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RECEIVED

MAR 3 4 2005

PUBLIC SERVICE
COMMISSION

March 3, 2005

VIA UPS

Ms. Beth O'Donnell

Executive Director

Kentucky Public Service Commission

211 Sower Boulevard

Frankfort, Kentucky 40602-0615

**Re: Notice of Election of Interconnection Agreement by
KMC Data LLC**

Dear Ms. O'Donnell:

Enclosed for filing with the Kentucky Public Service Commission, please find an original and four (4) copies of the above-referenced Notice of Election of Interconnection Agreement of KMC Data LLC ("KMC Data"). By this filing, KMC Data notifies the Commission of its adoption of the interconnection agreement between BellSouth Telecommunications, Inc. and Level 3 Communications, L.L.C. pursuant to Section 252(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(i), effective as of February 2, 2005.

Also enclosed are a duplicate of this filing and a self-addressed, postage prepaid envelope. Kindly date-stamp the duplicate and return in the envelope provided. If you have any questions concerning this filing, please do not hesitate to contact me at (703) 918-2380.

Respectfully submitted,



Andrea Pruitt Edmonds

Counsel to KMC Data LLC

Enclosures

IN THE MATTER OF KMC DATA LLC)
NOTICE OF ELECTION OF THE)
INTERCONNECTION AGREEMENT BETWEEN)
BELLSOUTH TELECOMMUNICATIONS, INC.)
AND LEVEL 3 COMMUNICATIONS L.L.C.)

In accordance with Sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), 47 U.S.C. §§ 151 *et seq.*, KMC Data LLC (“KMC Data”) hereby files its Notice of Election of Interconnection Agreement between BellSouth Telecommunications, Inc. (“BellSouth”) and Level 3 Communications L.L.C. (“Level 3”) for the State of Kentucky and respectfully requests that the Kentucky Public Service Commission (the “Commission”) enter an order acknowledging the adoption of the interconnection agreement, effective as of February 2, 2005.¹ In support hereof, KMC Data states as follows:

1 In the event prior Commission approval is required for adoption of an interconnection agreement under Section 252(i) of the Act, KMC Data respectfully requests that the Commission treat this filing as an application for adoption of the Level 3 Agreement, effective as of February 2, 2005.

Attachment A. A copy of the letter from BellSouth rejecting KMC Data's adoption notice is appended hereto as **Attachment B.** A copy of the Level 3 Agreement already is on file with the Commission and, thus, is not attached hereto.

Notwithstanding the adoption of a preexisting agreement, KMC Data reserves the right to amend the Level 3 Agreement to reflect the terms of the Federal Communications Commission's ("FCC") recent decision relating to reciprocal compensation for ISP-Bound traffic. On October 8, 2004, the Federal Communications Commission ("FCC") granted, in part, the *Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. 160(c) from Application of the ISP Remand Order in WC Docket No. 03-171*, ("CoreComm Forbearance Decision"). In the CoreComm Forbearance Decision, the FCC granted Core Communication's petition for forbearance from the growth caps and new markets rule established in the FCC's *ISP Remand Order*.² The CoreComm Forbearance Decision was made effective as of October 8, 2004 and, consequently, the growth caps and new market rules are no longer effective. Because the Level 3 Agreement does not reflect the CoreComm Forbearance Decision, KMC Data reserves the right to amend Level 3 Agreement to reflect the CoreComm Forbearance Decision once this adoption becomes effective.

In processing this adoption, please include the following contact information for the Notice sections of the KMC Data/BellSouth interconnection agreement:

Marva Brown Johnson
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6220 (telephone)
(678) 985-6213 (facsimile)

² *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), remanded, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert denied, 538 U.S. 1 (2003).

and copies to:

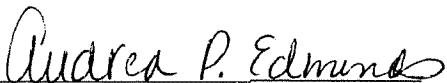
Raymond Pifer
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6441 (telephone)
(678) 985-6213 (facsimile)

In addition, the following contact information should be used solely for the purpose of completing the adoption process:

Brad E. Mutschelknaus
Andrea Pruitt Edmonds
Denise N. Smith
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036

WHEREFORE, KMC Data prays the Commission enter an order acknowledging KMC Data's adoption of the Level 3 Agreement.

Respectfully submitted,

By: 

Brad E. Mutschelknaus
Andrea P. Edmonds
Denise N. Smith
KELLEY DRYE AND WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036
Telephone: (202) 955-9600
Facsimile: (202) 955-9792

Attorneys for KMC Data LLC

Dated: March 3, 2005

CERTIFICATE OF SERVICE

I, Andrea Pruitt Edmonds, Attorney for KMC Data LLC, do hereby certify that on this 3rd day of March 2005 a true and correct copy of the above Notice of Election was sent via first class U.S. mail to:

James Tamplin
BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Andrea P. Edmonds

ATTACHMENT A

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

TYSONS CORNER

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BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

February 2, 2005

VIA FACSIMILE AND OVERNIGHT DELIVERY

Mr. James Tamplin
BellSouth Interconnection Services
675 West Peachtree Street, NE
Room 34S91
Atlanta, GA 30375
James.Tamplin@BellSouth.com
FAX: 404-529-7839

Re: Notification of KMC Data LLC, Pursuant to Section 252(i) of the Communications Act of 1934, as amended, to Adopt the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Level 3 Communications L.L.C. for the State of Kentucky

Dear Mr. Tamplin:

KMC Data LLC ("KMC Data"), by its attorneys, hereby notifies BellSouth Telecommunications, Inc. ("BellSouth") of its adoption, pursuant to section 252(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(i) (the "Act"), of the interconnection agreement between BellSouth and Level 3 Communications L.L.C. ("Level 3"), effective June 23, 2004 and approved by the Kentucky Public Service Commission in an order dated July 8, 2004, for the State of Kentucky (the "Level 3 Agreement"). KMC Data hereby adopts the terms and conditions of the Level 3 Agreement as the terms and conditions that will govern the relationship between BellSouth Telecommunications, Inc. and KMC Data in the State of Kentucky.

By execution of this adoption letter and any related correspondence or documentation, neither KMC Data nor BellSouth waives any of its rights or remedies under the Act; the rules, decisions or administrative processes of the Federal Communications Commission or the regulatory utility commissions, agencies, boards or departments in Kentucky; or under any other applicable law or regulation. KMC Data's adoption of the Level 3 Agreement does not

Mr. James Tamplin
BellSouth Interconnection Services
February 2, 2005
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affect any rights KMC Data has to adopt or negotiate/arbitrate amendments or successor agreements to the agreement formed through this adoption. In addition, this adoption request in no way impairs or affects the status of KMC Telecom III LLC and KMC Telecom V, Inc., which are parties to an ongoing arbitration proceeding with BellSouth.

KMC Data reserves the right to amend the Level 3 Agreement to reflect the terms of the Federal Communications Commission's ("FCC") recent decision relating to reciprocal compensation for ISP-Bound traffic. On October 8, 2004, the Federal Communications Commission ("FCC") granted, in part, the *Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. 160(c) from Application of the ISP Remand Order in WC Docket No. 03-171*, ("*CoreComm Forbearance Decision*"). In the CoreComm Forbearance Decision, the FCC granted Core Communications's petition for forbearance from the growth caps and new markets rule established in the FCC's *ISP Remand Order*.¹ The CoreComm Forbearance Decision was made effective as of October 8, 2004, and consequently, the growth caps and new market rules are no longer effective. To the extent the Level 3 Agreement does not reflect the CoreComm Forbearance Decision, KMC Data reserves the right to amend the Level 3 agreement to reflect the CoreComm Forbearance Decision once this adoption becomes effective.

In processing this adoption, please include the following contact information for the Notice sections of the KMC Data/BellSouth interconnection agreement:

Marva Brown Johnson
KMC TELECOM
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6220 (telephone)
(678) 985-6213 (facsimile)

and copies to:

Raymond Pifer
KMC TELECOM
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6441 (telephone)
(678) 985-6213 (facsimile)

In addition, the following contact information should be used solely for the purpose of completing the adoption process:

¹ *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), remanded, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert denied, 538 U.S. 1 (2003).

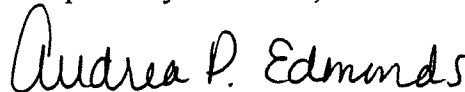
Mr. James Tamplin
BellSouth Interconnection Services
February 2, 2005
Page Three

Brad E. Mutschelknaus
Andrea P. Edmonds
Denise N. Smith
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

By sending this letter, KMC Data has fully exercised its rights, under section 252(i) of the Act, to adopt the Level 3 Agreement. Accordingly, the effective date for the interconnection agreement formed through this adoption is the date of this notice, February 2, 2005. Kindly acknowledge BellSouth's receipt of this notification and agreement to the effective date by executing a copy of this letter in the space provided and returning it to the undersigned counsel. Please contact us at your earliest convenience in order to agree upon a process for the preparation and filing of the interconnection agreement formed through this adoption. Please be advised, however, that KMC Data reserves the right to proceed to file this adoption directly with the Kentucky Public Service Commission should the undersigned counsel not receive a signed acknowledgement from BellSouth within five (5) business days from the date of this letter.

Thank you for your anticipated cooperation in this matter.

Respectfully submitted,



Brad Mutschelknaus
Andrea P. Edmonds
Denise N. Smith

Counsel to KMC Data LLC

ACKNOWLEDGED AND AGREED TO:

BellSouth Telecommunications, Inc.

BY: _____ (signature)

_____ (name)

DATED: _____

ATTACHMENT B

675 West Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

Jim Tamplin
(404)-927-8997
Fax: (404) 529-7839

Sent Via E-mail and Certified Mail

February 11, 2005

Mr. Brad Mutschelknaus
Ms. Denise N. Smith
Ms. Karly E. Baraga
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036

Dear Mr. Mutschelknaus:

This is in response to your four letters dated February 2, 2005, regarding a request of KMC Data LLC ("KMC Data") to adopt the Interconnection Agreement between BellSouth and Level 3 Communications, L.L.C. ("Level 3") for the states of Kentucky, North Carolina, South Carolina and Tennessee.

BellSouth acknowledges receipt of KMC Data's request for adoption but disagrees with the assumptions upon which KMC Data bases its request and the manner in which the request is made. Due to the Federal Communications Commission's (FCC) Interim Rules Order as well as the requirements set forth in 47.C.F.R. § 51.809, BellSouth respectfully declines to execute KMC Data's adoption request at this time, but can provide alternatives that should meet KMC Data's needs for the states of Kentucky, North Carolina, South Carolina and Tennessee.

The Interim Rules Order provided that an adoption of another party's interconnection agreement that contains rates, terms and conditions for mass market switching, enterprise market loops and high-capacity dedicated transport, that comprise the frozen elements addressed in the Interim Rules Order, is not permitted at this time. Specifically, paragraph 22 of the Interim Rules Order states:

We also hold that competitive LECs may not opt into the contract provisions 'frozen' in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the *status quo* in certain respects without expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting new carriers to enter during the interim period.

In addition, paragraph 23 of the Interim Rules Order states:

[I]f the vacated rules were still in place, competing carriers could expand their contractual rights by seeking arbitration of new contracts, or by opting into other carriers' new contracts. The interim approach adopted here, in contrast, does not enable competing carriers to do either.

The intent of the Interim Rules Order was to freeze in place the carriers' provisions as of June 15, 2004, and not to permit a new carrier to obtain vacated elements to which they were not entitled as of June 15, 2004.

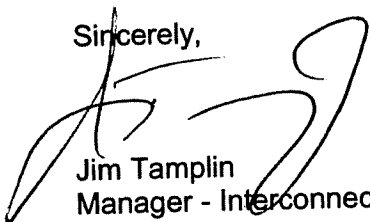
Further, 47 C.F.R. § 51.809(c) states that interconnection agreements are to be made available to requesting carriers for adoption only for a reasonable period of time after such agreements are approved by the applicable state commission. Since the execution of the Level 3 agreement, there have been substantial changes in law, including but not limited to the D.C. Circuit Court of Appeals vacatur of certain portions of the FCC's Triennial Review Order, and the FCC's Interim Rules Order regarding interim unbundling rules, as referenced and discussed above. In addition, the FCC's Triennial Review Remand Order will become effective on March 11, 2005, further changing the terms upon which requesting carriers may order unbundled network elements. Given the significant changes that have occurred rendering the Level 3 Interconnection Agreement noncompliant with existing law, KMC Data's request to adopt this agreement has not been made within a reasonable period of time as required by the FCC's rules and is not adoptable in accordance with the FCC's rules and orders.

Although an adoption of the Level 3 Interconnection Agreement is not an option at this time, BellSouth can provide KMC Data with BellSouth's proposed Interconnection Agreement for new CLECs for the states of Kentucky North Carolina, South Carolina and Tennessee.

Please advise BellSouth as to how KMC Data would like to proceed and BellSouth can make available the appropriate agreement to be executed by the Parties. BellSouth will fully cooperate with KMC Data to complete these agreements and establish the necessary billing accounts once KMC Data and BellSouth have executed an agreement. The executed agreements will be effective on the date agreed upon by the Parties in the Interconnection Agreement.

Please contact me at your earliest convenience. BellSouth looks forward to working with KMC Data in reaching a mutually agreeable Interconnection Agreement.

Sincerely,



Jim Tamplin
Manager - Interconnection Services

cc: Rhona Reynolds, Esq.
Andrew Shore, Esq.
Marva Brown Johnson, KMC Data LLC
Raymond Pifer, KMC Data LLC