

ORIGINAL

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

EX PARTE OR LATE FILED

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE (202) 887-1257

E-MAIL: AKlein@KelleyDrye.com

Admitted in New York and New Jersey
(Not admitted in D.C.)

NEW YORK, NY
TYSONS CORNER, VA
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

April 17, 2002

RECEIVED

APR 18 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REDACTED – FOR PUBLIC INSPECTION

VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Re: Application by BellSouth Corporation for Provision of In-Region,
InterLATA Services in Georgia and Louisiana
Notice of Ex Parte Presentation; CC Docket 02-35

Secretary Dortch:

On April 16, 2002, Michael Duke of KMC Telecom and the undersigned, representing KMC Telecom, met with Kyle Dixon, Senior Legal Advisor to Chairman Powell, and separately with Renée Crittendon, Pamela Megna, Pam Slipakoff, Aaron Goldberger and Ian Dillner of the Wireline Competition Bureau. On April 17, 2002, Michael Duke, the undersigned and Genevieve Morelli, representing KMC Telecom, met with Commissioner Martin, Emily Willeford, Special Assistant to Commissioner Martin, Matthew Brill, Legal Advisor to Commissioner Abernathy, and Jordan Goldstein, Senior Legal Advisor to Commissioner Copps. During these meetings, KMC Telecom discussed its opposition to the above referenced application of BellSouth. The attached written material was submitted at the time of the oral presentations and summarizes the substance of the presentation.

This notice is being filed in conformance with the Commission's rules. Please file this notice with the record of the above-referenced proceeding.

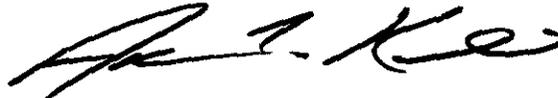
No. of Copies rec'd 012
List ABCDE

KELLEY DRYE & WARREN LLP

Marlene H. Dortch, Secretary
April 17, 2002
Page Two

Should you have any questions with regard to the foregoing, please do not hesitate to contact the undersigned at your convenience. Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. M. Klein", written in a cursive style.

Andrew M. Klein
Counsel to KMC Telecom, Inc.

cc: Commissioner Martin
Kyle Dixon
Jordan Goldstein
Matthew Brill
Renée Crittendon
Susan Pié
James Davis-Smith (U.S. D.O.J.)



**Presentation to
Federal Communications Commission:**

**Deficiencies in the BellSouth
§271 Application
CC Docket 02-35**

April 16 and 17, 2002

AGENDA

KMC Telecom/FCC Meeting on BellSouth §271 Application

- **KMC's Objective is to have BellSouth Address its Concerns**
- **Who is KMC Telecom?**
- **Specific Issues that Must be Addressed**
 - **Anti-Competitive Activity**
 - **Unreasonable Access to Loops**
 - **Inadequate OSS Performance**

KMC TELECOM

FACT SHEET

➤ **KMC Local Business Service**

✓ **Services**

- **Voice, Data, Internet and Enhanced Services**

✓ **Network**

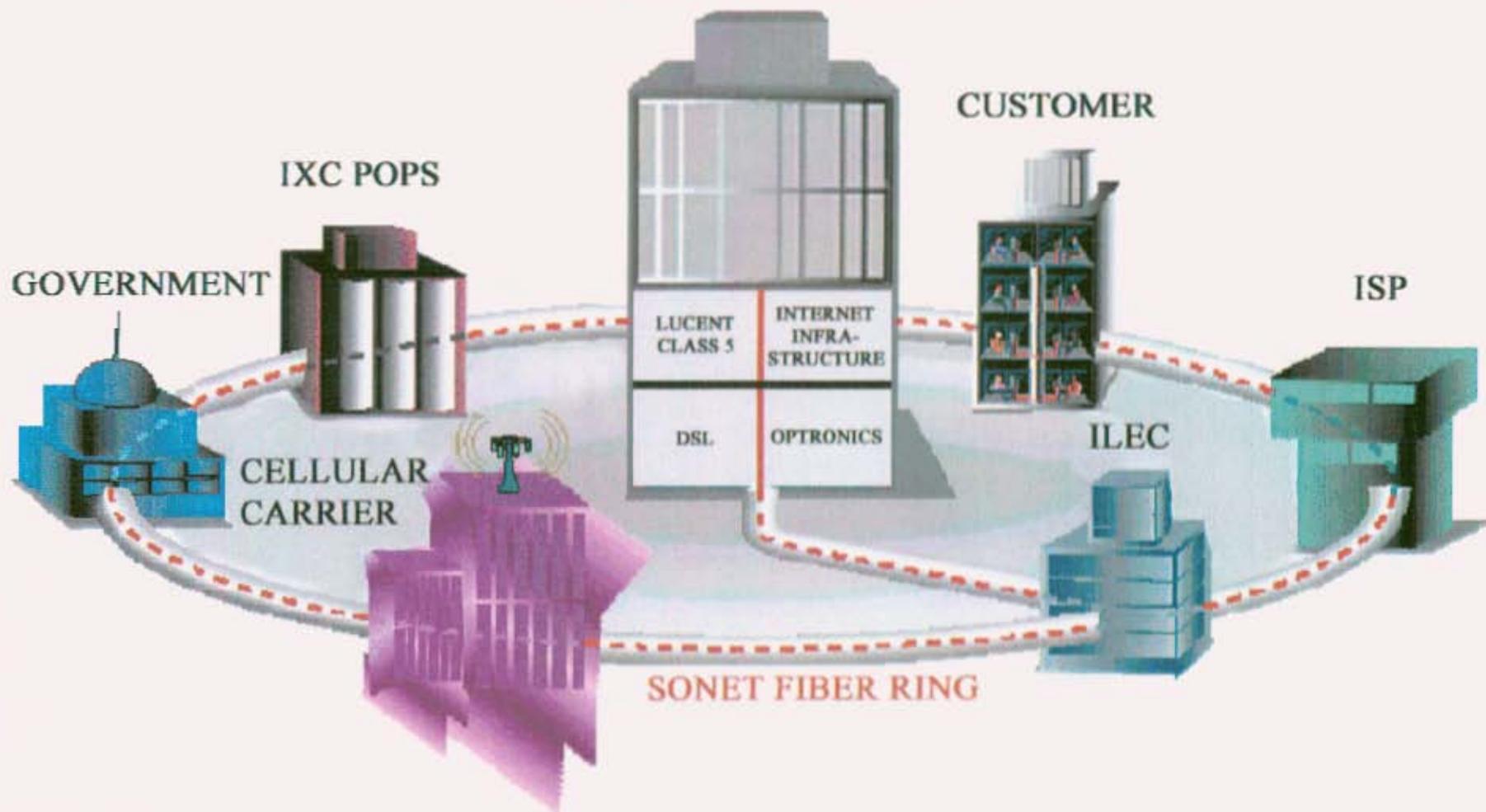
- **KMC operates local networks in 35 mid-size cities**
- **\$1 Billion invested**
 - 35 Lucent 5ESS Switches
 - 35 Lucent PSAX Soft-switches
 - 2,400 local fiber miles deployed
 - 140 ILEC collocations

✓ **Market**

- **Local Presence of Sales, Service and Customer Support**
 - More than 14,000 customers
 - Over 2.8 Million lines in service (DS-0 equivalents)
 - \$175 Million in Revenue (2001)

KMC TELECOM TIER III NETWORK

KMC CENTRAL OFFICE



[REDACTED]

KMC TELECOM

BellSouth Continues to Engage in Blatantly Anti-Competitive Activity

- **BellSouth is Blocking Access to End Users Using its DSL service and the DSL USOC**
 - ✓ This Activity is Based Solely on BellSouth Policy, and has No Technical or Justifiable Basis.

It is BellSouth's "policy" to not provide DSL service to end users who receive voice service from CLECs. "[W]e're not gonna allow the data service to remain on the line if its converted over." North Carolina Utilities Commission, Tr. Vol. 8 at pages 14 and 17 (BellSouth witness Thomas Williams).

KMC TELECOM

How BellSouth's Anticompetitive Methods Thwart Competition:

- ✓ BellSouth Uses Several Different, Anticompetitive Methods
 1. Places DSL service on the primary/billing telephone line of a multi-line customer's account.
 2. BellSouth illegally ties its DSL service to its voice service, and transfers back to itself a CLEC customer's primary voice line when the customer requests BellSouth DSL service.
 3. Blocks customer migrations through the placement of DSL USOC on customer account.

KMC TELECOM

How BellSouth's Anticompetitive Methods Thwart Competition:

1. BellSouth places DSL service on the primary/billing telephone line of a BellSouth multi-line customer.

- ✓ This prevents the hunting feature from working when a competitor wins the account. Without access to the primary line, the remainder of the lines on a customer's account cannot be transferred; even if they could, the secondary or roll-over lines are useless without the primary line to which all incoming calls are initially directed.

2. BellSouth illegally ties its DSL service to its voice service, and transfers back to itself the KMC customer's primary voice line when the customer requests BellSouth DSL service.

- ✓ Since the voice line that it transfers back is the customer's *primary* line, KMC is left with nothing but useless secondary lines. BellSouth will not engage in line splitting.

KMC TELECOM

How BellSouth's Anticompetitive Methods Thwart Competition: (Cont'd)

3. Blocks customer migrations through the placement of a DSL USOC on customer account.

- ✓ BellSouth rejects orders to transfer loops with DSL codes, and continually pre-qualifies customer lines for DSL service, and then itself marks the account with a DSL service ordering code. In other instances, BellSouth will fail to remove the USOC even after DSL service has been cancelled. BellSouth will not even recognize KMC's authority to remove the USOC as part of an order to switch service, despite the fact that it will permit its affiliates to do so. (*Florida PSC Workshop Transcript, at 131-33, 135-36*) The mere existence of the DSL USOC therefore prevents competitors from serving these customers, unless and until the end user convinces BellSouth retail to "remove the DSL USOC from the CSR."

KMC TELECOM

✓ **KMC is Not Alone in Recognizing the Harm Caused By BellSouth's Actions**

- Birch, Mpower and Xspedius have all raised the same issues in this proceeding. See Birch Initial Comments at pages 30-31, Mpower Reply Comments at pages 7-8, and Xspedius Reply at page 3.
- Louisiana Public Service Commission Staff found BellSouth's conduct "rather disturbing" and recommended that BellSouth be ordered to provide its DSL service directly to the end user via the same UNE loop that the CLEC is utilizing to provide voice service to the end user. *Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. U-22252-E, Louisiana Staff Final Recommendation, p. 86 (August 31, 2001)

KMC TELECOM

✓ Solutions to the DSL Blocking Problem

- Prohibit BellSouth from assigning DSL service to the primary line of a multi-line customer.
 - ✓ “[P]ut the ADSL on another line. I think that’s the answer.” Florida Public Service Commission Docket No. 960786-TL, at Tr. Vol. 5, page 713 (BellSouth witness Thomas Williams).
- Prevent BellSouth from transferring back to itself a CLEC customer’s primary line in response to a request for DSL service.
- Require BellSouth to process orders despite existence of a DSL USOC, or permit CLECs to remove it based on the authority vested by its new customer to act on his or her behalf.

KMC TELECOM

✓ **BellSouth Uses Confidential CLEC Wholesale Information in its Retail Operations**

- Customers report receiving calls from BellSouth the day after making the decision to switch – well before their service was actually transferred to KMC.
- Mpower raised the same issue in this proceeding, in its Reply Comments at pages 8-9.
- BellSouth has mechanized the process of flowing wholesale information to its retail and winback teams.

The FCC Must Take Action to End these Blatantly Anti-Competitive Practices Before the Local Market Can Be Declared "Open to Competition."

KMC TELECOM

BellSouth Fails to Provide Reasonable Access to Loops

✓ Missed Appointment/Lack of Facility Performance

The procedures that BellSouth has in place are simply insufficient to provide an accurate and reliable order confirmation since they fail to verify the existence of adequate facilities at the appropriate time:

Upon receipt of a CLEC order, BellSouth conducts a cursory check of its records, confirms the order and **then**, just prior to the install, verifies that the necessary facilities exist.

- BellSouth witness Ainsworth admits that "we do not do the pre-FOC [facilities] check." (Attachment Two to KMC Comments, from NCUC Tr. Vol. 7, at 241)
- BellSouth follows these same unreasonable procedures in Georgia and Louisiana, since its practices are allegedly regionwide. (Attachment Two to KMC Comments, from NCUC Tr. Vol. 8, at 286 - BellSouth witness Heartley).

Effect on Competition: Missed appointments, delayed installs, and inadequate notice to both KMC and the end user that the change in service providers will not take place as scheduled.

KMC TELECOM

BellSouth's Own Reported Performance Tells the Story

✓ Missed Installation Appointments:

Two-Wire Analog Loops with LNP KMC Orders in Georgia (% Missed)	
June 2001	19%
October 2001	15%
January 2002	9%
Average (June '01-Jan '02)	11%

Digital Loops KMC Orders in Louisiana (% Missed)		
	< DS-1	>= DS-1
August 2001	22%	29%
January 2002	25%	17%

Hot Cuts:

BellSouth fails to perform the time specific hot cuts for which KMC contracts. The data for KMC orders in Georgia for February 2002 indicate, for example, that BellSouth met time-specific SL2 hot cut only 92% of time - below the 95% standard.

KMC TELECOM

✓ **Percent Jeopardies:**

UNE ISDN and Analog Loops February 2002 All CLEC Orders in Georgia		
Circuit Type	BellSouth	CLECs
UNE ISDN	7%	13%
2-wire Analog w/LNP non-design	1%	4%
All CLEC Orders in Louisiana		
UNE ISDN	4%	17%
2-Wire Analog Loop Design	0%	5%

Digital Loops DS-1 and Above All CLEC Orders in Georgia		
Month	BellSouth	CLEC
December, 2001	4%	66%
January, 2002	3%	43%
February, 2002	4%	56%
All CLEC Orders in Louisiana		
February, 2002	12%	74%

KMC TELECOM

Inadequate Installation Quality, Maintenance & Repair

✓ BellSouth's Performance Data Again Speaks for Itself:

1. Provisioning Troubles

Percent of Provisioning Troubles within 30 days - KMC Only		
Analog Loops (designed)		
	Georgia	Louisiana
Dec 2001	8%	16%
Jan 2002	13%	4%

Percent of Provisioning Troubles within 30 days - All CLECs		
Georgia - February 2002		
Circuit Type	BellSouth	CLECs
Loop + Port Combo \geq 10/Dispatch	7%	17%
2-wire Analog Design/Dispatch	6%	12%
2-wire Analog w/LNP Design/Dispatch	6%	11%
2-wire Analog w/LNP Non-Design/Dispatch	8%	30%
UNE Digital Loop \geq DS-1	2%	8%
Louisiana		
Digital Loops \geq DS-1	0.5%	5%

KMC TELECOM

2. Repeat Troubles

- Over **one-third** of the KMC DS-1 and higher loop troubles in both Georgia and Louisiana over the June 2001-January 2002 timeframe had a trouble in the preceding 30 days.
- One-fifth of the "Other Non-design/dispatch" troubles in Georgia were repeat troubles, in February 2002.

3. Overall Trouble Rate

Overall Customer Trouble Report Rate – All CLECs Georgia - February 2002		
Circuit Type	BellSouth	CLECs
Other (non 2-wire) Design/Dispatch	1.5%	7%
Other (non 2-wire) Design/Non-Dispatch	1%	7%

KMC TELECOM

KMC's Commercial OSS Experience Proves that BellSouth's Ordering Processes Do Not Function Properly

- BellSouth's Supplemental Application Focuses Almost Solely on UNE-P and Resale, and Fails to Address OSS Functions as they Relate to UNE Loops
- Incomplete FOCs
 - BellSouth Returns FOCs without its own order number/Order ID Without the BellSouth Order ID, KMC personnel cannot track the order, or coordinate the order with their BellSouth counterparts
- Improper Order Rejects
 - BellSouth often rejects orders citing "invalid circuit ID," despite fact that the ID has been verified through BellSouth's own COSMOS system

KMC TELECOM

Conclusion

BellSouth has failed to even respond to KMC's concerns. The Commission must prevent BellSouth from continuing its anticompetitive activity and must demand better performance, prior to approving any BellSouth §271 application.

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

- o Microfilm, microform, certain photographs or videotape.

- o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician

1 DISKETTE