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November 8, 2002

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: WC Docket 02-307 Ex-Parte # 4

Dear Ms. Dortch:

This letter is being submitted into the record of the above-referenced proceeding at the request of Commission staff. The staff has asked BellSouth to respond to the two assertions described below which were raised for the first time in the Reply Comments of parties to this proceeding.

Loading Factors

Although admitting that it has no evidence to support its belief, AT&T suggests that it might be possible that an error in the cost studies BellSouth recently submitted in the ongoing North Carolina pricing proceeding could have impacted BellSouth's UNE prices in Florida. (AT&T Reply Comments at 34). It does not.

On June 10, 2002 BellSouth filed new cost studies in North Carolina for a number of unbundled network elements and combinations. These cost studies were produced in response to the North Carolina Utilities Commission's ("NCUC's") March 20, 2002 Order that instituted a new UNE cost proceeding for BellSouth. Subsequent to the submission of these new studies, it was discovered that BellSouth had inadvertently used incorrect inputs in the development of the hardwire and plug-in loading factors associated with the circuit and digital switching accounts. Additionally, BellSouth used the incorrect sales tax for central office-related items. Corrected studies were filed in North Carolina on October 1, 2002.

The loading factor error was due solely to an incorrect sourcing reference in the factor file which mistakenly included data from another state into the calculation of the hardwire and plug-in loading factors associated with the circuit and digital switching accounts. The North Carolina factors were developed based upon a 2000 base-year and projected to reflect the 2002-2004-study period. This same error did not occur in Florida, where an entirely different factor file was employed, a 1998 base-year was utilized, and the study period was 2000-2002. Nonetheless, in order to confirm the accuracy of the Florida study, BellSouth has reviewed the Florida cost study and reaffirmed the fact that the correct sourcing was used in the development of the factors submitted in Florida Docket No. 990649-TP and that only Florida data was used.

The second correction to the North Carolina study concerned the application of the sales tax. North Carolina differentiates the sales tax rate between central office and outside plant equipment. Thus, two separate sale tax rates need to be considered. Florida does not have this bifurcated tax structure, thus this error could not and was not introduced in the Florida cost proceeding.

Reciprocal Compensation

In its Reply Comments, KMC for the first time asserts that information provided to KMC by BellSouth in April of this year somehow demonstrates that BellSouth has withheld payments to KMC greatly in excess of the **amounts** BellSouth has asserted are involved in the ongoing contractual dispute between the parties. KMC's assertion is baseless.

As detailed in the attached letter from BellSouth to KMC, there are several issues causing this dispute. First, KMC's invoices reflect that BellSouth originated an amount of usage that exceeds the amount BellSouth's data shows as its own originated traffic. It is BellSouth's belief that KMC is including third-party originated traffic in its calculation of BellSouth originated traffic. Such third-party originated traffic would not be subject to reciprocal compensation. However, BellSouth needs data to confirm or deny this belief. Additionally, BellSouth has identified instances in which KMC has applied an incorrect rate or factor to the usage amount invoiced. Thus, even where BellSouth owes compensation to KMC, BellSouth believes that in certain instances KMC **is** billing it at a rate other than that provided in the contract. In any event, the information provided by KMC simply doesn't show what KMC claims. In particular, there is no basis for KMC to extrapolate the 7 months of information contained in the BellSouth worksheet over the 30 month period which KMC alleges are in dispute.

BellSouth has offered on numerous occasions to discuss this dispute with KMC upon BellSouth's receipt of the data necessary to support KMC's claim. To date, however, KMC has been unwilling to provide the necessary data- solely in

its possession—needed to resolve these issues. Indeed, as recently as yesterday, we were unable to meet because KMC had not finished gathering the requested data. Nonetheless, BellSouth continues to make itself available to resolve these issues.

In accordance with Commission rules, I am filing copies of this notice and attachment and request that they be included in the record of the proceeding identified above.

Sincerely,



Glenn T. Reynolds

cc: Jeff Dygert
Josh Swift
Cara Grayer
Monica Desai
Christine Newcomb
Susan Pie
James Davis-Smith

cc: [illegible]
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Sent via Certified Mail

November 7, **2002**

Ms. Riley M. Murphy
Senior Vice President Legal Affairs
1545 Route 206, Suite 300
Bedminster, New Jersey 07921

Dear Ms. Murphy:

This is in response to your letter dated October 31, 2002. As you know, the discrepancy in usage calculations is not the sole issue in BellSouth's disputes. In some cases, KMC has applied the incorrect factor or rate. BellSouth and KMC have worked previously to correct several of the rate issues, although many still remain open.

After the April 16, 2002 meeting between KMC and BellSouth, both sides agreed to exchange detail information for all usage exchanged for a period of seven (7) months. The purpose of this data exchange was to allow KMC and BellSouth to compare the total usage recorded by each party as originated by BellSouth or third parties and determine the reason for the discrepancy in our respective usage calculations. As a good faith gesture to assist KMC in an investigation of its usage and to resolve any found discrepancies, BellSouth promptly provided a spreadsheet, which was subsequently misrepresented by KMC in your letter. This spreadsheet included BellSouth originated usage and usage originated from third parties that transited BellSouth and was terminated by KMC. This "Transit Traffic" included CLEC originated, CMRS originated, ICO originated, IXC originated, Resold originated and UNE originated traffic. Also included in this seven month period is a partial invoice month for June due to KMC's billing cycle, which causes a slight skewing of the data

In your letter dated October 31, 2002, you state that the aforementioned spreadsheet provided by BellSouth "reveals only a 4% difference between the" BellSouth and KMC calculations of the appropriate amount to be billed. You then state that the \$8.6 million in dispute is **38%** of the total billed by KMC. Your conclusion is that BellSouth should only dispute 4% of the dollar amount billed by KMC since the spreadsheet shows that for one seven month period our usage calculations were 4% apart.

There are several fallacies in your logic. First, as stated above, KMC's apparent belief that a 4% difference in usage calculations should result in a 4% difference in the dollar amounts billed and paid is simply comparing apples to oranges. As KMC is aware, the discrepancy in usage calculations is not the sole issue in these disputes. If KMC correctly calculated its usage but applied an incorrect rate or factor, the dollar amount billed would be incorrect and, therefore, BellSouth would issue a dispute. Using KMC's logic, if the usage calculation is correct, BellSouth should pay regardless of whether the correct rate was applied appropriately.

Second, please note that the usage provided only reflects a seven-month period. KMC claims that the time period at issue is May of 2000 through the present (30 months), yet KMC is content to reference a spreadsheet for seven months in 2001 as the basis of its claim. Additionally, the spreadsheet contains the usage invoiced by KMC, but does not provide any information indicating how KMC arrived at its calculation. In this spreadsheet, in addition to BellSouth originated usage, BellSouth provided the non-BellSouth usage recorded by BellSouth, for which BellSouth sends KMC **EMI** records to enable KMC to bill such third parties. As BellSouth has repeatedly stated, in order to resolve a portion of the disputes, KMC needs to provide similar data supporting its claim that its usage calculation is appropriate. To date KMC has not provided BellSouth comparable data other than the invoiced amounts on their monthly invoices. Without such data, BellSouth cannot determine the reason for this usage discrepancy.

Please submit the requested data as soon as possible so that we can come to resolution as to the usage calculation portion of the open billing disputes.

Sincerely,



Jerry Hendrix
Assistant Vice President
BellSouth Telecommunications, Inc.

Received
2001 SEP 14
11:00 AM
KMC