

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF KMC DATA LLC  
FOR ADOPTION OF THE  
INTERCONNECTION AGREEMENT BETWEEN  
QWEST CORPORATION AND MCI metro  
ACCESS TRANSMISSION SERVICES LLC

IDAHO PUBLIC  
UTILITIES COMMISSION  
)  
) Docket No. \_\_\_\_\_  
)  
)

**NOTICE OF ELECTION OF INTERCONNECTION AGREEMENT**

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 the Interconnection Agreement between Qwest Corporation ("Qwest") and MCI metro Access Transmission Services LLC ("MCI metro") for the State of Idaho and respectfully requests that the Idaho Public Utilities Commission (the "Commission") enter an order acknowledging the adoption of the interconnection agreement, effective as of December 8, 2004.<sup>1</sup> In support hereof, KMC Data states as follows:

KMC Data elects to receive interconnection services in accordance with the terms of the interconnection agreement between Qwest and MCI metro (the "MCI metro Agreement"), as approved by the Commission on November 21, 2002 in Docket No. QWE-T-02-22. On December 8, 2004, KMC Data notified Qwest by letter of its intent to adopt the MCI metro Agreement, but has been unable to reach agreement with Qwest with regard to certain terms for the adopted agreement. Accordingly, KMC Data is exercising its adoption rights under the Act by making this filing directly with the Commission. A copy of the adoption notice to Qwest is

<sup>1</sup> 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

appended hereto as *Attachment A*. A copy of the MCImetro Agreement already is on file with the Commission and, therefore, is not attached hereto.

Notwithstanding the adoption of a preexisting agreement, KMC Data reserves the right to amend the MCImetro 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' petition for forbearance from the growth caps and new markets rule established in the FCC's *ISP Remand Order*.<sup>2</sup> 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 KMC Data Agreement does not reflect the CoreComm Forbearance Decision, KMC Data reserves the right to amend the MCImetro 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/Qwest interconnection agreement:

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

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Commission treat this filing as application for approval of KMC Data's adoption of the MCImetro Agreement.

<sup>2</sup> *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  
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 MCImetro Agreement.

Respectfully submitted,

By: 

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

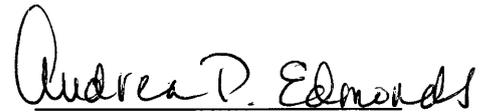
*Attorneys for KMC Data LLC*

Dated: January 21, 2005

**CERTIFICATE OF SERVICE**

I, Andrea Pruitt Edmonds, Attorney for KMC Data LLC, do hereby certify that on this 21<sup>st</sup> day of January 2005 a true and correct copy of the above Notice was sent via first class U.S. mail to:

Mr. Steve Dea  
Manager of Interconnection Agreements  
Qwest Corporation  
1801 California Street, Room 2420  
Denver, CO 80202

  
Andrea P. Edmonds

# **ATTACHMENT A**

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

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BRUSSELS, BELGIUM

AFFILIATE OFFICES  
JAKARTA, INDONESIA  
MUMBAI, INDIA

December 08, 2004

**VIA EMAIL, FACSIMILE AND OVERNIGHT DELIVERY**

Steve Dea, Manager- Interconnection Agreements  
Qwest Corporation  
1801 California Street, Suite 2420  
Denver Colorado, 80202  
(303) 965-3527  
steve.dea@qwest.com

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 Qwest Corporation and MCImetro Access Transmission Services LLC for the State of Idaho

Dear Mr. Dea:

KMC Data LLC ("KMC Data"), by its attorneys, hereby notifies Qwest Corporation ("Qwest") 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 Qwest and MCImetro Access Transmission Services LLC ("MCI"), dated October 25, 2002, for the State of Idaho (the "MCI Agreement"). KMC Data hereby adopts the terms and conditions of the MCI Agreement as the terms and conditions that will govern the relationship between Qwest and KMC Data in the State of Idaho.

By execution of this adoption letter and any related correspondence or documentation, neither KMC Data nor Qwest 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 Idaho; or under any other applicable law or regulation. In addition, KMC Data's adoption of the MCI Agreement does not affect any rights KMC Data has to adopt or negotiate/arbitrate amendments or successor agreements to the agreement formed through this adoption.

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KMC Data reserves the right to amend the MCI 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*.<sup>1</sup> 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. The MCI Agreement does not reflect the CoreComm Forbearance Decision so KMC Data reserves the right to amend the MCI 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/Qwest 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:

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

<sup>1</sup> *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).

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KELLEY DRYE & WARREN LLP

(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 MCI Agreement. Accordingly, the effective date for the interconnection agreement formed through this adoption is the date of this notice, December 08, 2004. Kindly acknowledge Qwest'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 Idaho Public Utilities Commission should the undersigned counsel not receive a signed acknowledgement from Qwest within five (5) business days from the date of this letter.

Thank you for your anticipated cooperation in this matter.

Respectfully submitted,



Brad Mutschelknaus  
Denise N. Smith  
Karly E. Baraga

*Counsel to KMC Data LLC*

cc: Marva Brown Johnson, KMC Data LLC  
Raymond Pifer, KMC Data LLC

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December 08, 2004  
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KELLEY DRYE & WARREN LLP

**ACKNOWLEDGED AND AGREED TO:**

Qwest

BY: \_\_\_\_\_ (signature)

\_\_\_\_\_ (name)

DATED: \_\_\_\_\_