

## KELLEY DRYE &amp; WARREN LLP

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EMAIL: aedmonds@kelleydrye.com

March 9, 2005

**VIA UPS**

Ms. Pam Bonrud  
 Executive Director  
 South Dakota Public Utilities Commission  
 State Capitol Building  
 500 East Capitol Avenue  
 Pierre, South Dakota 57501-5070

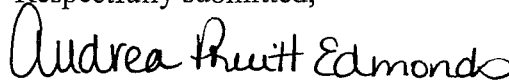
**Re: Notice of Election of Interconnection Agreement by  
KMC Data LLC**

Dear Ms. Bonrud:

Enclosed for filing with the South Dakota Public Utilities Commission (the "Commission"), please find an original and ten (10) 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 Qwest Corporation and AT&T of the Midwest, Inc. pursuant to Section 252(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(i), effective as of January 31, 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

RECEIVED  
 MAR 10 2005  
 SOUTH DAKOTA PUBLIC  
 UTILITIES COMMISSION

**BEFORE THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF KMC DATA LLC )  
NOTICE OF ELECTION OF THE )  
INTERCONNECTION AGREEMENT BETWEEN )  
QWEST CORPORATION AND AT&T )  
COMMUNICATIONS OF THE MIDWEST, INC. )**

**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 Interconnection Agreement between Qwest Corporation ("Qwest") and AT&T of the Midwest, Inc. ("AT&T") for the State of South Dakota and respectfully requests that the South Dakota Public Utilities Commission (the "Commission") enter an order acknowledging the adoption of the interconnection agreement, effective as of January 31, 2005.<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 AT&T (the "AT&T Agreement"), as approved by the Commission on May 13, 2004 in Docket No. TC04-080. On January 31, 2005, KMC Data notified Qwest by letter of its intent to adopt the AT&T Agreement, but has not received a response from Qwest regarding its notice of adoption. 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 appended hereto as *Attachment A*. A copy of the AT&T Agreement already is on file with the Commission and, thus, is not attached hereto.

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<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 Commission treat this filing as an application for adoption of the AT&T Agreement, effective as of January 31, 2005.

Notwithstanding the adoption of a preexisting agreement, KMC Data reserves the right to amend the AT&T 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*.<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 AT&T Agreement does not reflect the CoreComm Forbearance Decision, KMC Data reserves the right to amend AT&T 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:

---

<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).

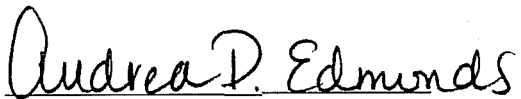
Raymond Pifer  
KMC Telecom  
1755 North Brown Road  
Lawrenceville, GA 30043  
(678) 985-6441 (telephone)  
(678) 985-6213 (facsimile)

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 AT&T Agreement.

Respectfully submitted,

By: 

Brad E. Mutschelknaus  
Andrea P. Edmonds  
Denise N. Smith  
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

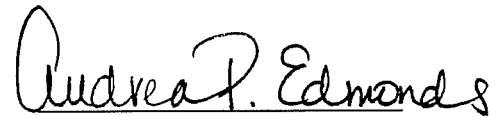
*Attorneys for KMC Data LLC*

Dated: March 9, 2005

**CERTIFICATE OF SERVICE**

I, Andrea Pruitt Edmonds, Attorney for KMC Data LLC, do hereby certify that on this 9<sup>th</sup> day of March 2005 a true and correct copy of the above Notice of Election was sent via first class U.S. mail to:

Steve Dea, Manager -- Interconnection Agreements  
Qwest Corporation  
1801 California Street, Suite 2420  
Denver, Colorado 80202

Handwritten signature of Andrea P. Edmonds in cursive script.

# ATTACHMENT A

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**TYSONS CORNER**

**8000 TOWERS CRESCENT DRIVE**

**SUITE 1200**

**VIENNA, VIRGINIA 22182**

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PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES  
JAKARTA, INDONESIA  
MUMBAI, INDIA

January 31, 2005

**VIA UPS**

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 AT&T Communications of the Midwest, Inc. for the State of South Dakota

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 AT&T Communications of the Midwest, Inc. ("AT&T"), dated April 8, 2004, for the State of South Dakota (the "AT&T Agreement"). KMC Data hereby adopts the terms and conditions of the AT&T Agreement as the terms and conditions that will govern the relationship between Qwest and KMC Data in the State of South Dakota.

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 South Dakota; or under any other applicable law or regulation. In addition, KMC Data's adoption of the AT&T 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.

VIA UPS

Steve Dea, Manager -- Interconnection Agreements

January 31, 2005

Page Two

KMC Data reserves the right to amend the AT&T 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>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 AT&T Agreement does not reflect the CoreComm Forbearance Decision so KMC Data reserves the right to amend the AT&T 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  
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In addition, the following contact information should be used solely for the purpose of completing the adoption process:

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<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).



KELLEY DRYE & WARREN LLP

VIA UPS

Steve Dea, Manager -- Interconnection Agreements

January 31, 2005

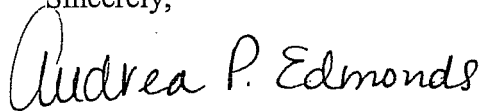
Page Three

Brad E. Mutschelknaus  
Andrea P. Edmonds  
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 AT&T Agreement. Accordingly, the effective date for the interconnection agreement formed through this adoption is the date of this notice, January 31, 2005. 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 South Dakota 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.

Sincerely,



Brad E. Mutschelknaus  
Andrea P. Edmonds  
COUNSEL TO KMC DATA LLC

APE:APE

cc: Marva Brown Johnson, KMC Telecom  
Mike Duke, KMC Telecom  
Raymond Pifer, KMC Telecom