

DT 01-136

KMC DATA, LLC

**Petition for Authority to Provide
Local Telecommunications Services**

Order Nisi Granting Authorization

O R D E R N O. 23,866

December 7, 2001

On June 29, 2001, KMC Data, LLC (KMC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

Subsidiaries of KMC Telecom Holdings, Inc. have been active in New Hampshire since KMC Telecom, Inc. received CLEC status in Docket No. 96-352 under Order No. 22,596 dated May 13, 1997.

Pursuant to Puc Chapter 1300, an applicant's petition for certification as a Competitive Local Exchange Carrier (CLEC) shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed KMC's petition for compliance with these standards. Staff reports that the company has provided all the information required by Puc 1304.02 and that the information provided supports KMC's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff further reports that adding KMC to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

KMC requests a waiver of the surety bond requirement in Puc 1304.02(b). In support, KMC submitted a sworn statement that it does not require advance payments or deposits of their customers. Staff recommends granting the waiver.

KMC has requested a waiver of 1304.02(a)(6) which requires the filing of U.S.G.S. based map of the areas in which service will be offered. KMC avers that it will offer service only in those territories served by Verizon New Hampshire. Maps of that territory are already on file with the Commission. Staff recommends granting the waiver.

We find that KMC has satisfied the requirements of Puc 1304.01(a)(1) and (2) and, further, that authorization is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g we have

considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because KMC has satisfied the requirements of Puc 1304.01(a), we will grant the petition.

We find KMC's request for a waiver of the requirement that maps delineating the territory in which the company intends to provide service is reasonable and will be granted.

As part of its petition, KMC avers it will charge access rates no higher than by Verizon New Hampshire's present and future rates for intraLATA switched access. At any point KMC seeks to exceed Verizon New Hampshire's access rates it will first seek Commission review. The Commission will monitor access rates as the intraLATA toll and local exchange markets develop, in order to avoid any inhibition of intraLATA toll competition in contravention of the Telecommunications Act of 1996.

We note that as new competitors enter the market, constantly increasing pressure is put on the 603 area code, so long as today's number assignment process remains in effect. Accordingly, we will require that KMC request and use numbers responsibly and conservatively, and to join in exploring alternative mechanisms to use existing numbers as efficiently as

possible. As evidenced by our recent orders, we have serious concern for the maintenance and viability of the 603 area code and the North American Numbering Plan as a whole. In approving this petition, we require KMC to comply with our orders on number resource optimization, including but not limited to Order No. 23,385 issued January 7, 2000, and Order No. 23,392 issued January 27, 2000. We note that KMC has multiple affiliates in New Hampshire and we are concerned with the possibility of a potential drain on New Hampshire's numbering resources. We thank KMC 5 for their cooperation on number conservation as shown by their recent return of whole codes in exchange for thousand blocks. We expect that future numbering requests from KMC and all of its affiliates will comply with our mandate on number conservation.

Based upon the foregoing, it is hereby

ORDERED NISI, that KMC's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Verizon New Hampshire, is GRANTED, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that KMC's request for a waiver of Puc 1304.02(a)(6) is GRANTED: and it is

FURTHER ORDERED, that KMC's request for waiver of the

surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to KMC's agreement not to collect any deposit, prepayment or advance payment prior to the provision of service; and it is

FURTHER ORDERED, that no less than ten days prior to commencing service, the Petitioner shall file with the Commission a rate schedule including the name description and price of each service, in accordance with N.H. Admin. Rules, Puc 1304.03(b); and it is

FURTHER ORDERED, that KMC shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than December 17, 2001 and to be documented by affidavit filed with this office on or before December 31, 2001; and it is

FURTHER ORDERED, that all persons interested in responding to this Order Nisi shall submit their comments or file a written request for a hearing on this matter before the Commission no later than December 24, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be effective January 7, 2002, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that, should the petitioner fail to exercise the authority granted herein within two years of the date of this order, the authority granted shall be deemed

withdrawn, null, and void.

By order of the Public Utilities Commission of New
Hampshire this seventh day of December, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary