

DT 03-202

KMC TELECOM V, INC.

**Petition for Authority to Provide Switched and non-Switched
Local Telecommunications Services**

Order Nisi Granting Authorization

O R D E R N O. 24,304

April 2, 2004

The petitioner, KMC Telecom V, Inc. (KMC V or Petitioner), filed an application to provide Competitive Local Exchange Carrier (CLEC) service with the New Hampshire Public Utilities Commission (Commission) on October 27, 2003. The petition was filed pursuant to N.H. Admin. Rule Puc 1300. RSA 374:22-g authorizes the Commission to approve the provision of switched and non-switched local exchange telecommunications services by more than one entity in all telephone franchise areas served by a telephone utility that provides local exchange service and has more than 25,000 access lines.

KMC V, a Delaware corporation, is a subsidiary of KMC Data Sub Holdings I, LLC. KMC Telecom Holdings, Inc. is the parent company of KMC Data Sub Holdings I, LLC. KMC V is authorized to provide intraLATA toll services in New Hampshire under IXC No. 08-001-00 issued August 7, 2000. In its petition, KMC V stated that it intends to meet the obligations of minimum basic service as outlined in Puc 1306.01(a), and therefore

requests the Commission to approve its application for CLEC certification.

Pursuant to N.H. Admin. Rule Puc 1300, an applicant's petition for certification as a 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 V's petition for compliance with these standards. Staff reports that KMC V has provided all the information required by Puc 1304.02 and that the information provided supports KMC V's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b)(1) and (2), (e), (f) and (g). Staff further reports that adding KMC V to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

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

KMC V also requests a waiver of Puc 1304.02(a)(6) which requires the filing of a U.S. Geological Survey-based map of the areas in which service will be offered. KMC V avers that it will offer service only in those territories served by Verizon New England d/b/a Verizon New Hampshire (Verizon). Maps of that territory are already on file with the Commission. Staff recommends granting the waiver.

We find that KMC V has satisfied the requirements of Puc 1304.01(a)(1) and (2). We also find that granting KMC V authority to operate as a CLEC 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 telephone company's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred.

KMC V attests it will not charge any customer deposits, advanced payments or prepayments. Based on this attestation, the Commission finds reasonable KMC V's request for a waiver of Puc 1304.02(b) which requires a CLEC applicant to post a surety bond to cover refund of deposits and advanced payments. However, this waiver shall apply only so long as KMC V does not require such deposits or advanced payments. In the event KMC V decides to

change its policy on prepayments, it must immediately notify the Commission.

The Commission also finds reasonable KMC V's request for a waiver of Puc 1304.02(a)(6) which requires a CLEC applicant to file maps delineating the territory in which it intends to provide service based on its representation that its service will be offered in only those territories served by Verizon. With these conditions, we grant these waiver requests.

As part of its petition, KMC V states that it will charge access rates no higher than Verizon's effective access rates as filed in Tariff 85. 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. (Pub.L.No. 104-104, 110 Stat. 56, *codified* at 47 U.S.C. §151 *et seq.*)

Pursuant to Puc 1304.02(a)(7), applicants for CLEC certification agree to adhere to all state laws and Commission policies, rules and orders. We take this opportunity to draw attention to two rules in particular. Puc 1306.01(8) and Puc 1306.01(10), respectively, describe Enhanced 911 (E911) and Telecommunications Relay Service (TRS) as part of the minimum basic service that every CLEC must provide. Pursuant to Puc 1306.01(c), authorized CLECs are responsible to collect and properly remit the E911 surcharge, currently set at 42 cents per

access line per month. Pursuant to Puc 1306.01(b), authorized CLECs are also responsible to collect and remit TRS charges, currently set at 4 cents per access line per month.

As new competitors enter the telecommunications market, we recognize that New Hampshire's 603 area code encounters increasing demand. Accordingly, we will require that KMC V request and use numbers responsibly and conservatively, and we require KMC V to utilize its affiliate's Service Provider Operating Company Number (OCN) when requesting numbers, and to refrain from acquiring any additional Local Routing Numbers (LRN) from NeuStar. In approving this application, we require KMC V to comply with our orders on number conservation, including Order No. 23,385, issued January 7, 2000, and Order No. 23,392, issued January 27, 2000, as well as further orders issued by the Commission concerning this matter. KMC V has stated its intention to share the number blocks already assigned to its affiliates operating in New Hampshire.

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that KMC V's request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to the condition that KMC V not collect any deposit, prepayment or advanced payment prior to the provision of service; and it is

FURTHER ORDERED, that KMC V's request for a waiver of the map filing requirement in Puc 1304.02(a)(6) is GRANTED; 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 the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than April 12, 2004 and to be documented by affidavit filed with this office on or before April 26, 2004; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than April 19, 2004;

and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 26, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective May 3, 2004, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this second day of April, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary