

**DT 03-202**

**KMC V TELECOM V, INC.**

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

**Order Nisi Granting Authorization**

**ORDER NO. 24,339**

**June 21, 2004**

On October 27, 2003, KMC Telecom V, Inc. (KMC V) 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.

The Commission Staff (Staff) recommended approval of the petition and, accordingly, on April 2, 2004 we entered Order No. 24,304 approving the petition on a nisi basis. Specifically, we indicated that the approval granted in the Order would be effective as of May 3, 2004 unless KMC V failed to publish the Order. We directed KMC V to publish the text of the Order in a newspaper of statewide circulation no later than April 12, 2004 and we established April 19, 2004 as the deadline for public comments and/or requests for hearing on the petition. On May 14, 2004, KMC V advised the Commission in writing that it had not accomplished the publication required by Order No. 24,304.

In these circumstances, we deem it appropriate to treat our previous Order nisi as annulled, pursuant to our authority under RSA 365:28, as not having become effective, a condition precedent (publication) having not been satisfied by the petitioner. In its May 14

letter, KMC V assents to reissuance of our previous Order nisi and, indeed, requests that the Commission do so.

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 Holding 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 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.

As already noted, and as previously stated in Order No. 24,304, Staff has reviewed KMC V'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 V'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 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 that it does not require advanced payments or

deposits of their customers. Staff therefore recommends granting the waiver.

KMC V also requests a waiver of 1304.02(a)(6) which requires the filing of U.S.G.S. based maps 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 Hampshire and that relevant maps 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) 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).

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 avers it will charge access rates no higher than Verizon New Hampshire's present and future rates for intraLATA switched access. At any point KMC V 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.

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 Puc 1306.01(c), authorized CLECs are responsible to collect and properly remit the E911 surcharge, currently set at 42 cents per access line. 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.

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 KMC V'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 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 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 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 V 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 July 1, 2004 and to be documented by affidavit filed with this office on or before July 15, 2004; 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 July 15, 2004; and it is

**FURTHER ORDERED**, that this Order Nisi shall be effective July 21, 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; 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 twenty-first day of June, 2004.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director and Secretary