

# NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

MONROE BLUFF EXECUTIVE CENTER

601 MONROE STREET, SUITE 301

P.O. BOX 537

JEFFERSON CITY, MISSOURI 65102-0537

www.ncrpc.com

October 7, 2003

ROBERT K. ANGSTEAD  
MARK W. COMLEY  
CATHLEEN A. MARTIN  
STEPHEN G. NEWMAN  
JOHN A. RUTH

TELEPHONE: (573) 634-2266

FACSIMILE: (573) 636-3306

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED**

**OCT 07 2003**

**Missouri Public  
Service Commission**

Re: KMC Telecom V, Inc.  
Application for Basic Local Exchange Services

Dear Judge Roberts:

Enclosed for filing on behalf of KMC Telecom V, Inc. please find the original and five copies of an Application for Expansion of Certificate of Service Authority and a Motion for Protective Order. The company's financial statements are attached as Exhibit C to the application and are being filed under seal.

Would you please bring this filing to the attention of the appropriate Commission personnel.

Thank you for your attention to this matter.

Sincerely,

NEWMAN, COMLEY & RUTH, P.C.

By:

Mark W. Comley  
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Brad E. Mutschelknaus

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED**

OCT 07 2003

In the Matter of the Application of )

KMC TELECOM V, INC. )

To Expand its Telecommunications )

Authority in Missouri to Include )

Competitive Resold and Facilities-Based )

Basic Local Exchange Telecommunications )  
Services )

Missouri Public  
Service Commission

Case No. \_\_\_\_\_

**APPLICATION FOR EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY**

KMC Telecom V, Inc. ("KMC V" or "Applicant"), currently an authorized interexchange and nonswitched local exchange carrier classified as competitive by the Missouri Public Service Commission ("Commission")<sup>1</sup>, by its undersigned counsel and pursuant to MO. REV. STAT. §§ 392.361, 392.420, and 392.430, § 392.450 (2000), and MO. CODE REGS. ANN. tit. 4 § 240-2.060, respectfully requests that the Commission grant it additional authority to provide facilities-based and resold basic local exchange telecommunications services in the State of Missouri in the exchanges of Southwestern Bell Telephone Company ("SWBT"), CenturyTel, Inc. (including both CenturyTel-Missouri, Inc. and Spectra territories, "CenturyTel") and Sprint Missouri ("Sprint"). Pursuant to MO. REV. STAT. § 392.420 and MO. CODE REGS. ANN. tit. 4 § 240-32.010(2), the Applicant also seeks a waiver of certain of the Commission's requirements for basic local exchange telecommunications service offerings. In support of its Application, KMC V provides the following information:

<sup>1</sup> See *In the matter of the Application of KMC Telecom V, Inc. for Certificates of Service Authority to Provide Competitive Resold Intrastate Interexchange Telecommunications Services and Nonswitched Local Exchange Services in the State of Missouri*, Case No. TA-2000-785, granted August 16, 2000 ("Nonswitched Application").

## **I. IDENTIFICATION OF THE APPLICANT**

### **A. Corporate Information**

1. KMC V is a corporation formed under the laws of Delaware. KMC V's principal addresses are:

#### **Corporate Headquarters:**

KMC Telecom V, Inc.  
1545 Route 206, Suite 300  
Bedminster, New Jersey 07921  
Telephone (908) 470-2100  
Facsimile (908) 719-8776

#### **Operational Headquarters:**

KMC Telecom V, Inc.  
1755 North Brown Road  
Lawrenceville, Georgia 30043  
Telephone (678) 985-7900  
Facsimile (678) 985-6213

A copy of KMC V's Articles of Incorporation and Certificate of Good Standing from the Delaware Secretary of State are on file with the Commission, included as exhibits to KMC V's *Nonswitched Application* cited above. Those previous exhibits are still current and correct and pursuant to MO. CODE REGS. ANN. tit. 4 § 240-2.060(1)(G), KMC V incorporates the same by reference herein. KMC V's Certificate of Good Standing is attached as *Exhibit A*. The name and address of KMC V's registered agent in Missouri for service of process is:

CT Corporation System  
120 South Central Avenue  
Clayton, MO 63105

### **B. Designated Contacts**

2. The designated contacts for this Application are:

Mark W. Comley  
NEWMAN, COMLEY & RUTH  
601 Monroe, Suite 301  
P.O. Box 537  
Jefferson City, MO 65101  
Telephone: (573) 634-2266  
Facsimile: (573) 636-3306

Copies of all correspondence, notices, orders and inquiries also should be sent to:

Doug Nelson, Esq.  
KMC Telecom V, Inc.  
1755 North Brown Road  
Lawrenceville, GA 30043  
Telephone (678) 985-7900  
Facsimile (678) 985-6213

All correspondence, notices and inquiries regarding all (1) consumer, (2) technical and service quality, and (3) tariff and pricing issues should be sent to:

Michael Duke  
Director – Governmental Affairs  
KMC TELECOM V, INC.  
1755 North Brown Road  
Lawrenceville, Georgia 30043  
Telephone (678) 985-7900  
Facsimile (678) 985-6213

## II. SERVICES

### A. Proposed Basic Local Exchange Services to Be Offered By Applicant

3. By this Application, KMC V seeks to expand its authority to provide telecommunications services in Missouri to include competitive facilities-based and resold basic local exchange telecommunications services, in addition to its current authority to provide interexchange services and nonswitched local services. Specifically, KMC V desires to be able to provide all forms of switched and dedicated local and interexchange telecommunications services throughout the State of Missouri. KMC V already has been classified by the Commission as a competitive carrier in the *Nonswitched Application*. KMC V submits that it will remain a competitive carrier offering competitive basic local exchange services to consumers in Missouri.

4. With respect to the geographic coverage area for its intended services, KMC V requests authority to operate as a competitive basic local exchange carrier in all areas defined by the existing exchange areas in which SWBT, CenturyTel and Sprint are authorized to operate in

Missouri. The SWBT, CenturyTel and Sprint exchanges in which Applicant seeks authority to provide basic local exchange services in Missouri are set forth in the tariffs of SWBT, CenturyTel and Sprint respectively.

**B. Description of KMC Telecom V, Inc.'s Network**

5. KMC V intends to provide voice telecommunications services on a common carrier basis in direct competition with incumbent local exchange carriers. KMC V plans to upgrade its switching equipment and network interconnection arrangements, including but not limited to upgrading the interconnection trunking to provide 911 trunks to facilitate emergency calling.

**III. DESCRIPTION OF THE MANAGERIAL, TECHNICAL AND FINANCIAL ABILITY OF APPLICANT**

**A. MANAGERIAL AND TECHNICAL QUALIFICATIONS**

6. KMC V is a wholly-owned subsidiary of KMC Telecom Holdings, Inc. ("KMC Holdings"), a Delaware corporation. KMC V is technically qualified to operate as a provider of facilities-based local exchange services and resold local exchange telecommunications services in the State of Missouri. Specifically, KMC V will rely upon the expertise of KMC Holdings' management team who oversees the operations of KMC V and its certificated affiliates: KMC Telecom III, LLC ("KMC III"), KMC Data LLC ("KMC Data"), KMC Telecom of Virginia, Inc. ("KMC VA") and KMC Telecom V of Virginia, Inc. ("KMC V of VA").

7. The following is a list of KMC Holdings' management team:

<b>William F. Lenahan</b>	<b>Chief Executive Officer</b>
<b>Roscoe C. Young, II</b>	<b>Chief Executive Officer and Chief Operating Officer</b>
<b>William H. Stewart</b>	<b>Chief Financial Officer and Executive Vice President</b>

**Alan Epstein**

**Executive Vice President, General  
Counsel**

8. These officers will be responsible for KMC V's telecommunications services in Missouri and throughout the United States. The full business experience of these key management and operational personnel is set forth in detail in *Exhibit B*.

**B. FINANCIAL QUALIFICATIONS**

9. KMC V also possesses the necessary financial resources to provide the basic local exchange telecommunications services and information service provider services identified in this Application. As is evident from KMC V's most recent financial statements (*see* KMC V's Balance Sheet, Profit and Loss Statement, and Cash Flow Statement, which are being filed with this Application *under seal* as *Exhibit C*), KMC V has the necessary financial resources to provide the telecommunications services described in this Application, and to finance its operations in order to ensure the continued provision of these services in Missouri.

10. As demonstrated in its Cash Flow statement, KMC V has access to ample working capital, to fund the construction and operation of KMC V's telecommunications network in Missouri, and to meet any lease and ownership obligations associated with its provision of local exchange services in Missouri. This capital will enable KMC V to meet its working capital requirements in Missouri for the foreseeable future.

11. Please note that the information provided in *Exhibit C* is privileged and confidential and therefore is being submitted separately as an appendix to the Company's *Motion for a Protective Order* ("Motion"). This Motion seeks the confidential treatment of all information contained in *Exhibit C* and is being filed pursuant to *proposed* MO. CODE REGS. ANN. tit. 4 § 240-2.085, solely for the purpose of the Commission's *in camera* review.

#### **IV. REPAIR AND MAINTENANCE/CUSTOMER SERVICE INFORMATION**

12. KMC V's customer service representatives are available to assist its customers with service, maintenance and billing issues. Specifically, KMC V's customer service representatives are prepared to respond to a broad range of service matters, including inquiries regarding: (1) the types of services offered by KMC V and the rates associated with such services; (2) monthly billing statements; (3) problems or concerns pertaining to a customer's current service; and (4) general telecommunications matters. For service and maintenance issues, customers may contact KMC V's Client Services 24 hours a day, seven (7) days a week, by calling toll-free 1-888-KMC-THE1/ 1-888-562-8431. Alternatively, customers may communicate billing questions or concerns to KMC V's customer service representatives in writing to:

KMC Telecom V, Inc.  
1755 North Brown Road  
Lawrenceville, Georgia 30043

#### **V. STATEMENTS OF COMPLIANCE AND REQUESTS FOR WAIVER**

13. KMC V will offer basic local exchange telecommunications service in accordance with applicable law. KMC V is willing to comply with all applicable Commission rules, and is willing to meet all relevant service standards, including but not limited to, billing, quality of service, and tariff filing and maintenance. However, consistent with the Commission's treatment of other certificated competitive local exchange telecommunications companies, KMC V requests that the following statutes and regulations be waived for its basic local exchange telecommunications service offerings, in accordance with MO. REV. STAT. § 392.420 and MO. CODE REGS. ANN. tit. 4 § 240-32.010(2):

#### **STATUTES**

392.210.2	-	Uniform System of Accounts
392.240(1)	-	Just & Reasonable Rates
392.270	-	Ascertain Property Values
392.280	-	Depreciation Accounts
392.290	-	Issuance of Securities
392.300.2	-	Acquisition of Stock
392.310	-	Issuance of stock and debt
392.320	-	Stock dividend payment
392.330	-	Issuance of securities, debts & notes
392.340	-	Reorganizations

#### REGULATIONS

4 CSR 240-3.545(2)(C)	-	Rate schedules should be posted at central office
4 CSR 240-3.550(5)(C)		
4 CSR 240-10.020	-	Depreciation fund income
4 CSR 240-30.040	-	Uniform system of accounts
4 CSR 240-33.030	-	Inform customers of lowest price

14. The above-referenced rules and statutory provisions have been waived with regard to other competitive basic local exchange companies (Case No. TA-97-380). These rules or statutory provisions are principally designed to apply to non-competitive telecommunications carriers. As a result, it would be inconsistent with the goal and purpose of Section 392.530 to apply them to a competitive telecommunications carrier such as Applicant, and, for this reason, KMC V respectfully requests that the Commission waive the application of these rules.

15. KMC V further requests a temporary waiver of MO. CODE REGS. ANN. tit. 4 § 240-2.060(6)(C). This rule requires that an application for a certificate of service authority to provide interexchange, local exchange or basic local exchange services shall include a proposed tariff with a forty-five (45) day effective date. KMC V is in the process of developing tariffs to fully comply with this rule since it has not yet finalized its rates for its telecommunications services. At such time as all facts necessary for the development of such tariffs are known to KMC V, the Company promptly will file said tariffs with the Commission in a manner consistent



with recent Commission practice in similar cases. All filed tariffs will bear no less than a forty-five (45) day effective date.

16. KMC V has no pending or final judgments or decisions against it or its affiliates from any state or federal agency or court that involve customer services or rates.

## **VI. PUBLIC INTEREST**

17. KMC V submits that approval of this Application is in the public interest because KMC V is well-qualified – technically, managerially, and financially – to serve the Missouri public as a facilities-based and resold local exchange carrier. Moreover, permitting KMC V to provide the services described in this Application will expand local service options for customers in Missouri, and will increase competition in Missouri by expanding the diversity of suppliers and competition within the telecommunications and information service provider market -- without any adverse impact on the Commission's goals of universal service and affordable telecommunications services for the residents of Missouri.

18. KMC V's participation in the market for local exchange telecommunications services and information service provider services in Missouri will promote customer choice by expanding the availability of innovative, high quality, reliable and competitively-priced telecommunications services. Approval of this Application also is likely to compel other telecommunications providers to improve their existing services, increase the quality and efficiency of their operations, and introduce innovative new services of their own. The granting of this application will enhance competition in the State. Further, KMC V's provision of services in Missouri is consistent with the legislative goals set forth in the 1996 Act and Chapter 392 of the Missouri Revised Statutes.

WHEREFORE, KMC V respectfully requests that the Commission approve the expansion of its Certificate of Service Authority to include the provision of competitive resold

and facilities-based basic local exchange telecommunication services, as described in this Application. KMC V further requests that the Commission grant waivers of the aforementioned rules and statutory provisions.

Respectfully submitted,

**KMC TELECOM V, INC.**

By: 

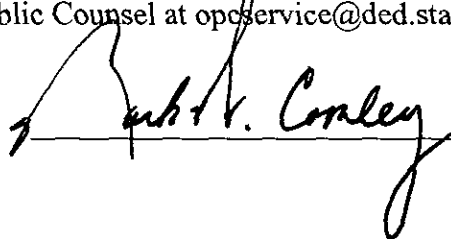
Mark W. Comley #28847  
NEWMAN, COMLEY & RUTH P.C.  
601 Monroe Street, Suite 801  
P.O. Box 537  
Jefferson City, MO 65101  
Telephone: (573) 634-2266  
Facsimile: (573) 636-3306

Its Attorneys

Dated: October 7, 2003

Certificate of Service

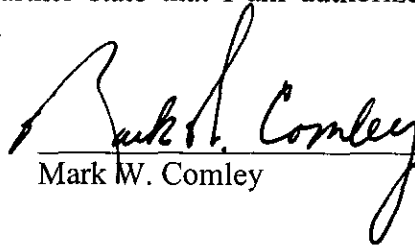
I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 7th day of October, 2003, to General Counsel's Office at [gencounsel@psc.state.mo.us](mailto:gencounsel@psc.state.mo.us); Office of Public Counsel at [opcservice@ded.state.mo.us](mailto:opcservice@ded.state.mo.us).



**ATTORNEY VERIFICATION**

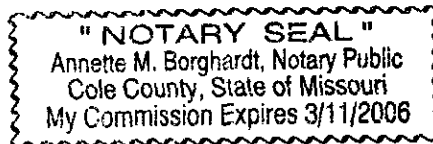
STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF COLE     )

I, Mark W. Comley, being first duly sworn, do hereby certify, depose and state that I am the attorney for KMC Telecom V, Inc., applicant in this proceeding; that I have read the above and foregoing Application and the allegations therein contained are true and correct to the best of my knowledge, information and belief; and I further state that I am authorized to verify the foregoing application by the above said applicant.

  
\_\_\_\_\_  
Mark W. Comley

Subscribed and sworn to before me, a Notary Public, this 7<sup>th</sup> day of October, 2003.

My Commission expires: \_\_\_\_\_  
Annette M. Borghardt  
Notary Public



# **LIST OF EXHIBITS**

- EXHIBIT A:**           **CERTIFICATE OF GOOD STANDING**
- EXHIBIT B:**           **MANAGERIAL AND TECHNICAL QUALIFICATIONS**
- EXHIBIT C:**           **FINANCIAL STATEMENTS (FILED UNDER SEAL)**

# **EXHIBIT A**

## **CERTIFICATE OF GOOD STANDING**

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

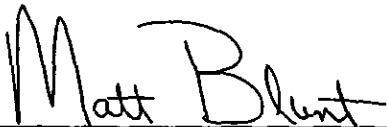
**KMC TELECOM V, INC.**

using in Missouri the name

**KMC TELECOM V, INC.  
F00484121**

a DELAWARE entity was created under the laws of this State on the 31st day of May, 2000, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 7th day of October, 2003

  
Secretary of State



Certification Number: 6138047-1 Page 1 of 1 Reference:

Verify this certificate online at <http://www.sos.state.mo.us/businessentity/verification>

# **EXHIBIT B**

## **MANAGERIAL AND TECHNICAL QUALIFICATIONS**

Collectively, the members of KMC Holdings' management team have designed, managed, and/or operated advanced telecommunications facilities throughout the United States. The members of KMC Holdings' management team bring many years of experience and a wealth of knowledge from being associated with a number of highly successful companies in the telecommunications industry.

William F. Lenahan is the Chief Executive Officer and a member of the Board of Directors of KMC Telecom Holdings, Inc. Mr. Lenahan came to KMC from BellSouth Wireless Data, where he was President and CEO, responsible for financial performance and nationwide wireless data strategy for this division of BellSouth Corporation, beginning in October 1994. Through his vision and execution, BellSouth earned recognition as the nationwide leader in wireless data. Lenahan's team combined the power of handheld computers with wireless technology to deliver products and services for interactive messaging, email on the belt and access to the Internet with Palm.net service on the Palm VII, the first true Internet appliance. Mr. Lenahan has served nearly 30 years in the information technology, telecommunications and data industries. He began his career at IBM, where he worked for 12 years in a variety of sales, marketing, operations and human resources executive assignments, and sat on the IBM Product Review Board, helping determine key product launches. He later joined United Telecom, the forerunner of Sprint, where he started Amerisource, a new business that resold PBXs, PCs and systems integration products. In 1986, he was named President and CEO of Bell Atlantic's Compushop division, a reseller of PCs and communications products. From 1987 to 1993 he was Vice President/General Manager and then President and CEO of three Sears divisions – Sears Business Centers, Office Centers and Computer Services. Mr. Lenahan earned a Bachelor of Science degree in Data Processing at Kings College, and has pursued graduate studies in



Business Administration at Pace University, Financial Management at Harvard University and Financial Planning at LaHulpe in Belgium. He is a member of the boards of the Broadbeam Corporation and the WolfeTech Corporation, a member of the World President's Organization, and was on the Advisory Councils of IBM, Compaq and NCR.

Roscoe C. Young, II, KMC Holdings' Chief Executive Officer and Chief Operating Officer, prior to joining the Company, was Vice President of Network Services for Ameritech, where he led more than 4,000 employees in providing services ranging from ISDN and digital Centrex to dial tone. He previously directed engineering, network services, national account sales, marketing and real estate procurement for MFS Communications as Senior Vice President of that company. He has also been a senior executive with AT&T where he was responsible for sales, marketing, operations, engineering, financial management and human resources. During that time, he was selected by the Reagan Administration to serve as a Special Assistant to Secretary of Defense Caspar Weinberger under the White House Executive Exchange Program.

William H. Stewart, KMC Holdings' Chief Financial Officer and Executive Vice President, was previously employed with Nassau Capital. Mr. Stewart joined Nassau Capital in 1995 and has over eleven in the telecommunications investment industry. While at Nassau Capital, Mr. Stewart led Nassau's investment program in the communications industry, which included investments in Cypress Communications, Crown Castle and Portal Software. Mr. Stewart has served as a Director of KMC Holdings since 1996. He graduated cum laude with a B.S. degree from Villanova University, earned an M.B.A. from New York University, and is a Chartered Financial Analyst.

Alan M. Epstein, KMC Holdings' Executive Vice President and Chief Legal Counsel, is a partner in the New York office of Sidley Austin Brown & Wood. He practices in all areas of

domestic and international project finance with a particular focus on power, telecommunications, processing plants and infrastructure finance. He has represented multilateral agencies, major developers and financial institutions in project finance transactions in Asia, South America and Europe. In telecommunications finance, he has advised a major local exchange carrier and a number of other telecom providers. He has extensive experience in financing of non-recourse and limited recourse projects. Mr. Epstein is the author of a chapter on lease financing published by Matthew Bender & Co., Inc. Mr. Epstein is a 1974 graduate of Syracuse University College of Law.

# **EXHIBIT C**

## **FINANCIAL STATEMENTS**

### **FILED UNDER SEAL**