

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of KMC)
Telecom III, Inc., for a Certificate of)
Service Authority to Provide Basic Local)
Telecommunications Services in the State)
of Missouri and for Competitive Classifi-)
cation.)

Case No. TA-99-577

NOTICE REGARDING ATTACHMENT

The Commission's Order Granting Certificate to Provide Basic Local Telecommunications Services, issued August 30, 1999, lacked the attachment referenced in the order. A copy of this attachment, the Stipulation and Agreement filed August 5, 1999, is attached to this notice.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 31st day of August, 1999.

Ruth, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED
AUG 5 1999
Missouri Public
Service Commission

In the matter of the Application of)
KMC Telecom III, Inc.)
for a Certificate of Service Authority to Provide)
Basic Local Exchange Telecommunications) Case No. TA-99-577
Services in the State of Missouri and for)
Competitive Classification)

STIPULATION AND AGREEMENT

KMC Telecom III, Inc. (Applicant or KMC III) initiated this proceeding on May 26, 1999, by filing an Application requesting certificate of service authority to provide facilities-based and resold basic local telecommunications services in those portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE of the Midwest, Incorporated (GTE) and United Telephone Company of Missouri, d/b/a Sprint (Sprint), and other relief.

The Missouri Public Service Commission (Commission) has granted the timely application to intervene of Southwestern Bell Telephone Company (SWBT).

A. Standards and Criteria

1. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange and basic local exchange service authority in exchanges served by "large" local exchange companies (LECs)¹ should be processed in a manner similar to that in which applications for interexchange authority are currently handled.

2. In determining whether KMC III's application for certificate of service authority should be granted, the Commission should consider KMC III's technical, financial and managerial

¹Large LECs are defined as LECs who serve 100,000 or more access lines §386.020 RSMo. Supp. 1996. In Missouri, the current large LECs are SWBT, GTE and Sprint.

resources and abilities to provide basic local telecommunications service. KMC III must demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the filing and maintenance of basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies (ILECs) with which applicant seeks to compete. Further, KMC III agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the ILECs with which applicant seeks to compete. Notwithstanding the provisions of §392.500 RSMo (1994), as a condition of certification and competitive classification, KMC III agrees that, unless otherwise ordered by the Commission, KMC III's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large ILEC(s) within whose service areas KMC III seeks authority to provide service. Further, KMC III agrees to offer basic local telecommunications service as a separate and distinct service and has sufficiently identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the ILECs in the same area and is no smaller than an exchange. Finally, KMC III agrees to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of residence or income. See §392.455 RSMo Supp. 1996.

3. The parties acknowledge that the Commission is currently examining the extent to which CLEC switched access rates should be regulated in Case No. TO-99-596. KMC III will comply with any applicable Commission order regarding CLEC switched access rates, and the parties

acknowledge that KMC III can comply with any such order notwithstanding any contrary terms contained in this Stipulation.

4. KMC III has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H). KMC III agrees to file its initial tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariffs will be provided by Applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, KMC III shall also file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier, and its explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

5. KMC III has, pursuant to §392.420 RSMo, requested that the Commission waive the application of the following statutory provisions and rules to its basic local telecommunications services, and the parties agree that the Commission should grant such request provided that §392.200 RSMo should continue to apply to all of KMC III's services:

STATUTORY PROVISIONS

§392.210.2
§392.270
§392.280
§392.290.1
§392.300.2
§392.310
§392.320
§392.330
§392.340

COMMISSION RULES

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

6. In negotiating the remaining provisions of this Stipulation and Agreement, the parties employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and §§392.450 and 392.455 RSMo regarding applications for certificates of local exchange service authority to provide basic local telecommunications service

B. KMC III Certification

7. KMC III hereby agrees that its application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-5 above.

8. Based upon its verified Application, as amended by this Stipulation and Agreement, KMC III asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that KMC III:

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service;
- B. proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;
- C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;
- D. will offer basic local telecommunications service as a separate and distinct service;
- E. has agreed to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income; and
- F. has sought authority which will serve the public interest.

9. KMC III asserts, and no party opposes, that KMC III's application and request for authority to provide basic local telecommunications services and local exchange telecommunications services (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of §392.200 continue to apply, and KMC III shall remain classified as a competitive telecommunications company. KMC III asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the ILECs to justify a lesser degree of regulation of KMC III's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

The service authority and service classification herein granted are subject to the requirements of §392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The parties agree that KMC III's switched exchange access services may be classified as competitive services. The parties further agree that Applicant's switched exchange access services are subject to §392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be cost justified and shall be made pursuant to §§392.220 and 392.230 and not §§392.500 and 392.510. The Commission's Order should state the foregoing conditions substantially as follows:

The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of §392.200 and the

requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost justified and shall be made pursuant to §392.220 and 392.230 and not §392.500 and 392.510.

10. KMC III's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because KMC III does not yet have approved resale and/or interconnection agreements with the large ILECs. KMC III agrees that at such time as all facts necessary for the development of tariffs become known, it will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. KMC III shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission and serve them with the aforesaid written disclosure and shall upon request immediately provide any party with a copy of those tariffs. The Commission's Order should state these obligations as conditions to the waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

Applicant's request for temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted for good cause in that applicant does not yet have approved any resale and/or interconnection agreement with the incumbent local exchange carrier within whose service areas it seeks authority to provide service; provided, when applicant submits its tariffs in this docket to the Commission, such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all resale and/or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier; and its explanation of why such a resale and/or interconnection agreement is unnecessary for any such areas.

11. KMC III's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of KMC III's services should be granted:

STATUTORY PROVISIONS

§392.210.2
§392.270
§392.280
§392.290.1
§392.300.2
§392.310
§392.320
§392.330
§392.340

COMMISSION RULES

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

12. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

13. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to §536.070(2) and §536.080.1 RSMo 1994, to present testimony, to cross examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 1994; and their respective rights to seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510 RSMo 1994. The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the KMC III application made herein.

14. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

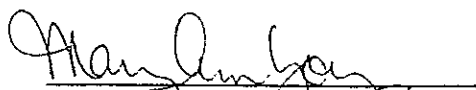
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure.

15. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing and has offered no objection.

16. Finally, KMC III will comply with all applicable Commission rules and regulations except those which are specifically waived by the Commission.

WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification as requested by KMC III, subject to the conditions described above, at its earliest convenience.

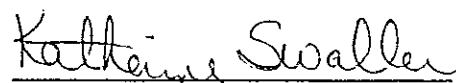
Respectfully submitted,


Mary Ann (Garr) Young #27951

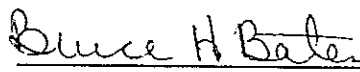
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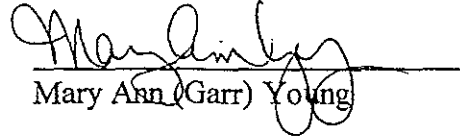
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FOR: Staff of the Missouri
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document has been hand delivered or mailed by first class mail, postage prepaid, to the parties of record listed below, on this 5th day of August 1999.


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R E C E I V E D

AUG 31 1999

COMMISSIONER COUNSEL
PUBLIC SERVICE COMMISSION