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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

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

KMC Telecom III, Inc. (KMC III), applied to the Commission on May 26, 1999, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under 4 CSR 240-2.060(4). KMC III is a Delaware corporation with its principal place of business at 1545 Route 206, Suite 300, Bedminster, New Jersey 07921-2567. In addition, KMC III is a direct, wholly owned subsidiary of KMC Telecom III Holdings, Inc. (KMC III Holdings), also a Delaware corporation. The Commission issued a notice and schedule of applicants on June 1, 1999, directing interested parties wishing to intervene to do so by July 1, 1999. The Commission granted intervention to Southwestern Bell Telephone Company (SWBT) on July 16, 1999.

On August 5, 1999, the parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1. The Staff of the Commission (Staff) filed Suggestions in Support of the Stipulation and Agreement on August 5, 1999. In the

Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

KMC III seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE of the Midwest Incorporated (GTE), and United Telephone Company of Missouri, d/b/a Sprint (Sprint). KMC III is not asking for certification in any area that is served by a small incumbent local exchange provider. KMC III states that it will not offer service in areas smaller than an exchange. KMC III is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulations be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, a description of the types of service it intends to provide,

a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. KMC III has provided all the required documentation except for the proposed tariff. KMC III requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission.

The Commission will require KMC III to file its tariff after approval of an interconnection agreement. The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and, when KMC III files the required tariff, it will be assigned a new case number.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1998, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due considera-

tion to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

KMC III submitted as Exhibit 2 to its application financial documentation detailing its financial resources. These documents were filed under seal. Exhibit 3 to the application is a guaranty whereby KMC Telecom III Holdings, Inc., guarantees the financial obligations of KMC Telecom III, Inc. (KMC III), attendant to KMC III's operations as a telecommunications carrier in the state of Missouri. KMC Telecom III Holdings, Inc., is the owner of all the issued and outstanding common stock of KMC III, and issued the guaranty in support of KMC III's application. Exhibit 4 to the application lists the names and qualifications of KMC III's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry, including experience in developing, implementing, financing and maintaining telecommunications services. The parties agreed that KMC III proposes to offer basic local services that satisfy the minimum standards established by the Commission.

KMC III wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint. The parties agreed that KMC III has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

KMC III has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable

access, as determined by the Commission, for all Missourians within the geographic area in which it will offer such service.

C. Competitive Classification

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. § 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications Companies Within the state of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the Matter of Southwestern Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. § 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Supra*, 1 Mo. P.S.C. 3rd at 487.

As indicated in paragraph 9 of the Stipulation and Agreement, all parties agreed that KMC III should be classified as a competitive telecommunications company, and all of the telecommunications services it offers should be classified as competitive. However, the Staff and other parties expressed concern about classifying exchange access services as competitive. To address this concern, the parties devised

an access rate "cap" that places an upper limit on access rates at the lowest level charged by the LECs in whose service territory KMC III will be initially certificated. This access rate cap is discussed and stipulated to in paragraphs 2 and 3 of the Stipulation and Agreement. Although access services would technically be classified as competitive, the applicant may not avail itself of the near-automatic rate changes normally afforded to competitive services in Sections 392.500 and 393.510, RSMo. Instead, if KMC III can establish to the Commission's satisfaction that its costs of providing access exceed the capped rate, it could increase its rates through the rate change process set out in Sections 392.220 and 392.230, RSMo. Such a mechanism is permissible because Sections 392.361.5 and 392.361.6 authorize the Commission to impose conditions on competitive classification rate changes that are reasonably necessary to protect the public interest.

KMC III has agreed that, unless otherwise ordered by the Commission, its 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.

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 the Stipulation and Agreement.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.340, RSMo 1994, and 392.330, RSMo Supp. 1998. The parties also agreed that application of the following Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that KMC III has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that KMC III has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that KMC III meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those require-

ments in the future. The Commission determines that granting KMC III a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. KMC III's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that KMC III should be classified as a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.

F. The Commission finds that KMC III's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. KMC III has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1998, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and

.420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1998, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1998.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on August 5, 1999, is approved.

2. That KMC Telecom III, Inc., is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That KMC Telecom III, Inc., is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived as they relate to the regulation of its new services:

Statutes

392.210.2	-	uniform system of accounts
392.270	-	valuation of property (ratemaking)
392.280	-	depreciation accounts
392.290.1	-	issuance of securities
392.300.2	-	acquisition of stock
392.310	-	stock and debt issuance
392.320	-	stock dividend payment
392.340	-	reorganization(s)
392.330, RSMo Supp. 1998	-	issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	-	depreciation fund income
4 CSR 240-30.040	-	uniform system of accounts
4 CSR 240-35	-	reporting of bypass and customer-specific arrangements

4. That the request for waiver of the filing of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff is granted.

5. That KMC Telecom III, Inc., shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement that will allow it to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

6. That KMC Telecom III, Inc., shall give notice of the filing of the tariff described above to all parties or participants in this case.

7. That KMC Telecom III, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

8. That this order shall become effective on September 9, 1999.

9. That this case may be closed on September 10, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Vicky Ruth, Regulatory Law Judge,
by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30,
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 30th day of August, 1999.

R E C E I V E D

AUG 30 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION