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June 30, 2003

FILED²

JUN 30 2003

Missouri Public
Service Commission

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

Re: KMC Telecom V, Inc.
Case No. CC-2003-0455

Dear Judge Roberts:

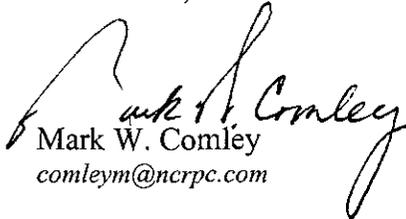
Please find enclosed for filing in the referenced matter the original and five copies of a Motion for Expedited Treatment.

Please bring this filing to the attention of the appropriate Commission personnel. Thank you very much.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
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MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel's Office
Andrew M. Klein
Marva Johnson
Larry W. Dority

FILED²

JUN 30 2003

BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI

**Missouri Public
Service Commission**

KMC Telecom V, Inc.)	
)	<u>Case No. CC-2003-0455</u>
Complainant,)	
)	
CenturyTel of Missouri, LLC)	
)	
Respondent.)	

MOTION FOR EXPEDITED TREATMENT

Complainant KMC Telecom V, Inc. (KMC Telecom) by its attorneys Newman, Comley & Ruth, PC, and Kelley Drye & Warren LLP, pursuant to 4 CSR 240-2.080, hereby requests that Missouri Public Service Commission grant expedited treatment to the Complaint filed by KMC Telecom against Respondent CenturyTel of Missouri, LLC (Respondent). KMC Telecom requests such expedited treatment in order to prevent further harm to KMC Telecom and to mitigate the harmful effects of Respondent's actions on the citizens of the State of Missouri.

AUTHORITY

1. Missouri rule 4 CSR 240-2.080 provides, at section (16), that a party may seek expedited treatment of a case by setting forth the following:

- (A) The date by which the party desires the commission to act;
- (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and
- (C) That the pleading was filed as soon as it could have been or an explanation why it was not.

2. In this motion, KMC Telecom sets forth each of the requisite elements, and respectfully requests that the Commission expedite this proceeding to the greatest extent possible.

NATURE OF THE COMPLAINT

3. KMC Telecom filed the within action on April 25, 2003, in light of Respondent's repeated and continuing failure to comply with its interconnection obligations and specific Commission mandates. More specifically, KMC Telecom was forced to bring the Complaint in order to compel Respondent to comply with the terms of the interconnection agreement existing between KMC Telecom and Respondent, the Report and Order of the Public Service Commission issued May 21, 2002 in Case No. TM-2002-232 (Report and Order), and the stipulation executed in Case No. TM-2002-232 and made a part of the foregoing order (Stipulation).

4. The crux of the Complaint stems from KMC Telecom's eminently reasonable request for the establishment of a point of interconnection with Respondent at the tandem that serves the Mt. Vernon end office. This point of interconnection is needed to permit KMC Telecom and Respondent to exchange traffic originating from and terminating to each carriers' customers.

5. As the Commission will recall, Respondent and GTE Midwest/Verizon Midwest ("Verizon"), filed a joint application for, *inter alia*, approval of the transfer of the Verizon service territory in Missouri to Respondent in late 2001. On March 21, 2002, Respondent, Verizon, Commission Staff, Public Counsel and others signed the Stipulation that set forth agreed-upon conditions for the transfer.

6. The Stipulation, which was made part of the Commission's Report and Order, contained numerous conditions. Among those conditions were requirements that CenturyTel use the same rates, terms and conditions of service as Verizon on the date of the closing of the transaction and that it negotiate in good faith interconnection agreements with all carriers that have interconnection agreements with Verizon – utilizing the same rates, terms and conditions contained in those agreements. Respondent further undertook to cooperate with the interconnecting carriers to ensure continuity of service for all CLEC customers. Finally, the Stipulation specified that interconnection agreement not replaced within one year would continue in force on a month-to-month basis until replaced. (Report and Order at page 6 and Stipulation at pages 4-5)

7. The Commission “reviewed and carefully considered the Stipulation and Agreement and the conditions contained therein,” and determined that it would conditionally approve CenturyTel's acquisition of Verizon's exchanges “subject to the conditions contained in the Stipulation and Agreement.” (Report and Order at page 17)

8. In its ordering clauses, the Commission approved the Stipulation and specifically affirmed that the “various grants of authority and certificates of service authority to CenturyTel of Missouri, LLC, contained in this Report and Order are subject to the conditions contained in the Stipulation and Agreement.” (Ordering Clause 2, Report and Order at page 21) The Commission then ordered Respondent to comply with the conditions contained in the Stipulation. (*Id.*)

9. KMC Telecom had an interconnection agreement covering the service territory at issue with Verizon, which was based on the terms of the U.S. Dial Tone L.P./Verizon agreement, that had been adopted by KMC Telecom in 2001. KMC Telecom and Verizon continued to

operate pursuant to the terms of the Interconnection Agreement right up until the time that Respondent conditionally acquired the service territory from Verizon.

10. In an agreement with KMC Telecom following Respondent's conditional acquisition of the service territory in August 2002, Respondent admits that the Commission's Report and Order requires that it honor the rates, terms and conditions of the interconnection agreement that KMC Telecom had with Verizon. This agreement explicitly states that "*per the stipulation of the Missouri Public Service Commission, CenturyTel will agree to honor . . . the terms, conditions, and rates of KMC's Agreement with Verizon until August 31, 2003.*" (Letter Agreement dated October 24, 2002, at page 1; *emphasis in original*) A copy of this KMC Telecom/CenturyTel agreement was attached to the Complaint as Exhibit 1.

11. In addition to an order compelling Respondent to comply with the terms of the parties' interconnection agreement, Complainant KMC Telecom also seeks a Commission determination that Respondent has failed to comply with the Report and Order, and in consequence thereof revoke the various grants of authority contained in the Report and Order that were made specifically subject to the conditions contained in both the Report and Order and the Stipulation. Finally, Complainant KMC Telecom seeks compensation and penalties for Respondent's failure to comply with its legal obligations and for its violation of Missouri law.

12. In sum, Respondent is required to provide interconnection with KMC Telecom pursuant to the parties' interconnection agreement, the Report and Order, the Stipulation and the federal Communications Act of 1934, as amended (the Act). By failing to provide such interconnection, Respondent is in violation of the agreement and the laws of the State of Missouri.

PROPOSED SCHEDULE

13. For the reasons set forth in this motion, and based on the requisite showing of the need for urgent relief, KMC Telecom respectfully requests that the Commission adopt the following schedule for the prosecution and resolution of this action:

1. Staff Report: July 11 (no change)
2. Completion of Discovery: July 18
3. Responses to Staff Report: July 23 (currently August 8)
4. Filing of Testimony by Complainant and Respondent: July 30.
5. Commission Hearing: August 11.
6. Briefs: August 21.
7. Commission Decision: August 29.

GRANTING EXPEDITED TREATMENT AVOIDS ADDITIONAL HARM AND PROVIDES BENEFITS TO THE GENERAL PUBLIC

14. Due to Respondent's failure to interconnect, and honor the Commission's Order, KMC Telecom is unable to provide service to its customer, who in turn is unable to provide a competitive alternative to CenturyTel and CenturyTel.net. As a direct result of Respondent's actions, competition is impaired and the general public is harmed. To the extent the Commission moves expeditiously, this harm is mitigated and the general public reaps the benefits of competition that much sooner.

15. In addition to its own Advanced Communications Services network, KMC Telecom provides wholesale services to enhanced service providers and other telecommunications carriers. One of these wholesale services includes the provisioning of primary rate interface ("PRI") services to internet service providers in support of their packaged ISP service offerings. To provide this PRI service KMC Telecom will, pursuant to its interconnection agreements, establish interconnection with incumbent local exchange carriers. KMC Telecom also will obtain numbering resources from the North American Numbering Plan Administrator, which enable KMC's customers to provide dial-up internet access to consumers.

The dial-up access to ISP services provided by KMC's customers provides consumers with a high quality, low-cost ISP service alternative. In the State of Missouri, the product offerings of KMC's customers would serve as a wonderful competitive alternative to CenturyTel.Net's ISP service offering.

16. In this particular instance, KMC Telecom has a signed contracts with a wholesale customer to provide it with services in the CenturyTel and Spectra service territories. In order to provide such service, however, KMC Telecom must establish interconnection with Respondent of the nature rightfully requested. In fact, KMC Telecom's customer originally requested that KMC establish service in Mount Vernon, Missouri, effective August 2002. Thus, as a result of Respondent's refusal to establish interconnection with KMC Telecom, service to KMC's customer has been delayed for almost a year. Pursuant to KMC Telecom's contractual obligations to its customer, KMC Telecom may be liable for ongoing damages until such time as it is able to interconnect with Respondent. The Commission should therefore approve an expedited procedural schedule in order to avoid additional harm to KMC Telecom and its customer.

17. Unfortunately, Respondent has also effectively barred KMC Telecom's customer from offering consumers a competitive dial-up ISP service in CenturyTel.Net's market in Mount Vernon, Missouri. The Commission's approval of an expedited procedural schedule would not only prevent additional harm to Missouri consumers but would actually benefit end-users by accelerating the deployment of competitive service alternatives in the Mount Vernon area.

18. Another factor to be considered is KMC Telecom's request to negotiate a replacement interconnection agreement. In accordance with the October 14, 2002 Letter Agreement between KMC Telecom and Respondent, the interconnection agreement existing

between the two parties is set to expire August 31, 2003. Given Respondent's actions to date, it appears unlikely that the parties will be able to settle on the terms of a replacement agreement without resorting to arbitration. Since a petition for arbitration may be filed as early as September 1, 2003, any delay in resolving the instant dispute could complicate efforts to reach closure on a replacement agreement.

19. An expedited procedural schedule would have no negative effect on either party's customers or the general public. As noted above, each party's customers will benefit once interconnection is effectuated and a new competitive ISP alternative is introduced. In light of the time this dispute has already dragged on,¹ and the fact that the parties have already been through the FCC mediation process, both parties are (or at least should be) ready for a Commission hearing on the merits.

20. In sum, the negative effects of Respondent's illegal actions will be mitigated to the extent the Commission expedites this proceeding. The grant of this motion will avoid additional harm, confer substantial benefit, and cause no negative effects.

A MOTION FOR EXPEDITED TREATMENT IS APPROPRIATE AT THIS TIME

21. This Motion for Expedited Treatment is being made as soon as possible, with due deference to the PSC's resources. Since KMC Telecom's primary interest is to interconnect with and provide a competitive alternative to Respondent CenturyTel, it had hope to resolve this problem in the most expeditious manner possible. KMC Telecom had therefore made a request for mediation to the Federal Communications Commission on April 18, 2003. Although both KMC Telecom and Respondent participated in an FCC Enforcement Bureau mediation session

¹ For the Commission's convenience, we have depicted in chart form the timeline of Respondent's ongoing failure to comply with its obligations under the Agreement and the Commission's Order. The timeline chart is attached hereto as Exhibit One.

on June 9th, and the FCC staff agreed that KMC Telecom has a right to the requested interconnection, Respondent failed to budge from its stonewall-and-delay position.

22. Since KMC reasonably believed that this matter would have been resolved through the FCC mediation, KMC Telecom delayed bringing this motion until the FCC process had run its course. In other words, KMC Telecom did not want to cause the Commission to expend valuable resources considering this motion until it became clear that such action was absolutely necessary. KMC Telecom had hoped that the motion, and indeed the entire proceeding, might be made moot by reasonable action on Respondent's behalf. Due to Respondent's obstreperous behavior, however, this now is clearly not the case, and KMC Telecom therefore makes this motion in the hope that the Commission can quickly bring Respondent into compliance with its obligations.

CONCLUSION

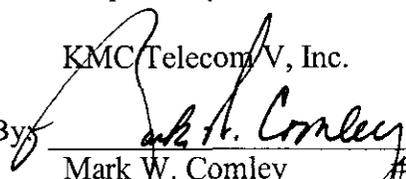
In light of the foregoing, KMC Telecom respectfully requests that the Commission grant expedited treatment to the Complaint filed by KMC Telecom against Respondent in order to mitigate the harmful effects of Respondent's illegal actions on KMC Telecom and the citizens of the State of Missouri, and grant such other and further relief as may be just and reasonable.

Dated: June 27, 2003

Respectfully submitted,

KMC Telecom V, Inc.

By


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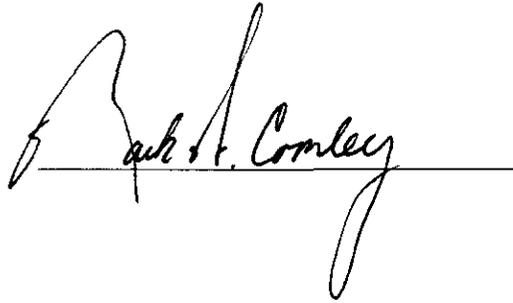
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand delivered, on this 30th day of June, 2003, to:

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P.O. Box 7800
Jefferson City, MO 65102

General Counsel's Office
P.O. Box 360
Jefferson City, MO 65102

Larry W. Dority
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101 Madison St., Suite 400
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Robert A. Comley

EXHIBIT 1

KMC/CENTURYTEL DISPUTE TIMELINE

KMC – CenturyTel Interconnection Dispute Time Line

DATE	ACTIVITY
March 27, 2001	<p style="text-align: center;">KMC ADOPTED U.S. DIAL TONE AGREEMENT</p> <p>KMC Telecom V, Inc. submitted adoption notice to Verizon North, Inc. and Verizon South, Inc. (collectively “Verizon”, hereinafter referred to as “Verizon”) setting forth KMC’s exercise of its rights to adopt the interconnection agreement between U.S. Dial Tone, L.P. (the “Agreement”) and Verizon in Missouri.</p>
May 15, 2001	<p style="text-align: center;">VERIZON ACKNOWLEDGES KMC’S ADOPTION OF THE AGREEMENT</p>
September 14, 2001	<p style="text-align: center;">VERIZON FILED AGREEMENT FOR APPROVAL WITH THE MISSOURI PSC</p> <p>Verizon filed the Agreement for approval with the Missouri PSC (Case No. TO-2002-148).</p>
November 25, 2001	<p style="text-align: center;">VERIZON/KMC AGREEMENT APPROVED</p>
March 21, 2002	<p style="text-align: center;">CENTURYTEL SIGNS STIPULATION WITH PARTIES TO MISSOURI PSC PROCEEDING</p> <p>CenturyTel agrees to honor agreements between Verizon and CLECs for one year following its purchase of the of the Verizon territory.</p>
April 22, 2002	<p style="text-align: center;">KMC/VERIZON ESTABLISH INTERCONNECTION</p> <p>KMC established interconnection arrangements at Verizon’s Missouri tandem pursuant to the parties’ Agreement.</p>
June 28, 2002	<p style="text-align: center;">KMC ADOPTED SPRINT/VERIZON-CALIFORNIA INTERCONNECTION AGREEMENT</p> <p>KMC requested adoption of the interconnection agreement between Sprint and Verizon-California for the State of Missouri to replace the Agreement. KMC utilized the BA/GTE merger conditions, and ported the Sprint-CA agreement to almost all of the former GTE states. Although Verizon never provided termination notice pursuant to the requirements of Section 2.1 of the Agreement, KMC adopted a replacement agreement for uniformity across the states in the former GTE region.</p>
July 3, 2002	<p style="text-align: center;">VERIZON INFORMED KMC OF THE IMPENDING SALE</p> <p>Renee Ragsdale of Verizon informed KMC, via electronic mail, that Verizon anticipated closing on the sale of the Missouri properties on 8/31/02 and indicated that KMC should contact Jackie Phillips to negotiate an agreement with CenturyTel (the purchasing company). Ms. Ragsdale further indicated that</p>

KMC – CenturyTel Interconnection Dispute Time Line

	<p>if KMC wanted Verizon to go forward with the preparation of the necessary adoption documents, KMC should advise her to do so and complete the Verizon-required adoption forms.</p>
July 8, 2002	<p style="text-align: center;">KMC CONFIRMED ITS ADOPTION REQUEST FOR THE SPRINT/VERIZON-CA INTERCONNECTION AGREEMENT</p>
July 8, 2002	<p style="text-align: center;">VERIZON AND KMC CONFIRMED OPERATIONAL EFFECTIVENESS OF AGREEMENT</p> <p>Marva Johnson and Scott Kassman, both of KMC, met with Charles Bartholomew, Verizon, via telephone. Verizon and KMC agreed that Verizon was obligated to honor the existing Agreement. The parties discussed the fact that KMC's orders required immediate attention, <i>noting that Verizon's request that KMC delay</i> its interconnection request by over two months (until the completion of the Verizon/CenturyTel transaction on August 31, 2002) would cause unnecessary and severe delays to KMC's customer. The parties further discussed the fact that KMC had already exercised its rights to adopt a new interconnection agreement with Verizon for Missouri.</p>
August 31, 2002	<p style="text-align: center;">VERIZON/CENTURYTEL TRANSACTION COMPLETED</p>
August 31, 2002	<p style="text-align: center;">VERIZON FAILS TO PROCESS KMC'S ADOPTION OF THE SPRINT/VERIZON- CA AGREEMENT</p>
October 9, 2002	<p style="text-align: center;">VERIZON CONFIRMS THAT CENTURYTEL WILL HONOR AGREEMENT FOR ADDITIONAL YEAR</p> <p>Sherri Sebring of Verizon contacts Counsel for KMC, confirming that CenturyTel will honor KMC's agreement for one year following closing, to resolve issue with respect to KMC's adoption of the Sprint-CA agreement. Verizon agrees that KMC already has an agreement in place, based on the U.S. Dial Tone terms.</p>
October 14, 2002	<p style="text-align: center;">KMC/CENTURYTEL CONFIRM EFFECTIVENESS OF AGREEMENT</p> <p>Scott Kassman, KMC, and Jackie Phillips, CenturyTel discussed the effectiveness of the Agreement between the parties. CenturyTel agreed to honor the terms of the Agreement for an additional year, through August 31, 2003.</p>
October 24, 2002	<p style="text-align: center;">KMC/CENTURYTEL EXECUTED LETTER AGREEMENT CONFIRMING AGREEMENT EFFECTIVENESS THROUGH AUGUST 31, 2003</p>
November 20, 2002	<p style="text-align: center;">CENTURYTEL REFUSES TO PORT CUSTOMERS TO KMC</p> <p>CenturyTel refused to port a customer to KMC under the premise that KMC did not have a valid interconnection agreement with CenturyTel in Missouri.</p>

KMC – CenturyTel Interconnection Dispute Time Line

November 21, 2002	<p style="text-align: center;">KMC SUBMITTED ANOTHER LSR REQUESTING THAT CENTURYTEL PORT A CUSTOMER</p> <p style="text-align: center;">Guy Miller (CenturyTel) confirmed that KMC's porting request complied with the current regulatory policy on porting and agreed to work with KMC to establish a legal letter of understanding on this matter.</p>
November 22, 2002	<p style="text-align: center;">CENTURYTEL PRODUCES A LETTER OF UNDERSTANDING IN AN ATTEMPT TO USE ITS VIOLATION OF ITS NUMBER PORTABILITY OBLIGATIONS TO REQUIRE THAT KMC WAIVE ITS RIGHTS TO OPERATE UNDER THE AGREEMENT</p>
November 26, 2003	<p style="text-align: center;">CENTURYTEL CONTINUES TO AVOID ITS NUMBER PORTABILITY OBLIGATIONS</p>
December 18, 2002	<p style="text-align: center;">KMC SENT CENTURYTEL NOTICE THAT KMC WOULD NOT SIGN THE PROPOSED LETTER OF UNDERSTANDING SINCE IT IS UNNECESSARY</p>
January 28, 2003	<p style="text-align: center;">CENTURYTEL FINALLY COMPLETED KMC PORTING REQUEST</p>
February 27, 2003	<p style="text-align: center;">KMC SUBMITTED ORDER FOR LOCAL INTERCONNECTION</p> <p style="text-align: center;">KMC submitted the order for DS-3 circuits to CenturyTel's Branson tandem in an effort to establish local interconnection with Spectra/CenturyTel to serve the Mount Vernon local calling areas.</p>
March 11, 2003	<p style="text-align: center;">KMC SUBMITTED ORDER TO ESTABLISH DIRECT INTERCONNECTION TRUNKING TO THE SPECTRA END OFFICE</p> <p style="text-align: center;">KMC submitted orders to establish direct end office interconnection facilities from the CenturyTel Branson tandem to the relevant Spectra end offices.</p>
March 17, 2003	<p style="text-align: center;">KMC SUBMITTED ORDER FOR TRUNKS</p> <p style="text-align: center;">KMC submitted a local service request to CenturyTel requesting that CenturyTel establish the trunks required for local interconnections (separate trunk groups are required for Local/IntraLATA toll/Optional EAS traffic, interLATA traffic and calls to provide Switched Access services to IXCs). In order to establish local interconnection with Spectra, an InterLATA/IXC trunk group must be established at the CenturyTel Bransom tandem.</p>
April 1, 2003	<p style="text-align: center;">CENTURYTEL ESTABLISHED THE DS-3 INTERCONNECTION FACILITIES AT THE BRANSOM TANDEM</p> <p style="text-align: center;">CenturyTel established the facilities from KMC's POP to CenturyTel's Bransom tandem, however, the DS-1 (DEOT) and trunk group orders necessary to establish the Spectra agreement have not been established.</p>

KMC – CenturyTel Interconnection Dispute Time Line

April 11, 2003	<p style="text-align: center;">KMC MADE AN ADDITIONAL REQUEST FOR CENTURYTEL TO HONOR THE TERMS OF THE AGREEMENT AND ESTABLISH INTERCONNECTION</p> <p>KMC’s counsel sent a letter to CenturyTel again requesting that KMC honor the terms established under the Agreement and the State of Missouri issued May 21, 2002 in Case No. TM-2002-232 (“PSC Transfer of Order”).</p>
April 14, 2003	<p style="text-align: center;">CENTURYTEL RESPONDED STILL REFUSING TO HONOR THE AGREEMENT</p> <p>Guy Miller, CenturyTel, indicated that CenturyTel was willing to establish the Spectra interconnection requests pursuant to the Spectra agreement. However, CenturyTel failed to recognize that the local interconnection requires an IXC trunk group that must be established at the CenturyTel tandem. CenturyTel also argued that they were mistaken in their understanding of the termination provisions of the Agreement and therefore did not believe that the October 24, 2002 letter agreement could be considered valid.</p>
April 17, 2003	<p style="text-align: center;">KMC SENDS CENTURYTEL A BFR FOR A REPLACEMENT AGREEMENT</p> <p>KMC’s counsel sent a BFR to CenturyTel requesting that the parties begin negotiation of a replacement agreement. If completed consistent with the timeframes established by the Act, the replacement agreement would be complete close to the expiration of the letter agreement extending the Agreement until August 31, 2003.</p>
April 18, 2003	<p>KMC FILES REQUEST FOR MEDIATION WITH THE FCC</p>
April 25, 2003	<p>KMC FILES FORMAL COMPLAINT WITH MISSOURI PUBLIC SERVICE COMMISSION</p>
May 7, 2003	<p style="text-align: center;">KMC REQUESTS ADOPTION OF VERIZON/AT&T COMMUNICATIONS AGREEMENT FOR MISSOURI</p> <p>In an effort to resolve the dispute, Brad Muschelknaus, counsel for KMC, contacted Tanya Rutherford, counsel for CenturyTel to discuss KMC’s proposed adoption of the Verizon/AT&T Communications Agreement in Missouri. CenturyTel refused to accept KMC’s request. CenturyTel asserted that the Verizon/AT&T agreement is no longer available for adoption (despite the Missouri stipulation which requires that the Verizon/AT&T agreement be available for a year after the sale (<i>i.e.</i>, until August 31, 2003).</p>
Current Date	<p style="text-align: center;">KMC/CENTURYTEL (FORMER VERIZON) INTERCONNECTION STILL IN PLACE</p> <p>KMC’s current interconnection arrangement at the Missouri tandem (formerly a Verizon tandem, now the CenturyTel tandem) remains operational to date.</p>

KMC – CenturyTel Interconnection Dispute Time Line

Current Date	SPECTRA INTERCONNECTION STILL PENDING DISPUTE CenturyTel still refuses to provision the DS-1 direct end office trunking and to establish the trunk group arrangements necessary to complete interconnection with Spectra.
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