

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE
December 8, 2004

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In re:)
Petition of KMC Telecom III LLC,)
KMC Telecom V, Inc., and KMC Data LLC)
for Arbitration of an Interconnection Agreement)
with United Telephone-Southeast, Inc.)
Pursuant to Section 252(b) of the Communications)
Act of 1934, as Amended)

T.R.A. DOCKET ROOM

DOCKET NUMBER:
04-00136

**JOINT MOTION OF KMC TELECOM III LLC, KMC TELECOM V, INC.,
KMC DATA LLC AND UNITED TELEPHONE-SOUTHEAST, INC. TO HOLD
PROCEEDING IN ABEYANCE**

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United Telephone-Southeast, Inc. ("Sprint") and KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data, LLC, ("KMC") (jointly referred to herein as "Parties") submit this Joint Motion and respectfully request that the Hearing Officer hold this arbitration proceeding in abeyance until January 24, 2005. In so doing, the Parties request that the Hearing Officer cancel the pre-hearing conference scheduled for December 14, 2004. By this Joint Motion, and upon the contingency that the Hearing Officer grants the relief requested herein, the Parties agree to waive the time frames specified in 47 U.S.C. 252(b)(4)(C). In support of this Joint Motion, the Parties state as follows:

1. Prior to the filing of the Petition for Arbitration, the Parties were negotiating the appropriate terms and conditions for the Master Interconnection and Resale Agreement ("Agreement") based on the law effective during the negotiations. In a decision dated March 2, 2004 the United States Court of Appeals for the District of Columbia Circuit, in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 ("*USTA II*"), affirmed in part, vacated in part, and remanded in part certain rules of the Federal Communications Commission

("FCC") that govern the rights and obligations of ILECs and CLECs regarding services and unbundled network elements. While the effectiveness of the *USTA II* decision was initially stayed by the court, the court's mandate was ultimately issued on June 15, 2004. The FCC has apparently voted to adopt interim rules and issue these rules in the very near future, which the Parties understand will then be followed by new permanent rules within approximately six months. On August 20, 2004, the FCC released its Order in *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 ("*Interim Order*"). The FCC has indicated its intent to issue new unbundling rules prior to the end of 2004.

2. In consideration of the circumstances noted above, the Parties respectfully request that the Hearing Officer hold this proceeding in abeyance to address the effect of the *USTA II*, the *Interim Order* and the forthcoming unbundling rules on the terms, conditions and rates that should be included in the Agreement, as well as to identify any additional issues for resolution in this arbitration. KMC and Sprint agree that no new issues may be raised in this arbitration proceeding other than those that result from the Parties' negotiations regarding the above referenced rules and orders that have occurred after the date this arbitration was filed.

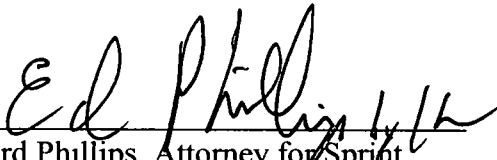
3. The Parties have therefore agreed to an abeyance until January 24, 2005 to provide KMC and Sprint with the time necessary to incorporate into the Agreement language reflective of the *USTA II* decision, the FCC's interim rules, if applicable, and the anticipated new unbundling rules. The Parties may respectfully request a further abeyance depending on, for example, the status of the FCC's rules, during the 45 day abeyance period.

The abeyance would promote administrative efficiency, in that it would permit the Parties to identify any and all issues in need of resolution by the Authority, and thereby avoid a separate negotiation and arbitration of interconnection agreement terms to reflect the *USTA II* decision, the FCC's interim rules, if applicable, and the new unbundling rules. In short, the Parties believe that it is reasonable to account for the new realities created by the *USTA II* decision and the FCC's new unbundling rules. The Parties have agreed that they will continue to operate under their current interconnection Agreement until they execute the new agreement that results from this proceeding. During the abeyance period, the Parties would also continue their efforts to close the few remaining issues already included in the arbitration.


In light of the foregoing, Sprint and KMC respectfully request that the Hearing Officer hold this arbitration proceeding in abeyance until January 24, 2005. Upon the conclusion of the abeyance time period, the Parties propose that KMC would file a supplement to its Petition for Arbitration and a revised issues matrix to identify all remaining issues in need resolution by the Authority, and that Sprint would then file a supplemental response and revised issues matrix.

Duly submitted this 8th day of December, 2004.

By:


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CERTIFICATE OF SERVICE

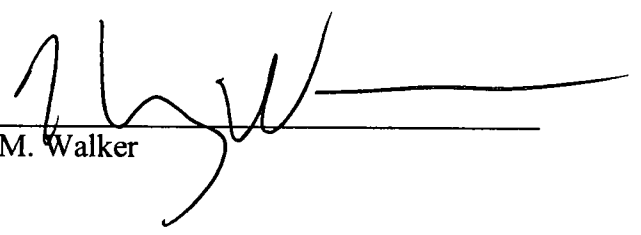
I hereby certify that a copy of the foregoing is being forwarded via via U.S. mail, postage prepaid, to:

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on this the 8 day of December 2004.



Henry M. Walker