

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 18, 2005

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.

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DOCKET NO.
04-00136

ORDER ACCEPTING WITHDRAWAL OF PETITION

This matter came before Director Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 22, 2005 for consideration of the requests for withdrawal filed by KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data, LLC (collectively "KMC") on July 25, 2005 and United Telephone-Southeast, Inc. ("Sprint" and collectively with KMC, the "Parties") on August 8, 2005.

Background

On May 6, 2004, KMC filed a *Petition for Arbitration* ("*Petition*") seeking arbitration of issues regarding an interconnection agreement between the Parties. The *Petition* included an issues matrix which detailed the issues that had been previously resolved by the Parties as well as those that were in dispute at the time the *Petition* was filed. On June 1, 2004, Sprint filed the *Response of United Telephone-Southeast, Inc. to Petition for Arbitration of KMC Telecom III, LLC, KMC Telecom V, Inc and KMC Data, LLC* ("*Response*"). The *Response* also included an issues matrix outlining the unresolved issues along with Sprint's proposed language. On October 6, 2004, the Authority issued an order accepting the *Petition* and appointing a Pre-Arbitration Officer for the purposes of identifying issues and preparing this docket for hearing

On December 8, 2004, the Parties filed the *Joint Motion of KMC Telecom III, LLC, KMC Telecom V, Inc and KMC Data, LLC and United Telephone-Southeast, Inc. to Hold Proceeding in Abeyance*. The Parties requested that the Pre-Arbitration Officer hold the arbitration in abeyance until January 24, 2005 in light of a recent decision by the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*¹ (“*USTA II*”), which affirmed in part, vacated in part, and remanded in part certain rules of the Federal Communications Commission that govern the rights and obligations of incumbent local exchange carriers and competitive local exchange carriers regarding services and unbundled network elements. The Parties requested that the proceeding be held in abeyance, in part, to identify any additional issues that arose as a result of *USTA II*.²

On January 14, 2005, the Pre-Arbitration Officer issued an *Order Granting in Part and Denying in Part Joint Motion to Hold Proceeding in Abeyance*. There, the Pre-Arbitration Officer granted the Parties’ request to hold the proceeding in abeyance, but denied the Parties’ request to raise any new issues or amend or supplement the *Petition* or the responses thereto to raise any new issues as a result of *USTA II*. The Pre-Arbitration Officer also ordered the Parties to file a statement regarding whether they would agree to waive the nine-month deadline for resolution of the arbitration set forth in 47 U.S.C. § 252(b)(4)(C) in light of the partial grant of the *Joint Motion of KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data, LLC and United Telephone-Southeast, Inc. to Hold Proceeding in Abeyance*. The Parties filed a waiver of the statutory deadline on January 25, 2005.

On July 25, 2005, the KMC filed a letter stating that the Parties had reached a settlement in this matter and requesting that the *Petition* be withdrawn. On August 3, 2005, the Pre-Arbitration

¹ *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir. 2004)

² The Parties agreed to waive the nine-month deadline required by 47 U.S.C. § 252(b)(4)(C) for final resolution of the arbitration by the Authority contingent on approval of the *Joint Motion of KMC Telecom III, LLC, KMC Telecom V, Inc and KMC Data, LLC and United Telephone-Southeast, Inc to Hold Proceedings in Abeyance*

Officer issued a Notice of Filing recognizing that the Parties had reached an agreement and that KMC had requested that the *Petition* be withdrawn. However, the Pre-Arbitration Officer noted that Sprint's *Response* raised an additional issue which was not raised in the *Petition*. As such, the Pre-Arbitration Officer directed Sprint to file a statement of whether or not it wished to withdraw its *Response* no later than August 10, 2005. On August 8, 2005, Sprint filed a letter with the Authority stating that it wished to withdraw its *Response* because all pending issues had been resolved.


August 22, 2005 Authority Conference

During the Authority Conference held on August 22, 2005, upon consideration of the entire record in this matter, the panel voted unanimously to accept the Parties' requests to withdraw the *Petition* and the *Response*.

IT IS SO ORDERED.


Deborah Taylor Tate, Director


Pat Miller, Director


Sara Kyle, Director