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September 24, 2003

FILED

SEP 24 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., KMC Telecom III LLC and KMC Data, L.L.C.
Verified Petition for Arbitration

Dear Judge Roberts:

Enclosed for filing on behalf of KMC Telecom V, Inc., KMC Telecom III LLC and KMC Data, L.L.C. please find the original and five copies of a Verified Petition for Arbitration.

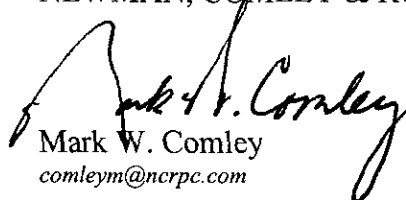
Would you please bring this filing to the attention of the appropriate Commission personnel.

Thank you for your attention to this matter.

Sincerely,

NEWMAN, COMLEY & RUTH, P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel
Larry W. Dority
Brad E. Mutschelknaus
Riley M. Murphy

**BEFORE THE
PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI**

FILED

SEP 24 2003

In the Matter of the)
)
Petition by KMC Telecom V, Inc.,)
KMC Telecom III LLC and KMC Data, L.L.C.,)
For Arbitration of an Interconnection)
Agreement with CenturyTel, Inc. and)
CenturyTel of Missouri, LLC, Pursuant)
to Section 252(b) of the Communications)
Act of 1934, as Amended.)

Missouri Public
Service Commission

Docket No. _____

VERIFIED PETITION FOR ARBITRATION

COME NOW KMC Telecom V, Inc. ("KMC V"), KMC Telecom III LLC ("KMC III"), and KMC Data, L.L.C. ("KMC Data") (collectively, "KMC"), pursuant to Section 252(b) of the federal Communications Act of 1934, as amended (the "Communications Act"), Rules of the Department of Economic Development, Division 240—Public Service Commission, Chapter 2—Practice and Procedure, and other applicable state and federal statutes, rules, regulations, and decisions, hereby file this Verified Petition for Arbitration (the "Petition") seeking resolution of certain issues arising between KMC and CenturyTel, Inc. ("CenturyTel") and CenturyTel of Missouri, LLC ("CenturyTel Missouri") (collectively, the "CenturyTel Entities") (KMC and the CenturyTel Entities are hereinafter collectively referred to as the "Parties") in the negotiation of an interconnection agreement pursuant to Sections 251 and 252 of the Communications Act. In support of its Petition, KMC states as follows:

I. DESIGNATED CONTACTS

1. All communications and submissions in this proceeding, including but not limited to, correspondence, notices, inquiries, and orders, should be served upon the following designated contacts for KMC:

Mark Comley
NEWMAN, COMLEY & RUTH, P.C.
601 Monroe Street
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and

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with a copy to:

Riley M. Murphy
Marva Brown Johnson
KMC Telecom Holdings, Inc.
1755 North Brown Road
Lawrenceville, GA 30043
(678) 985-6220 (voice)
(678) 985-6213 (facsimile)

2. The CenturyTel Entities' attorney in Missouri is:

Larry W. Dority
Fischer & Dority, P.C.
101 Madison St., Suite 400
Jefferson City, MO 65101
(573) 636-6758 (voice)
(573) 636-0383 (facsimile)

II. STATEMENT OF FACTS

3. KMC V is a Delaware corporation and KMC III and KMC Data are Delaware limited liability corporations having their principal place of business at 1755 North Brown Road, Lawrenceville, GA 30043. KMC V, KMC III and KMC Data are, collectively, nationwide facilities-based providers of next-generation telecommunications infrastructure and services at the network edge, providing fiber-based, integrated data, voice, and Internet infrastructure communications services. They offer these services to business, government and institutional and end-users, Internet service providers, long distance carriers and wireless service providers. They are certified to provide telecommunications services in 49 states, the District of Columbia, and Puerto Rico. KMC V, KMC III and KMC Data are authorized to provide competitive local exchange and interexchange services in Missouri, including the territories served by the CenturyTel Entities.¹

4. CenturyTel Missouri, is a Louisiana limited liability corporation that is duly authorized to do business in Missouri. CenturyTel Missouri's principal place of business is located at 100 CenturyTel Drive, Monroe, Louisiana. CenturyTel Missouri is a new corporation, formed for the purpose of acquiring and conducting GTE Midwest, Inc.'s (d/b/a Verizon Midwest) ("Verizon") telecommunications business in the state of Missouri. CenturyTel

¹ KMC Telecom V, Inc. was granted a Certificate of Service and authorized to provide intrastate interexchange telecommunications services and nonswitched local exchange services in the State of Missouri in Case No. TA-20000-785 (Effective August 29, 2000); KMC Telecom III, Inc. was authorized to provide intrastate interexchange and nonswitched local service as well as basic local exchange service in Missouri in Case Nos. TA-99-576 (July 13, 1999) and TA-99-577 (Aug. 30, 1999). The Commission issued an order recognizing the name change to KMC Telecom III LLC in Case No. TO-2002-386 (Apr. 13, 2002); KMC Data, L.L.C. was granted a Certificate of Service and authorized to provide intrastate interexchange telecommunications services and nonswitched local exchange services in the State of Missouri in Case No. TA-2001-595 (June 15, 2001); KMC Data, L.L.C. was granted a Certificate of Service and authorized to provide resold (continued...)

Missouri is a subsidiary of CenturyTel which, like KMC, provides telecommunications services in many states. The CenturyTel Entities are incumbent local exchange carriers ("ILECs") in Missouri, as defined by the Communications Act. *See* 47 U.S.C. § 251(h). On information and belief, none of the CenturyTel Entities is an exempt "rural telephone company" under section 251(f)(1) of the Communications Act or "rural carrier" under section 251(f)(2) of the Communications Act.

5. Pursuant to the Communications Act, the CenturyTel Entities are required to provide to requesting telecommunications carriers interconnection, access to unbundled network elements ("UNEs"), collocation, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and resale, among other things. *See, e.g.*, 47 U.S.C. §§ 251 (a)-(c). The terms and conditions of interconnection must comply with the provisions of Sections 251 and 252 of the Communications Act. *See* 47 U.S.C. § 251(c). Section 252(d) governs the pricing of UNEs, interconnection, reciprocal compensation and resale services.

6. KMC previously entered into an interconnection agreement with Verizon, CenturyTel Missouri's predecessor-in-interest in mid-2001. On November 28, 2001, CenturyTel Missouri and Verizon filed a joint application with the Missouri Public Service Commission ("Commission") seeking, *inter alia*, approval of the transfer of the Verizon assets in Missouri to CenturyTel Missouri.² On March 21, 2002, a nonunanimous stipulation (the "Stipulation") was

(...continued)

and facilities-based basic local telecommunications services in the State of Missouri in Case No. TA-2001-594 (June 16, 2001).

² *See generally In the Matter of Joint Application of GTE Midwest Incorporated, d/b/a Verizon Midwest, and CenturyTel of Missouri, LLC, for (1) Authority to Transfer and Acquire Part of Verizon Midwest's Franchise, Facilities or System Located in the State of Missouri; (2) for Issuance of Certificate of Service Authority to CenturyTel of Missouri, LLC; (3) to Designate CenturyTel of Missouri, LLC, as Subject to Regulation as a Price Cap Company; and (4) to Designate CenturyTel of Missouri, LLC as a Telecommunications Carrier Eligible to Receive* (continued...)

filed in Case TM-2002-232, which was signed by several parties, including CenturyTel Missouri, Verizon, the Staff of the Missouri Public Service Commission and Public Counsel. The Stipulation was subsequently ruled unanimous in accordance with Commission rules. The Stipulation, which was made part of the Commission's *Report and Order*, contained numerous conditions, principal of which was the following:

CenturyTel shall use the same rates, terms and conditions of service as Verizon on the date of the closing of the transaction. CenturyTel shall, in good faith, negotiate interconnection agreements with all carriers who currently have interconnection agreements with Verizon and who desire to interconnect with CenturyTel. Where technically feasible, the new agreement will have the same rates, terms and conditions as did the agreement with Verizon. These agreements will differ from the Verizon agreements only with respect to technical differences to reflect the way CenturyTel interfaces with the interconnecting carrier. In cases in which services are being provided under these interconnection agreements, CenturyTel will cooperate with the interconnecting carriers to secure expeditious approval of a replacement interconnection agreement and to ensure continuity of service for their customers. CenturyTel shall provide local interconnection services as set out in the interconnection agreement between Verizon and Intervenor AT&T, and adopted by Intervenor Fidelity, for a period of one year following the closing of the proposed transaction. Any interconnection agreement not replaced within one year shall continue in full force on a month-to-month basis until replaced.³

7. On October 24, 2002, CenturyTel Missouri advised KMC that the transfer of Verizon's telephone operations and related assets was consummated on August 31, 2002.⁴ CenturyTel Missouri further advised KMC that CenturyTel Missouri would honor the KMC-

(...continued)

Federal Universal Support, Case No. TM-2002-232, Report and Order (effective May 31, 2002) (*Report and Order*).

³ *Report and Order*, at 6.

⁴ See Letter from Jackie Phillips, CenturyTel, to Michael P. Duke, KMC Telecom, dated Oct. 24, 2002 (the "Confirmation Letter").

Verizon interconnection agreement until August 31, 2003. KMC, through KMC Telecom V, Inc., subsequently countersigned the Confirmation Letter as requested by CenturyTel Missouri.⁵ A copy of the Confirmation Letter is attached hereto and incorporated herein by reference as *Exhibit A*.

8. In accordance with the Confirmation Letter, the Commission's *Report and Order*, and Sections 251 and 252 of the Communications Act, KMC sent a letter to CenturyTel on April 17, 2003, via overnight mail, requesting negotiation of an interconnection agreement to replace the Parties' existing agreement.⁶ A copy of the Interconnection Request is attached hereto and incorporated herein by reference as *Exhibit B*. KMC timed its Interconnection Request so that the end of the 135-day negotiating period specified in the Communications Act would end concurrent with the date through which CenturyTel Missouri had agreed, in the Confirmation Letter, to honor the Parties' existing agreement. Accordingly, pursuant to section 252(b)(1) of the Communications Act, the arbitration window opened on August 31, 2003, and will close on September 25, 2003.

9. Although the Parties have exchanged oral and written communications, including an interconnection agreement proposed by KMC, the Parties have not held extensive negotiations.⁷ Indeed, KMC is still waiting for the CenturyTel Entities' response to its proposed agreement. Nevertheless, several issues have already become apparent and remain unresolved at this point. Consequently, KMC is filing the instant Petition pursuant to Section 252 of the

⁵ As this Commission is already aware, CenturyTel Missouri did not honor the Verizon-KMC interconnection agreement or the terms of the Confirmation Letter. *See generally KMC Telecom V, Inc. v. CenturyTel of Missouri, LLC*, Case No. CC-2003-0455.

⁶ Letter from Andrew M. Klein, Counsel for KMC Telecom, to Guy Miller, CenturyTel, dated April 17, 2003 (the "Interconnection Request").

⁷ *See Proposed Interconnection, Resale and Unbundling Agreement Between CenturyTel of Missouri and KMC Telecom III LLC and KMC Telecom V, Inc.* (submitted on August 29, 2003).

Communications Act and other applicable federal and state law to address the issues that remain unresolved.

III. JURISDICTION AND APPLICABLE LAW

10. Under the Communications Act, parties to an interconnection negotiation have the right to petition the relevant state commission for arbitration of any open issue whenever negotiations between them fail to yield an agreement. *See* 47 U.S.C. § 252(b). Either party may seek arbitration during the period between the 135th day and the 160th day, inclusive, after the date the ILEC received the request for negotiation. *Id.*

11. Because the request for negotiation was received by CenturyTel Missouri on April 18, 2003, the statutory arbitration window opened on August 31, 2002, and closes on September 25, 2003. Accordingly, this Petition is timely filed. Section 252(b)(4)(C) of the Communications Act requires that the Commission conclude the resolution of any unresolved issues within nine (9) months after the request for interconnection negotiation was initiated. 47 U.S.C. § 252(b)(4)(C). Consequently, unless the Parties waive the statutory deadline, the Commission must conclude this arbitration no later than January 18, 2004.

12. The Federal Communications Commission (the "FCC") established the appropriate standard for arbitration under sections 251 and 252 of the Communications Act in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996) (*Local Competition Order*). Pursuant to the Communications Act, the Commission must resolve by arbitration any open issues and impose conditions that (1) ensure that such resolution and conditions meet the requirements of Section 251 of the Communications Act, including regulations promulgated by the FCC, (2) establish rates for interconnection, services and access to UNEs in accordance with

Section 252(d) of the Communications Act, and (3) provide a schedule for implementation by the Parties. 47 U.S.C. § 252(c)(2).

13. The Commission must make an affirmative determination that the rates, terms and conditions that it prescribes in this arbitration proceeding for interconnection are consistent with the requirements of Section 251 and Section 252(d) of the Communications Act.

14. Section 251(a) of the Communications Act, 47 U.S.C. § 251(a), states that each telecommunications carrier has the following duties:

- (1) **to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and**
- (2) not to install network, features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

15. Section 251(b) of the Communications Act, 47 U.S.C. § 251(b), states that each local exchange carrier has the following duties:

- (1) the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications service;
- (2) the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC;
- (3) the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays;
- (4) the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224 of the Act; and
- (5) **the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.**

16. Section 251(c) of the Communications Act states that each incumbent local exchange carrier, such as the CenturyTel Entities, has the following additional duties:

- (1) the duty to negotiate in good faith;
- (2) **the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the carrier's network** that is at least equal in quality to that provided by the local exchange carrier to itself, or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory and that comply with Sections 251 and 252;
- (3) the duty to provide, to any requesting telecommunications carrier, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory and in such a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service;
- (4) the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers and not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on the resale of such services;
- (5) the duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and
- (6) the duty to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that virtual collocation may be provided if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

17. Section 252(d) of the Communications Act sets forth the applicable pricing standards for interconnection and network element charges as well as for transport and termination of traffic. Section 252(d)(1) of the Communications Act states, in pertinent part, that “determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment . . . and the just and reasonable rate for network elements . . . shall be (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), (ii) nondiscriminatory, and [(iii)] may include a reasonable profit.” 47 U.S.C. § 252(d)(1). Section 252(d)(2) further states in pertinent part that “a State commission shall not consider the terms and conditions for reciprocal compensation [for transport and termination] to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.” 47 U.S.C. § 252(d)(2).

IV. ARBITRATION ISSUES AND POSITIONS OF THE PARTIES

18. The unresolved issues between KMC and the CenturyTel Entities, and their respective positions as to each unresolved issue, are detailed below (see also KMC’s proposed issues matrix, which is attached hereto and incorporated herein by reference as *Exhibit C*). As KMC has stated elsewhere in this Petition, the Parties are continuing to engage in negotiations with a view toward resolving the unresolved issues and executing an interconnection agreement that is mutually acceptable to the Parties. Likewise, because the negotiations between the Parties have been very limited to date, the Parties have not exhaustively

identified all the issues upon which they disagree. Due to the imminent close of the statutorily prescribed arbitration window, however, KMC is compelled to seek arbitration of a number of issues which remain under discussion between the CenturyTel Entities and KMC. KMC remains hopeful that some or all of these issues will be resolved prior to hearing through continued negotiations. Because of the posture of the Parties' negotiations, and the fact that the Parties anticipate that additional issues likely will be identified subsequent to the filing of this Petition, KMC expressly reserves the right to amend its Petition to include additional issues as they are identified.

19. One of the threshold issues, however, appears to relate to the obligation of the CenturyTel Entities to interconnect with KMC, and the terms under which they must do so. The CenturyTel Entities apparently believe that they have the right to exclude ISP-bound traffic from Section 251/252 interconnection agreements. To the extent this is CenturyTel's position, it is completely lacking in support. There is absolutely no basis, under federal or state law, for the proposition that ISP-bound traffic should be treated any differently from local traffic for purposes of *interconnection*. The FCC has, for example, unambiguously drawn the distinction between interconnection and compensation – which is the same distinction KMC and every other ILEC have utilized in their interconnection agreements. CenturyTel's position represents a departure not only from common practice, but from all of the interconnection rules established under Sections 251 and 252 of the Communications Act and indeed the Communications Act itself.

20. As if to specifically prevent the CenturyTel Entities from even making this type of argument, the FCC explicitly clarified in its *Intercarrier Compensation Remand Order*⁸ that its decision “affects only the intercarrier *compensation* (i.e., the rates) applicable to the delivery of ISP-bound traffic.” “It does not alter carriers’ other obligations under [the FCC’s] Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.”⁹

21. With regard to this and the remainder of the issues, attached hereto and incorporated herein by reference as ***Exhibit D***¹⁰ is the interconnection agreement prepared by KMC and proposed to CenturyTel, which contains KMC’s position on the currently identified unresolved issues, as well as potential areas of disagreement, between the Parties. KMC will gladly cross-reference the issues matrix to the proposed interconnection agreement if the Commission so desires.

Issue No. 1: *Are the CenturyTel Entities required to interconnect with KMC in order to exchange local, ISP-bound and interexchange traffic?*

Position of KMC: Yes, all carriers have an obligation to interconnect with other carriers for the exchange of traffic pursuant to Section 251(a) of the Communications Act. The CenturyTel Entities have the additional obligation, as

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 15 FCC Rcd 3953 (rel. April 27, 2001) (*Intercarrier Compensation Remand Order*), remanded *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002).

⁹ *Id.* at n. 149 (*emphasis in original*).

¹⁰ Exhibit D will be late filed shortly.

Incumbent Local Exchange Carriers, to provide to any requesting carrier interconnection with their network for the transmission of traffic at any technically feasible point. *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. §51.305. The CenturyTel Entities must provide such interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory and that comply with Sections 251 and 252 of the Communications Act. *Id.* The CenturyTel Entities' cannot dictate whether or the manner in which KMC – or any other competitor – may provide competitive services in Missouri. To permit otherwise would be to permit CenturyTel to prevent competitive entry and thereby deprive Missouri residential and business customers of the benefits of competition.

Position of the CenturyTel Entities: The CenturyTel Entities apparently believe that they do not need to interconnect with KMC.

<p><u>Issue No. 2:</u> <i>What is the proper compensation structure for the exchange of 251(b)(5) traffic and ISP-Bound Traffic?</i></p>

Position of KMC: Intercarrier compensation must be determined in accordance with the terms of the FCC's *Intercarrier Compensation Remand Order*. In that Order, the FCC asserted jurisdiction over ISP-bound traffic pursuant to Section 201 of the Communications Act and established "an appropriate cost recovery mechanism for the exchange of such traffic."¹¹ The FCC-established mechanism presumes that traffic exchanged between LECs that is within a 3:1 ratio of

¹¹ *Intercarrier Compensation Remand Order* at ¶ 1.

terminating to originating is compensable pursuant to Section 251(b)(5) of the Communications Act, while traffic above that ratio is presumed to be ISP-bound traffic that is compensable at the FCC's interim rate or on a bill-and-keep basis (depending on whether carriers were exchanging traffic prior to adoption of the *Intercarrier Compensation Remand Order* and certain other factors).

Position of the CenturyTel Entities: The CenturyTel Entities assert that they should be able to assess switched access charges on traffic exchanged with KMC.

Issue No. 3: *Is KMC required under the Communications Act and FCC rules and regulations to establish more than one point of interconnection ("POI") for the exchange of traffic with the CenturyTel Entities?*

Position of KMC: No, the Communications Act and the FCC's Rules and decisions permit KMC to interconnect at any technically feasible point and to establish one point of interconnection for the exchange of traffic with the CenturyTel Entities.¹²

Position of the CenturyTel Entities: Yes, KMC should establish a POI at each central office.

¹² See, e.g., 47 U.S.C. § 251(c)(2); 47 C.F.R. §51.305; [Consolidated] *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration*, Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249 and 00-251, July 17, 2002 (*FCC Arbitration Order*).

Issue No. 4: *Should each Party be responsible for delivering calls originated by its subscribers to the Point of Interconnection (POI) designated by KMC, bearing the costs associated with those calls?*

Position of KMC: Yes. The Communications Act and the FCC rules permit KMC to interconnect at any technically feasible point, and to designate a single POI for this purpose. Once the POI has been designated by KMC, the Parties are required to deliver their originating traffic to the POI, and each Party is responsible for all the costs associated with the delivery of that traffic to the POI. Thus, the CenturyTel Entities must be responsible for the delivery of all calls originated by CenturyTel subscribers to the single POI designated by KMC, and must therefore bear the cost of the facilities used to transport those calls to the POI. The principle of cost-causation dictates that, as the originating carriers, the CenturyTel Entities are financially responsible for all costs associated with the origination and transport of calls originated by their subscribers. The FCC has recently affirmed that principle, with specific reference to its Rules.¹³

Position of the CenturyTel Entities: No, KMC should be responsible for the costs incurred by CenturyTel associated with the delivery of CenturyTel-originated calls to the POI.

¹³ See, e.g., *FCC Arbitration Order*, at ¶¶ 51-54, 57, and 66-71; 47 C.F.R. §51.703(b).

V. PROCEDURAL MATTERS

22. Section 252(b)(4)(c) of the Communications Act requires that, unless waived by the parties, the Commission should render a decision in this proceeding not later than nine (9) months after the date on which interconnection negotiations formally commenced which, in this case, is January 18, 2004. In order to allow the most expeditious conduct of this arbitration, KMC respectfully requests that the Commission issue a procedural order as promptly as possible, establishing a schedule for a prehearing conference and the timing and conduct of the hearing in this matter, as well as the filing of a decision point list, discovery requests, prefiled testimony, and other required documents. KMC is fully aware that, as a matter of practice and procedure, the Commission will issue a "Notice of Petition for Arbitration"¹⁴ and "Order Setting Prehearing Conference"¹⁵ following the filing of this Petition. KMC will therefore address any and all additional procedural issues at that time.

VI. CONCLUSION

23. KMC and the CenturyTel Entities have, in good faith, attempted to arrive at a mutually acceptable interconnection agreement. While some progress has been made, several issues remain unresolved. Accordingly, KMC calls upon the Commission to arbitrate the unresolved issues that have been identified by the Parties, as well as those issues that the Parties have yet to identify.

¹⁴ See, e.g., *In the Matter of the Petition of Sprint Communications Company, L.P., for Arbitration of Unresolved Interconnection Issues regarding xDSL with Southwestern Bell Telephone Company*, Case No. TO-99-461, Notice of Petition for Arbitration (effective April 27, 1999).

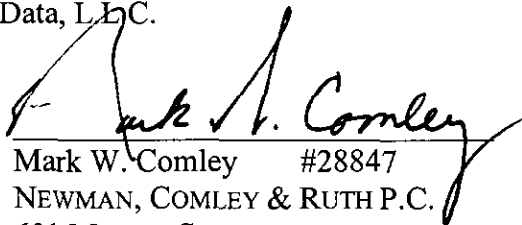
¹⁵ See, e.g., *In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 (b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, Order Setting Prehearing, Conference and Directing Filing (effective April 16, 2001).

WHEREFORE, KMC Telecom V, Inc., KMC Telecom III, LLC, and KMC Data, L.L.C. respectfully request that the Commission resolve the issues between the Parties as set forth in this Petition, as well as other issues that the Parties may identify following the filing of this Petition; resolve each such issue in favor of KMC, and grant any other relief as the Commission may deem just and proper.

Respectfully submitted,

KMC Telecom V, Inc.
KMC Telecom III LLC
KMC Data, L.L.C.

By:



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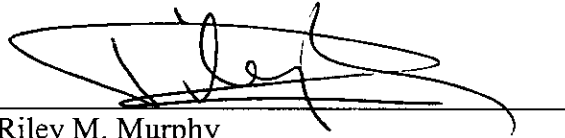
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Dated: September 24, 2003

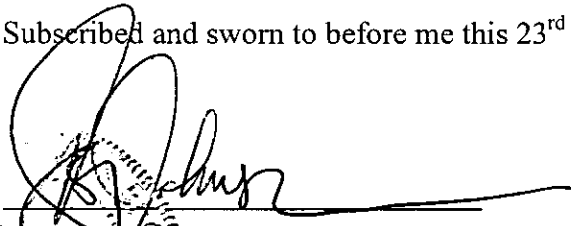
VERIFICATION

I, Riley M. Murphy, being first duly sworn, state that I am Senior Vice President, KMC Telecom V, Inc., KMC Telecom III LLC and KMC Data, L.L.C.; that I am authorized to make this Verification on their behalf; that I have read the foregoing Petition for Arbitration, and that the statements in the foregoing Petition for Arbitration, except as otherwise specifically attributed, are true and correct to the best of my knowledge, information and belief.

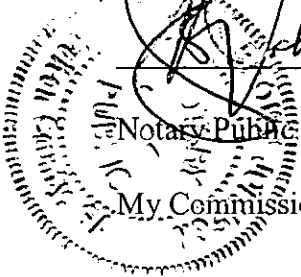


Riley M. Murphy
Senior Vice President
KMC Telecom V, Inc., KMC Telecom III LLC and
KMC Data, L.L.C.

Subscribed and sworn to before me this 23rd day of September, 2003.



Notary Public
My Commission expires: 12/2003



CERTIFICATE OF SERVICE

I, Mark W. Comley, do hereby certify that I have, on this 24th day of September, 2003, caused to be served upon the following individuals, by hand delivery and via e-mail, a copy of the foregoing:

Larry W. Dority
lwdority@sprintmail.com
FISCHER & DORITY, P.C.
101 Madison St., Suite 400
Jefferson City, MO 65101

General Counsel's Office
gencounsel@psc.state.mo.us
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65101

Office of Public Counsel
opcservice@ded.state.mo.us
Governor Office Building
200 Madison Street
Jefferson City, MO 65101



EXHIBIT A
CONFIRMATION LETTER



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 24, 2002

Mr. Michael P. Duke
Interconnection Contract Management
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30043

RE: KMC Telecom V, Inc.'s ("KMC") adoption of the terms of the Interconnection Agreement between GTE Midwest Incorporated, d/b/a Verizon Midwest ("Verizon") and U.S. Dial Tone, L.P. in the state of Missouri

Dear Mr. Duke:

As has been previously advised, CenturyTel of Missouri, LLC ("CenturyTel"), recently purchased Verizon's telephone operations and related assets (the "Transaction") in the state of Missouri. The date of close of the Transaction was August 31, 2002.

This correspondence shall serve to memorialize our understanding concerning the status of KMC's adoption of the terms of the Interconnection Agreement between U.S. Dial Tone, L.P. and Verizon for the state of Missouri (the "Agreement"). In light of the Transaction, KMC's existing Agreement will need to be replaced by a contract with CenturyTel. In the interim, *per the stipulation of the Missouri Public Service Commission*, CenturyTel will agree to honor, **to the extent technically feasible**, the terms, conditions, and rates of KMC's Agreement with Verizon **until August 31, 2003**. By agreeing to this arrangement, CenturyTel expressly represents that it does not necessarily agree with the appropriateness of the terms, conditions, and rates contained in the Agreement or that said rates accurately reflect the costs, etc., of the services covered in the Agreement.

Please note that, with regard to the services covered in the Agreement, on or before August 31, 2003, KMC will need to negotiate a contract with CenturyTel covering these services, and said contract will need to be approved by the Missouri Public Service Commission. Otherwise, no arrangement for these services will exist between CenturyTel and KMC after August 31, 2003.

Mr. Michael P. Duke
KMC Telecom V, Inc.
October 24, 2002
Page 2

If I have correctly expressed the understanding between CenturyTel and KMC, please sign an original copy of this letter and return it to my attention.

CenturyTel looks forward to working with your company. Thank you for your attention to this matter, and with kindest regards, I am

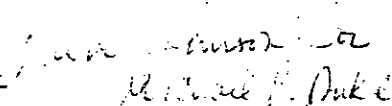
Sincerely yours,



Jackie Phillips
Manager - Carrier Relations

AGREED:

KMC Telecom V, Inc.

By: Michael P. Duke 
Michael P. Duke

Name: Michael P. Duke

Title: Director, Government Affairs

Date: October 29, 2002

EXHIBIT B

INTERCONNECTION REQUEST

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

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HONG KONG

AFFILIATE OFFICES
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JAKARTA, INDONESIA
MUMBAI, INDIA
TOKYO, JAPAN

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DIRECT LINE (202) 887-1257

E-MAIL: AKlein@KelleyDrye.com

Admitted in New York, New Jersey
and the District of Columbia

April 17, 2003

VIA OVERNIGHT MAIL

Guy Miller
Director of Carrier Relations
CenturyTel
100 Century Park Drive
Monroe, LA 71203

COPY

Re: KMC Telecom Request for Negotiation of Interconnection Agreement
with CenturyTel - Missouri

Mr. Miller:

In accordance with the Agreement between KMC Telecom and CenturyTel dated October 24, 2002,¹ the Report and Order of the Public Service Commission of the State of Missouri issued in Case No. TM-2002-232 on May 21, 2002, and Sections 251 and 252 of the Communications Act of 1934, as amended,² KMC Telecom hereby requests negotiation of an interconnection agreement. As you are aware, KMC Telecom and CenturyTel agreed to utilize the rates, terms and conditions of the interconnection agreement existing between KMC and Verizon (CenturyTel's predecessor-in-interest) as the rates, terms and conditions that would govern the relationship between KMC and CenturyTel in Missouri until August 31, 2003. This request is for an interconnection agreement to succeed those currently-effective rates, terms and conditions.

KMC Telecom makes the request for negotiations at this time in the hope that the two parties can negotiate an agreement within the timeframe envisioned in the Communications Act. Should that not prove possible, the arbitration window specified in the Communications Act will open 135 days from tomorrow – August 31, 2003.

¹ Letter Agreement dated October 24, 2002, from Jackie Phillips, Manager – Carrier Relations for CenturyTel to Michael Duke, Director of Government Affairs for KMC Telecom ("Agreement").

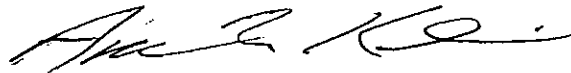
² 47 U.S.C. §§251 and 252.

KELLEY DRYE & WARREN LLP

CenturyTel
April 17, 2003
Page Two

The rates, terms and conditions to be negotiated will replace the rates, terms and conditions of the current Agreement upon its expiration. In the meantime, KMC will continue to honor the terms of the current Agreement, and requires that CenturyTel comply with these same existing legal obligations as well.

Sincerely yours,



Andrew M. Klein
Counsel to KMC Telecom

cc: Jackie Phillips, CenturyTel (via overnight mail)
William Voight, Missouri Public Service Commission (via overnight mail)
Mark Comley, Esq., Newman, Comley & Ruth (via overnight mail)
Brad Mutschelknaus, Esq., Kelley Drye & Warren LLP
Riley Murphy, Esq., KMC Telecom
Marva Johnson, Esq. KMC Telecom
Scott Kassman, Esq., KMC Telecom

EXHIBIT C

ISSUES MATRIX

ISSUE NO.	ISSUE	POSITION OF KMC	POSITION OF THE CENTURYTEL ENTITIES
1	Is CenturyTel required to interconnect with KMC in order to exchange local, ISP-Bound and interexchange traffic?	Yes. All carriers have an obligation to interconnect with other carriers for the exchange of traffic pursuant to Section 251(a) of the Communications Act. The CenturyTel Entities have the additional obligation, as Incumbent Local Exchange Carriers, to provide to any requesting carrier interconnection with their network for the transmission of traffic at any technically feasible point.	No. The CenturyTel Entities apparently believe that they do not need to interconnect with KMC.
2	What is the proper compensation structure for the exchange of 251(b)(5) traffic and ISP-Bound Traffic?	Intercarrier compensation must be determined in accordance with the terms of the FCC's <i>Intercarrier Compensation Remand Order</i> , under which traffic that is within a 3:1 ratio of terminating to originating is compensable pursuant to Section 251(b)(5) of the Communications Act, while traffic above that ratio is presumed to be ISP-bound traffic that is compensable at the FCC's interim rate or on a bill-and-keep basis.	The CenturyTel Entities assert that they should be able to assess switched access charges on such traffic.
3	Is KMC required under the	No. The Communications	Yes. KMC should

ISSUE No.	ISSUE	POSITION OF KMC	POSITION OF THE CENTURYTEL ENTITIES
	Communications Act and FCC rules and regulations to establish more than one point of interconnection ("POI") for the exchange of traffic with the CenturyTel Entities?	Act and the FCC's Rules and orders permit KMC to interconnect at any technically feasible point and to establish one Point of Interconnection for the exchange of traffic with the CenturyTel Entities.	establish a POI at each central office.
4	Should each Party be responsible for delivering calls originated by its subscribers to the Point of Interconnection (POI) designated by KMC, bearing the costs associated with those calls?	Yes. Each Party, as the originating carrier, has the responsibility to deliver all calls originated by its subscribers to the POI to be designated by KMC as the competitive carrier.	No. KMC should bear the costs of delivering CenturyTel originating traffic to the POI.
5	Other issues relating to general terms and conditions that have yet to be identified by the Parties.	N/A	N/A
6	Other issues relating to interconnection that have yet to be identified by the Parties.	N/A	N/A
7	Other issues relating to collocation that have yet to be identified by the Parties.	N/A	N/A
8	Other issues relating to resale that have yet to be identified by the Parties.	N/A	N/A
9	Other issues relating to unbundled network elements that have yet to be identified by the Parties.	N/A	N/A
10	Other issues relating to performance metrics and self-executing enforcement mechanisms that have yet to be identified by the Parties.	N/A	N/A
11	Other miscellaneous issues that have yet to be identified by the Parties.	N/A	N/A

EXHIBIT D

INTERCONNECTION AGREEMENT
PROPOSED BY KMC
(TO BE LATE FILED)