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DA 05-1303

Released: May 5, 2005

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF KMC TELECOM LLC, KMC TELECOM II LLC, KMC TELECOM III LLC, KMC TELECOM OF VIRGINIA, INC., TO CENTURYTEL ACQUISITION LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-158

Comments Due: May 19, 2005

Reply Comments Due: May 26, 2005

On March 14, 2005, KMC Telecom LLC ("KMC I"), KMC Telecom II LLC ("KMC II"), KMC Telecom III LLC ("KMC III"), and KMC Telecom of Virginia, Inc. ("KMC of Virginia"), (collectively "KMC" or "Transferors"), filed an application pursuant to section 63.04 of the Commission's rules¹ requesting authority to transfer control of assets related to KMC's competitive local exchange telecommunications service to CenturyTel Acquisition LLC ("CenturyTel Acquisition" or "Transferee").²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(ii) of the Commission's rules because, immediately following the transactions, (1) CenturyTel Acquisition will hold less than a 10% share of the interstate, interexchange market; (2) CenturyTel Acquisition will provide local exchange service only in areas served by dominant local exchange carriers, none of which is a party to the proposed transaction; and (3) the Applicants are a dominant and a non-dominant carrier that provides services exclusively outside the geographic area where the dominant carrier is dominant.³

CenturyTel Acquisition is a limited liability company organized under Louisiana law, and is a direct, wholly-owned subsidiary of CenturyTel, Inc., a Louisiana corporation. Through its

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

² The Transferors filed an amendment to the application on April 27, 2005 with regard to the ownership interest of KMC Telecom Holdings, Inc.

³ 47 C.F.R. § 63.03(b)(2)(ii).

subsidiaries, CenturyTel, Inc. provides integrated communications services to rural markets in twenty-two states,⁴ including local exchange services as an incumbent LEC, long distance services, and dial-up and high-speed DSL Internet access services. No subsidiary of CenturyTel, Inc., provides local exchange service in any of the geographic areas where the KMC assets that are subject of this proposed transaction are located.⁵ The equity of CenturyTel, Inc. is widely-held and publicly traded on the New York Stock Exchange. No individual or entity directly or indirectly owns ten percent or more of the equity of CenturyTel, Inc.

KMC is a competitive local exchange carrier (“LEC”) providing a full range of telecommunications information services to carriers and enterprise customers, including local exchange, interexchange, switched and special access services, data transmission, and Internet access.⁶ KMC I, KMC II, and KMC III are all limited liability companies organized under the Delaware law. KMC of Virginia is a corporation formed under the laws of the Commonwealth of Virginia. KMC I, KMC II, KMC III, and KMC of Virginia are all wholly-owned by KMC Telecom Holdings, Inc. (“KMC Holdings”), a Delaware corporation. Mr. Harold Kamine, a U.S. citizen, owns 17% of KMC Holdings. General Electric Capital Corporation (“GECC”), a Delaware corporation, owns 14% of KMC Holdings.⁷ Nassau Capital Partners, LP (“Nassau”), a Delaware limited partnership, owns 13% of KMC Holdings. Nassau Capital LLC, a U.S. limited liability company, is a general partner of Nassau and owns 13% of it. Management Options, a U.S. entity owned by Harold Kamine, William Lenahan, William Stewart, and Roscoe C. Young, II, all U.S. citizens, owns 12% of KMC Holdings. There are no other entities that hold a 10% or greater interest in KMC.

On February 2, 2005, CenturyTel Acquisition and KMC entered into an asset purchase agreement under which CenturyTel Acquisition will acquire KMC’s customer accounts and metropolitan area network transmission and switching facilities used to provide telecommunications services in the following markets: Ann Arbor, Michigan; Baton Rouge, Louisiana; Chattanooga, Tennessee; Corpus Christi, Texas; Eden Prairie, Minnesota; Fort Wayne, Indiana; Huntsville, Tennessee; Lansing, Michigan; Long View, Texas; Madison, Wisconsin; Biloxi/Gulfport, Mississippi; Montgomery, Alabama; Topeka, Kansas; Akron, Ohio;

⁴ These states are: Alabama, Arizona, Arkansas, Colorado, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, Ohio, Oregon, Tennessee, Wisconsin and Wyoming.

⁵ CenturyTel, Inc., through its affiliates CenturyTel Solutions LLC and CenturyTel Fiber II LLC (collectively, “Lightcore”), offer competitive local, long distance, and data services to enterprise customers in Monroe and Shreveport, Louisiana, and wholesale bandwidth transport services to telecommunications carriers and service providers, using its fiber optic transmission network across 15 states in the central United States.

⁶ In addition, KMC provides nationwide customized telecommunications services, primarily consisting of data transmission and termination services, to interexchange carriers, wireless service providers, Internet service providers, utilities, and cable multiple system operators. KMC, through KMC Telecom V, Inc. and KMC Data LLC, wholly-subsidiaries of KMC Telecom Holdings, Inc., will continue to provide these services after the CenturyTel and Telcove transactions close.

⁷ GECC is a corporation owned by General Electric Company, a publicly-traded U.S. entity.

Dayton, Ohio; and Toledo, Ohio.⁸ In addition, CenturyTel Acquisition will also acquire a network operations center in Huntsville, Alabama that supports multiple markets. CenturyTel Acquisition will also acquire the right to, at its option, change its name to "KMC Telecom III LLC" and to use the KMC Access Carrier Name Abbreviation code. Although CenturyTel, Inc. and KMC serve markets in the same regions, there is no geographical overlap between CenturyTel, Inc. and the KMC assets CenturyTel Acquisition would acquire in this proposed transaction.

The Applicants state the proposed transaction would serve the public interest, convenience, and necessity because the integration of KMC's metropolitan area network assets into CenturyTel, Inc.'s existing networks will redound to the benefit of both carrier' customers. In addition, the proposed transaction is expected to enhance competition in the affected markets by introducing Transferee or expanding its presence as a viable competitor. There is no overlap between the KMC facilities being acquired and CenturyTel, Inc.'s incumbent LEC service territory, and as a result, there will be no reduction in the number of competitors or the level of competition post-consummation. Furthermore, the Applicants state that no existing service will be discontinued, reduced, or impaired, and that the proposed transaction will not affect rates for any service being provided to customers in the subject markets.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before May 19, 2005 and reply comments on or before May 26, 2005.**⁹ Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and related control on the 31st day after the date of this notice.¹⁰ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁸ In a related transaction, Telcove, Inc., another competitive LEC, is acquiring similar assets from KMC in the 21 remaining markets, namely: Augusta and Savannah, Georgia; Columbia, Charleston and Spartanburg, South Carolina; Daytona Beach, Ft. Myers, Greater Pinellas, Melbourne, Pensacola, Sarasota and Tallahassee, Florida; Fayetteville, Greensboro, Hickory, Wilmington and Winston-Salem, North Carolina; Hampton Roads and Roanoke, Virginia; Bethesda/Frederick/Rockville, Maryland; and Bristol/Johnson City/Kingsport (Tri-Cities) Tennessee. *See Domestic Section 214 Application Filed For Acquisition of Assets of KMC Operating Companies by Telcove, Inc.*, WC Docket No. 05-90, DA No. 05-669, rel. March 14, 2005. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

⁹ *See* 47 C.F.R. § 63.03(a).

¹⁰ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Adam Kirschenbaum, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: adam.kirschenbaum@fcc.gov
- (4) Terri B. Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;

(5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and

(6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Adam Kirschenbaum at (202) 418-7280.

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