

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: DONOVAN E. WALKER

DATE: AUGUST 19, 2005

SUBJECT: KMC DATA, LLC AND KMC TELECOM V, INC.'S APPLICATIONS FOR APPROVAL OF THE ADOPTION OF QWEST/MCIMETRO INTERCONNECTION AGREEMENT – CASE NOS. KMC-T-05-1 AND KMD-T-05-1.

On January 24, 2005, KMC Data, LLC and KMC Telecom V, Inc. (the Companies) filed identical Applications with the Commission for the adoption of the Qwest/MCIMetro Interconnection Agreement pursuant to 47 U.S.C. § 252(i). Applications at p. 1. The Applications state that the Companies “notified Qwest by letter of its intent to adopt the MCIMetro Agreement, but has been unable to reach agreement with Qwest with regard to certain terms for the adopted agreement.” *Id.*

In the ensuing line of correspondence between the Companies’ representative and Commission Staff through March 31, 2005, the Companies notified Staff that: (1) they were continuing to negotiate with Qwest, (2) if the negotiations were not successful, they would send Qwest a “formal” request for negotiations to start the 135/160 clock under the federal Act to petition for arbitration, and (3) the current Applications for adoption of the MCIMetro Agreement should be held in abeyance. (See Attached e-mail correspondence).

Staff subsequently has not had any contact from Companies. The Companies did not respond to Staff’s request for updated information and status in July 2005. Likewise the Companies did not respond to Staff’s notification that they would be asking for this case to be dismissed. *Id.*

STAFF RECOMMENDATION

Staff recommends that both cases be dismissed without prejudice.

COMMISSION DECISION

1. Does the Commission wish to dismiss these two cases without prejudice?
2. Does the Commission wish to continue holding these matters in abeyance, maintaining the status quo?
3. Does the Commission wish to take some other action?



DONOVAN E. WALKER

M:KMCT0501_KMDT0501_dw

Donovan Walker

From: Carolee Hall
Sent: Monday, July 25, 2005 10:50 AM
To: Donovan Walker; 'virginia.tate@kmctelecom.com'; Brenda Sorrell; Carolee Hall
Subject: KMC-T-05-01 and KMD-T-05-01
Importance: High

Donovan,

Would you please prepare a decision memo for the Commission asking that these cases be dismissed without prejudice?

I have contacted Ms. Tate numerous times trying to get resolution with these cases. My last contact gave the Company until Friday, July 15, 2005 to update Staff as to the current positions of the Companies. I have not received any response from her or the Company, as such I believe it is time to ask the Commission to dismiss these cases and should Qwest and the companies come to a meeting of the minds, then they certainly can refile.

Thanks much

Carolee

8/18/2005

Donovan Walker

From: Carolee Hall
Sent: Monday, July 11, 2005 7:44 AM
To: 'Virginia.Tate@kmctelecom.com'
Cc: Donovan Walker; Brenda Sorrell; Carolee Hall
Subject: Case Number(s) KMC-T-05-01 and KMD-T-05-01
Importance: High

Dear Ms. Tate,

In January of 2005, the Company filed two cases seeking to adopt Qwest/MCI interconnection agreements. Through many e-mails it was determined that KMC/KMD would make a formal request for abeyance until such time as Qwest and KMC/KMD could come to a mutual agreement. That was in March.

To date I have not heard back from you and must ask that you update the current position of the companies or withdraw these filings. If I do not hear from you by Friday, July 15, 2005, I will ask our Attorney to pursue a dismissal of these filings.

Your prompt attention to this matter is appreciated. To expedite this matter you may respond to this e-mail directing Staff as to what the Company's intent is.

Thank you

Carolee Hall
208-334-0364

8/18/2005

Donovan Walker

From: Carolee Hall
Sent: Thursday, March 31, 2005 4:33 PM
To: 'Tate, Virginia'
Cc: Weldon Stutzman; Donovan Walker; Joe Cusick
Subject: RE: Qwest Response on ICA Adoption

Thanks Virginia,

I will take this as a formal request for abeyance while you and Qwest work things out. Should they agree, then we certainly can move forward, but for now this will (subject to check with my attorney) work to stop the clock.

Just give me an update when you hear one way or the other.

Carolee

-----Original Message-----

From: Tate, Virginia [mailto:Virginia.Tate@kmctelecom.com]
Sent: Thursday, March 31, 2005 3:24 PM
To: Carolee Hall
Cc: Johnson, Marva
Subject: RE: Qwest Response on ICA Adoption

Carolee,

This is where we stand. I have sent Qwest a redlined version of their template interconnection agreement and deleted the UNE section and pricing, since we don't want to agree to their interpretation of the TRO and since we don't even need to purchase UNEs in Idaho. I can't imagine that they would force us to take their UNE attachment since we aren't purchasing UNEs, yet that was their verbal position on this a few weeks ago. I have also offered to them as an alternative that we enter into a Master Traffic Exchange Agreement. This is a standard agreement among telecom carriers where there is simply an exchange of traffic which is what we have in Idaho. They have told me they will get back to me in the next few days. In the event, they refuse both options, I will have to send them a formal request for negotiations which will start the 135-160 day clock to file for arbitration. For your purposes, I realize that the clock is ticking on the application to opt-in that we filed. I would suggest that we hold that in abeyance if need be. I'll let you know Qwest's response. I imagine that I'll hear from them at the beginning of the week. Thanks and let me know if you need anything else. Virginia Tate for KMC Telecom.

Office: (678) 985-6375

From: Carolee Hall [mailto:Carolee.Hall@puc.idaho.gov]
Sent: Monday, March 28, 2005 12:29 PM
To: Tate, Virginia; Donovan Walker
Cc: Johnson, Marva; Pifer, Raymond
Subject: RE: Qwest Response on ICA Adoption
Importance: High

Hi Virginia,

4/4/2005

I haven't heard from you since the 24th of February and must impress upon you that the regulatory clock is ticking. As you can see we left this matter where both parties were negotiating - where are we now?

I must have a response in writing from you or the company no later than Friday, **April 1, 2005**. This response must indicate what the companies have agreed to, or requesting that the Applications be withdrawn. If nothing else, we must stop the clock as time is running out on this. As you know we only have 90 days in which to act upon Interconnection Agreements.

If you have any questions regarding this, please give me a call!

Thanks Virginia

Carolee

-----Original Message-----

From: Tate, Virginia [mailto:Virginia.Tate@kmctelecom.com]
Sent: Thursday, February 24, 2005 11:32 AM
To: Carolee Hall
Subject: RE: Qwest Response on ICA Adoption

Carolee,

KMC definitely does not want to opt-into any agreement where Qwest has imposed its interpretation of the TRO. Therefore, we have decided that perhaps we could adopt an interconnection agreement without a UNE attachment which basically would be an interconnect and transport agreement. We don't need UNEs. That way a TRO amendment would be unnecessary. We would still reserve our right to negotiate a UNE amendment in the future if we need one. I just left Steve Dea at Qwest a message to this effect. We'll see what their response is. This would seem to be suitable to both parties though. I'll let you know what he says. Virginia

Office: (678) 985-6375

From: Carolee Hall [mailto:Carolee.Hall@puc.idaho.gov]
Sent: Wednesday, February 23, 2005 4:44 PM
To: Tate, Virginia
Cc: Carolee Hall
Subject: RE: Qwest Response on ICA Adoption
Importance: High

Virginia,

We are becoming pressed for time on our end. Would you please advise as to what your clients wishes are on this matter. Again, I will need a response no later than Friday (2/25) morning.

Thank you

Carolee

-----Original Message-----

From: Tate, Virginia [mailto:Virginia.Tate@kmctelecom.com]
Sent: Monday, February 14, 2005 2:05 PM
To: Carolee Hall
Subject: RE: Qwest Response on ICA Adoption

4/4/2005

Thanks Carolee, I'll review. Virginia

Office: (678) 985-6375

From: Carolee Hall [mailto:Carolee.Hall@puc.idaho.gov]
Sent: Monday, February 14, 2005 3:19 PM
To: Tate, Virginia
Subject: RE: Qwest Response on ICA Adoption

Please see attached -

-----Original Message-----

From: Tate, Virginia [mailto:Virginia.Tate@kmctelecom.com]
Sent: Monday, February 14, 2005 9:46 AM
To: Carolee Hall
Subject: RE: Qwest Response on ICA Adoption

We really just wanted to opt-into an existing agreement and not go through the entire 252 negotiation of a new ICA. We simply don't have the resources for that. We should be able to adopt an existing ICA and not be force fed Qwest's TRO amendment. We're basically being told by Qwest to take their TRO amendment or forget it. Virginia

Office: (678) 985-6375

From: Carolee Hall [mailto:Carolee.Hall@puc.idaho.gov]
Sent: Monday, February 14, 2005 11:39 AM
To: Tate, Virginia
Subject: RE: Qwest Response on ICA Adoption

Well the Telecom Act gives ALL CLECs the ability to enter into negotiations and if Qwest does not enter into voluntary negotiations, then the CLECs may petition the Commission for mediation and arbitration.....Take a look at Section 252 of the Act. Did you do any of these?

Thanks Carolee

-----Original Message-----

From: Tate, Virginia [mailto:Virginia.Tate@kmctelecom.com]
Sent: Monday, February 14, 2005 9:32 AM
To: Carolee Hall
Subject: RE: Qwest Response on ICA Adoption

Carolee,

I'll check, but I doubt we tried to negotiate on this point given our past experience with Qwest. Given that we have no leverage on our own for force Qwest to be reasonable, we would need the assistance of the PSC to help gain some leverage. They're in a position to be able to say 'take it or leave it' and unless we get the PSC behind us we can't make them budge. Virginia

4/4/2005

Office: (678) 985-6375

From: Carolee Hall [mailto:Carolee.Hall@puc.idaho.gov]
Sent: Monday, February 14, 2005 11:07 AM
To: Tate, Virginia
Cc: Carolee Hall
Subject: RE: Qwest Response on ICA Adoption
Importance: High

Virginia,

I note that the Company requested to adopt Qwest/MCI's agreement and where Qwest recited the law according to their interpretations, however, I do not see where the Company (or you) responded to Qwest's response. Was there ever any further negotiations that transpired? Did you/Company ever request arbitration? Do you have any further documentation that followed Qwest's denial?

Thanks much

Carolee

-----Original Message-----

From: Tate, Virginia [mailto:Virginia.Tate@kmctelecom.com]
Sent: Monday, February 14, 2005 8:34 AM
To: Carolee Hall
Subject: Qwest Response on ICA Adoption

Carolee,

Attached is Qwest's response to KMC's request to adopt the MCI ICA in Idaho. Denise Smith and Karly Baraga are our outside counsel who made the request. Please confirm receipt. Thanks. Virginia

Office: (678) 985-6375

4/4/2005