

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: KMC DATA, LLC	DOCKET NOS. TCU-01-8 WRU-01-20-3548
-----------------------------	--

**ORDER APPROVING APPLICATION, CONCURRENCE IN MAPS,
AND GRANTING WAIVERS**

(Issued June 1, 2001)

On April 23, 2001, KMC DATA, LLC (KMC DATA), filed an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2001), stating its intention to provide facilities-based and resold local exchange services in the exchanges served by Qwest Corporation (Qwest) and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). The application has been identified as Docket No. TCU-01-8. KMC DATA has provided the qualifications of its company officers and financial statements and commits to providing dialing parity on both intraLATA and interLATA basis by implementing a 2-PIC pre-subscription methodology.

Iowa Code § 476.29(2) (2001) provides that the local exchange carrier shall not be denied a certificate if the Utilities Board (Board) finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with public interest."

The Board has reviewed KMC DATA's application and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board finds that it is consistent with the public interest to approve the application.

KMC DATA also states that its service area will mirror the service territory of Qwest and Iowa Telecom and the exchange and service area maps as they are currently filed and as they may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have on file with the Board maps, which show exchange boundaries. The Board finds that KMC DATA has complied with the statutory and rule requirements by concurring in the exchange maps of the two companies.

KMC DATA has requested that the Board waive the requirements of 199 IAC 16.5(2), 18.2, and 22.3(2). The waiver requests were identified as Docket No. WRU-01-20-3548.

KMC DATA requested a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. KMC DATA states that it employs an accounting system in accordance with generally accepted accounting principles (GAAP). The Board finds that this waiver should be granted,

since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

KMC DATA has requested that the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant the waiver based upon the statement of KMC DATA that it will make the records available to the Board upon request.

KMC DATA also requested the Board waive 199 IAC 22.3(2), requiring it to independently publish a directory. The Board will grant this waiver since KMC DATA does not have a sufficient number of customers to warrant publishing a directory and KMC DATA states that it will provide customer information to incumbent carriers for inclusion in their directories.

Rule 199 IAC 1.3 states that the Board may grant a waiver if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests described above and finds that the waivers meet the four criteria of the rule and the evidence in support of the waivers is clear and convincing.

Adherence to these three rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa. It would be an undue hardship for such companies to keep a separate set of books just for Iowa, to

maintain a separate office in Iowa, and to publish a directory for just their customers. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantial equal protection for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

KMC DATA has not filed proposed tariffs for Board approval setting out the service and rates for providing local exchange service. The Board finds that a certificate should not be issued to KMC DATA until it has approved tariffs.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by KMC DATA, LLC, on April 23, 2001, is approved, subject to the requirements that follow.
2. The Board will issue a certificate of public convenience and necessity allowing KMC DATA, LLC, to provide facilities-based and resold local exchange service upon approval of tariffs to reflect the prices, terms, and conditions of local exchange service in Iowa. At the time KMC DATA, LLC, files proposed tariffs with the Board, it must give notice to all affected local exchange carriers.
3. The concurrence in the maps and boundaries of the exchanges of Qwest Corporation and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is approved.

4. The waiver of 199 IAC 16.5(2), 18.2, and 22.3(2) is granted as described in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 1st day of June, 2001.