

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  KMC DATA, LLC, AND QWEST CORPORATION	DOCKET NO. NIA-05-155
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**ORDER REQUESTING RESPONSE**

(Issued April 21, 2005)

On March 11, 2005, KMC Data, LLC (KMC), filed with the Utilities Board (Board) a "Notice of Election of Interconnection Agreement." KMC states that it elects to receive interconnection services from Qwest Corporation (Qwest) in accordance with the terms of the existing interconnection agreement between Qwest and XO Network Services (XO) as approved by the Board on February 22, 2004, in Docket No. NIA-04-1. KMC also states that it reserves the right to amend the agreement to reflect the terms of the recent decisions by the Federal Communications Commission (FCC).

On April 6, 2005, Qwest filed a timely response to KMC's notice wherein Qwest seeks a dismissal of KMC's notice to the extent it attempts to "opt in" to the interconnection agreement between Qwest and XO. In support of its motion to dismiss, Qwest states that it informed KMC that Qwest would allow KMC to adopt the agreement if KMC also agreed to simultaneously execute an appropriate "TRO/USTA II Amendment." Qwest states that the TRO/USTA II Amendment was designed to bring interconnection agreements into compliance with the FCC's

Triennial Review Order (TRO),<sup>1</sup> the D.C. Circuit Court's *USTA II* decision,<sup>2</sup> and the FCC's subsequently issued Interim Rules.<sup>3</sup> Qwest states that it required KMC and all other competitive local exchange carriers (CLECs) without interconnection agreements by June 15, 2004, to sign the "TRO/USTA II Amendment" as a condition of opting into an existing interconnection agreement. Qwest states that KMC did not negotiate with Qwest or provide Qwest with any response to the TRO/USTA II Amendment. Qwest states that KMC improperly filed its notice with the Board and that the notice does not acknowledge the TRO/USTA II Amendment.

Normally, a response to the motion to dismiss would have been due 14 days after the motion was filed. 199 IAC 7.8(2)"b." As of the date of this order, KMC has not responded to Qwest's motion to dismiss.

The Board has reviewed KMC's notice and Qwest's response and finds that sufficient information exists to warrant further investigation. The Board will docket the matter and delay establishing a procedural schedule until ten days following the issuance of this order to allow KMC an opportunity to respond to the issues raised in Qwest's response.

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent LECs*, 18 FCC Rcd. 16978(2003).

<sup>2</sup> *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent LECs*, CC Docket No. 01-338, WC Docket No. 04-313, "Order and Notice of Proposed Rule Making," 19 FCC Rcd 16783, 16785-87 (2004) (Interim Rules).

**IT IS THEREFORE ORDERED:**

1. The "Notice of Election of Interconnection Agreement" filed by KMC Data, LLC, on March 11, 2005, is docketed for further investigation.
2. KMC Data, LLC, is directed to file a response to the motion to dismiss filed by Qwest Corporation on April 6, 2005, within ten days of the date of this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

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Dated at Des Moines, Iowa, this 21st day of April, 2005.