

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 GRANTING MOTION TO DISMISS

(Issued May 24, 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 23, 2004, in Docket No. NIA-04-1.

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 Federal

Communications Commission's (FCC) Triennial Review Order (TRO),¹ the D.C. Circuit Court's *USTA II* decision,² and the FCC's subsequently issued Interim Rules.³ 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.

On April 21, 2005, the Board issued an order docketing KMC's notice for further investigation and requesting KMC respond to Qwest's motion to dismiss on or before May 2, 2005. KMC did not file a response to Qwest's motion. Absent a response from KMC regarding Qwest's assertions, the Board will grant Qwest's motion to dismiss KMC's notice.

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

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

³ *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:

The motion filed by Qwest Corporation on April 6, 2005, seeking dismissal of the "Notice of Election of Interconnection Agreement" filed by KMC Data, LLC, on March 11, 2005, is granted.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 24th day of May, 2005.