

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF KMC)
TELECOM V, INC., FOR REVIEW OF A PLAN)
FOR PROVIDING INTRALATA TOLL DIALING) PSC DOCKET NO. 03-473
PARITY IN ACCORDANCE WITH FEDERAL)
COMMUNICATIONS COMMISSION REQUIREMENTS)
(FILED OCTOBER 14, 2003))

ORDER NO. 6726

This 20th day of September, 2005, the Commission finds, determines, and Orders the following:

A. INTRODUCTION

1. KMC Telecom V, Inc. ("KMC V"), has been granted a Certificate of Public Convenience and Necessity to provide local exchange and competitive intrastate access telecommunications services within this State. Initially, KMC V offered only data services and therefore did not have to submit and seek approval of an intraLATA toll dialing parity plan. KMC V has decided to offer voice grade local exchange telephone service and has filed an application with the Commission asking for approval of an intraLATA toll dialing parity proposal to govern how KMC V, as a local exchange carrier ("LEC"), will afford equal access to other intraLATA toll carriers. After reviewing Staff's memorandum, and in the absence of any comments from other entities, the Commission approves KMC V's plan as recommended by Staff.

2. By 47 U.S.C. § 251(b)(3), Congress mandated that all local exchange carriers, both incumbent and new, provide "dialing parity" to competing providers of telephone exchange service and telephone toll service. The Federal Communications Commission ("FCC") has promulgated rules and policies to govern the LEC's duty to provide dialing parity in

the context of intraLATA and interLATA toll calls. See 47 C.F.R. §§ 51.5, 51.205, 51.209-51.215. Those rules set forth minimum nationwide standards (including a "full 2-PIC" methodology) for toll dialing parity.

3. Those rules also direct each LEC to submit to the relevant state utility commission a toll dialing parity implementation plan. That plan must set forth the LEC's proposed procedures for implementing toll dialing parity, the LEC's proposed implementation date, and the LEC's proposed methods for enabling customers to select alternative providers of telephone toll service. However, the federal regulations leave it to the state utility commissions to determine, consistent with the federal minimums, the appropriate consumer education and carrier selection procedures to be followed in that State.¹

4. On October 23, 2003, KMC V filed its toll dialing parity plan. In the plan, KMC V represents that, when it launches its voice grade local exchange services within Delaware, it will implement a full "2-PIC" carrier selection methodology, apparently premised on the Delaware-Philadelphia LATA. Under this methodology, the KMC V subscriber will be able to pre-subscribe to one carrier for interLATA toll service, and the same, or another, carrier, for intraLATA toll service. According to KMC V, all consumers contacting KMC V for local exchange service will be informed of the opportunity to choose both a presubscribed intraLATA and interLATA toll carrier. If the new customer fails to affirmatively make an intraLATA carrier selection at the time of subscribing to KMC V's local exchange service, the customer's intraLATA toll service will not be

¹The Court of Appeals had previously vacated the FCC's rules as they applied to intrastate toll calls. See California v. FCC, 124 F.3d 934, 940-41 (8th Cir. 1997). That jurisdictional holding has now been reversed. AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721, 738-39 (1999). In reviewing the toll dialing parity plan submitted here, the Commission will assume that the FCC's rules are now in effect.

defaulted to any carrier. Instead, until the time of selection, the customer will have to dial a carrier access code to route and complete an intraLATA call.

5. KMC V published notice of its toll dialing parity plan and solicited comments concerning its specifics. No comments were submitted.

6. Staff has reviewed the plan and found it consistent with the federal standards. Staff notes that KMC V has proposed to use the \$5.00 PIC charge to cover any expenses related to the implementation of toll dialing parity.

7. The Commission considered KMC V's toll dialing parity plan at its meeting on September 20, 2005.

B. DISCUSSION AND FINDINGS

8. The Commission will approve the intraLATA toll dialing parity plan filed by KMC V.

9. As the Commission has previously noted in approving other toll dialing parity plans, a telecommunications carrier has a right to market its telecommunications services, whether local exchange or toll. Similarly, new LECs have a right to market those services in bundled packages, if the carrier believes that such "one-stop shopping" is what customers prefer. At the same time, a LEC's right to sell its services must be balanced against both the Congressional command that all LECs provide toll dialing parity and the directive from our General Assembly that customers be afforded the opportunity for choice among a variety of telecommunications services. See 26 Del. C. § 702(3). The Commission has previously indicated that the appropriate balance is struck if the customer knows that they need not necessarily choose the LEC's toll services, even if they desire the LEC's local exchange service, and the

customer remains aware that they have the ultimate right to choose all of their telecommunications service providers.

10. KMC V recognizes this duty of providing choice; it acknowledges in its plan that consumers requesting new telephone exchange service should be informed of the opportunity to choose both an intraLATA and interLATA toll carrier and that customers will need to affirmatively make those selections. Again, as the Commission has noted previously, this duty to allow for the exercise of choice can be met in several ways. For example, when a customer makes an in-bound inquiry to KMC V about local exchange service, KMC V may provide a neutral statement describing intraLATA presubscription and, upon request, read a list of available intraLATA toll carriers from a random list that is rotated regularly.² Similarly, in the context of such in-bound inquiry, KMC V may recommend its own long distance service as long as it contemporaneously states that other carriers also provide similar long distance service and offers to read a list of all available intraLATA carriers, arranged in random order and rotated periodically.³ Either protocol ensures that the customer recognizes that they have the opportunity to choose intraLATA toll carriers other than KMC V.

11. Another crucial element of implementation is that if a customer, during this initial contact or at some later time, makes an affirmative selection of a carrier other than KMC V for their intraLATA toll service, then KMC V must honor that choice and process the

²See PSC Order No. 4382, ¶ 41 (Jan. 7, 1997).

³Compare In the Matter of the Application of BellSouth Corp. Pursuant to Section 271 of the Telecommunications Act of 1934 to Provide InterLATA Services in South Carolina, Mem. Op. & Order at ¶¶ 237-39, 13 FCC Rcd. 539 (1997).

customer's request for another carrier in the same fashion and in the same time frame as KMC V would do if the customer had selected KMC V.

12. KMC V has stated that it will tariff and offer to requesting customers a "PIC freeze" option. While the Commission recognizes that such freeze mechanisms can be used by a LEC in an anti-competitive fashion, the Commission also believes that a proper "PIC freeze" methodology is a device which consumers should have available to prevent unauthorized toll carrier changes. See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Unauthorized Changes of Consumers' Long Distance Carriers, Further NPRM and Second Rept. & Order, FCC 98-334, ¶¶ 112-138 (rel. Dec. 23, 1998). The Commission also expects that KMC V will comply with all carrier selection ("anti-slamming") verification procedures adopted by the FCC or by this Commission. See 47 C.F.R. Part 64, Subpart K.

13. If, in the initial call, a customer does not make an affirmative selection of an intraLATA carrier, then the customer should not be assigned to any toll carrier and should be informed that they will not have an assigned toll carrier and will have to use access codes to access intraLATA toll calling. In such a situation, the customer's non-selection may not be viewed as a default to KMC V. Of course, KMC V is free to remind a customer of the consequences if they do not make an affirmative selection of a carrier.

14. Finally, the Commission reserves the right to revisit the approval granted here if changed circumstances or complaints (from either consumers or competitors) raise concerns that "real world" implementation of KMC V's intraLATA toll dialing parity plan does not allow for customers to exercise informed choice in the selection of an intraLATA toll carrier.

