

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
KMC Telecom, Inc. Request for Waiver of	)	
§ 63.71(c) of the Commission’s Rules	)	NSD File No. W-P-D-563
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**ORDER**

**Adopted:** February 27, 2002

**Released:** February 27, 2002

By the Acting Chief, Network Services Division, Common Carrier Bureau:

1. In this Order, we grant KMC Telecom, Inc.’s (KMC) request for waiver of the requirement to give notice of its intention to discontinue providing domestic telecommunications service under section 63.71(c) of Federal Communications Commission (Commission) rules.<sup>1</sup> Section 63.71(c) of the Commission’s rules states that a carrier's discontinuance application shall be granted automatically on the thirty-first (31<sup>st</sup>) day after the Commission releases public notice of the filing.<sup>2</sup> The thirty-one (31) day period allows the Commission to determine, either through customer comments or its own fact-finding, whether affected customers have available, reasonable alternatives to the service to be discontinued. Because there will be no disruption of service in this case, and because the purpose and intent of the Commission’s notice requirements have been met, we find that granting this waiver is in the public interest.

2. According to its waiver request, KMC notified its customers on January 20, 2002, that due to its sale agreement with CenturyTel Solutions, LLC (CenturyTel), KMC proposed to discontinue providing its customers with local, long distance, and other telecommunications services on February 28, 2002.<sup>3</sup> On January 31, 2002, KMC filed an application for

<sup>1</sup> KMC Telecom, Inc. Request for Waiver of Section 63.71 of the Rules and Grant of Authority to Discontinue Domestic Interstate Common Carrier Service in Monroe and Shreveport/Bossier City, LA (February 25, 2002) (Waiver Request).

<sup>2</sup> See 47 C.F.R. § 63.71(c).

<sup>3</sup> KMC states that the proposed discontinuance will affect six hundred ninety-two (692) business customers in the Shreveport/Bossier City, Louisiana area, and two hundred thirty (230) customers in Monroe, Louisiana.

discontinuance authority with the Commission. Due to delays associated with the Commission's new mail processing procedures, staff within the Common Carrier Bureau's Network Services Division did not receive KMC's application until counsel for KMC faxed the application to them on February 14, 2002. Public notice of the discontinuance was released on February 19, 2002.<sup>4</sup> Thus, even though customers were notified by KMC of the planned discontinuance in January, automatic grant of the application would occur on March 22, 2002, under the Commission's rules.

3. KMC requests a waiver of section 63.71(c) on the ground that waiting until March 22, 2002 to grant the application would not serve the public interest. Specifically, KMC states that expediting the application's grant date will not harm customers, given that KMC provided them with discontinuance notice over a month ago, and that customers who do not choose to migrate to another carrier will continue to receive service from CenturyTel under the same rates, terms and conditions at least until March 22, 2002 -- the date of automatic grant of discontinuance authority. Moreover, KMC explains that it requires discontinuance authority to execute its sale agreement with CenturyTel, and that the agreement's closing date can only occur on the last day of the month. Thus, if the Commission were to grant automatic authority on March 22, 2002, the agreement's earliest closing date would be March 31, 2002. KMC explains that this delay will cost it approximately five hundred thousand dollars (\$500,000) in additional interest charges, and that it cannot predict what impact such delay will have on its future ability to provide service.<sup>5</sup>

4. Pursuant to section 1.3 of the Commission's rules, the Commission may grant a waiver of its rules upon a showing of "good cause."<sup>6</sup> Section 1.3, thus, allows the Commission to grant a waiver if special circumstances warrant a departure from the general rule, and that departure serves the public interest.<sup>7</sup>

5. We find that due to the special circumstances present here, departure from the general rule is warranted, and this departure serves the public interest. Because KMC provided its customers with actual notice of its proposed discontinuance more than thirty (30) days ago, we find that the purpose and intent of the Commission's notice requirements have been met. In reaching this finding, however, we emphasize that we are accepting and specifically relying on KMC's representations that under the terms of the asset sale, no customer will lose service as a result of the discontinuance, and that CenturyTel has agreed to provide service to affected customers under the same rates, terms and conditions. In this regard, it is particularly important to us that the Louisiana Public Service Commission has already determined that discontinuance would have no adverse

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<sup>4</sup> See *Comments Invited on KMC Telecom, Inc. and KMC Telecom III, Inc. Joint Application to Discontinue Domestic Telecommunications Services*, Public Notice, NSD File No. W-P-D-563, DA 02-381 (rel. Jan. 19, 2002).

<sup>5</sup> See Waiver Request at 2.

<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 US 1027 (1972)); see also *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

affect on customers.<sup>8</sup> Where customers would actually lose service if a discontinuance were allowed to go into effect, we would not necessarily reach the same conclusion.<sup>9</sup> We also note that granting the waiver requested would allow KMC to avoid the additional and unnecessary transaction costs mentioned above. We therefore find given the specific circumstances presented here, that KMC has shown good cause for a waiver of the Commission's discontinuance notice requirements, and that a grant of KMC's request to waive 63.71(c) is in the public interest.

6. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and 214 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 214, and Sections 0.91, 0.291, 1.3 and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 63.71, KMC's request for waiver of section 63.71(c) of the Commission's rules IS GRANTED, and KMC may discontinue providing service on February 28, 2002.

FEDERAL COMMUNICATIONS COMMISSION

Diane L. Griffin  
Acting Chief, Network Services Division  
Common Carrier Bureau

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<sup>8</sup> On February 21, 2002, the Louisiana Public Service Commission issued a Letter of Non-Opposition regarding KMC's application for state approval. It found that the proposed transaction and resulting discontinuance by KMC will not have an adverse impact on the consumers of Louisiana. The letter stated that ". . . affected customers currently served by KMC will be transferred to CenturyTel without interruption. Those customers will continue to receive high quality telecommunications services through their new provider at the same or better rates. Further, all customers will be provided notice . . . [and] the transfer will have no effect on the ability of customers to switch to another carrier after the transfer is completed." Letter from Lawrence C. St. Blanc, Executive Secretary of the Louisiana Public Service Commission, to Gordan D. Polozola of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, LLP (February 21, 2002).

<sup>9</sup> See *In the Matter of Rhythms Links Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, Order, NSD File No. W-P-D-523 (Sept. 7, 2001).