



# PUBLIC NOTICE

Federal Communications Commission  
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**DA 05-669**

**Released: March 14, 2005**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF KMC OPERATING COMPANIES BY TELCOVE, INC.**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 05-90**

**Comments Due: March 28, 2005**

**Reply Comments Due: April 4, 2005**

On March 1, 2005, TelCove, Inc. (“Buyer”), TelCove Investment, LLC (“TelCove Investment”), TelCove of Kentucky, Inc. (“TelCove Kentucky”), TelCove Operations, Inc. (“TelCove Operations”), TelCove of Virginia, LLC (“TelCove Virginia”) (collectively, not including the Buyer, the “TelCove Operating Companies”), KMC Telecom Holdings, Inc. (“KMC Holdings”), KMC Telecom LLC (“KMC”), KMC Telecom II LLC (“KMC II”), KMC Telecom III LLC (“KMC III”), and KMC Telecom of Virginia, Inc. (“KMC Virginia”) (collectively, the “KMC Operating Companies” and, together with Buyer and the TelCove Operating Companies, the “Applicants”), pursuant to sections 63.03 and 63.04 of the Commission’s rules,<sup>1</sup> filed an application requesting authority to complete a transaction whereby Buyer will acquire certain assets, including certain customer accounts, from the KMC Operating Companies.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission’s rules because, immediately following the transactions, (1) Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their affiliates will provide local exchange service only in areas served by dominant local exchange carriers (none of which are

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<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants are also filing applications for transfer of control associated with authorization for international services as Buyer and KMC III hold international facilities-based and resold Section 214 authority. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

parties to the proposed transactions) and; (3) none of the Applicants or their affiliates is dominant with respect to any service.<sup>3</sup>

Buyer is a corporation formed under the laws of the Delaware. TelCove Investment is a Delaware limited liability company, TelCove Kentucky and TelCove Operations are corporations formed under the laws of Delaware, and TelCove Virginia is a limited liability company formed under the laws of Virginia. Buyer is 20% owned by Bay Harbour Partners, Ltd., a Cayman Islands investment firm, 17% owned by Bay Harbour 90-1, Ltd., a U.S. investment firm, 15% owned by Goldman Sachs, a U.S. corporation,<sup>4</sup> and 10% owned by Credit Suisse First Boston, a Switzerland investment firm. Both Bay Harbour Partners, Ltd. and Bay Harbour 90-1, Ltd. are managed and controlled by Bay Harbour Management, L.C., a U.S. entity.<sup>5</sup> Bay Harbour Management, L.C. is owned and controlled by Tower, Inc., a U.S. corporation (85%) and Unity, N.V., a Netherland Antilles investment firm (10%). Tower, Inc. is owned and controlled by two U.S. citizens, Douglas Teitlebaum (50%) and Stephen Van Dyke (50%). Unity, N.V. is owned by Sir John M. Templeton (100%), a British citizen. Credit Suisse First Boston is owned by Credit Suisse Group (100%), a Switzerland investment firm. Buyer, through its operating subsidiaries, including the TelCove Operating Companies, is a leading facilities-based provider of integrated communications services that serves medium and large businesses, state and local governmental agencies, educational institutions, and other communications service providers.<sup>6</sup>

KMC Holdings is a Delaware corporation and the ultimate holding company parent of the KMC Operating Companies. KMC, KMC II and KMC III are limited liability companies formed under the laws of the state of Delaware and KMC Virginia is a corporation formed under the laws of Virginia.<sup>7</sup> KMC Holdings, through the KMC Operating Companies and its affiliates, provides voice and/or data services in every state with the exception of Alaska, Colorado and

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<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(ii).

<sup>4</sup> Goldman Sach is a publicly traded and widely held corporation traded on the New York Stock Exchange under the ticker symbol GS. The Applicants state that no entity owns more than half of the equity of Goldman Sachs and does not have day-to-day involvement in Buyer's operations.

<sup>5</sup> Bay Harbour Management, L.C. manages, but does not own several investment funds, including Bay Harbour Funds, that cumulatively own 47% of Buyer.

<sup>6</sup> Buyer, through its operating subsidiaries, including the TelCove Operating Companies, is authorized to provide facilities-based local exchange and interexchange telecommunications services in every state, except Alaska, Arizona, Hawaii, and the District of Columbia. Buyer's operating companies currently provide Internet, voice and data services to customers in Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont and Virginia.

<sup>7</sup> In addition to its international and interstate operations, KMC Holdings, through the KMC Operating Companies and its affiliates, is authorized by various state public service commissions to provide resold and/or facilities-based, competitive local and/or intrastate interexchange telecommunications services in 49 states and the District of Columbia. In Virginia, KMC Holdings provides service through KMC Virginia.

Hawaii. Wireline voice services are provided by KMC III in Alabama, Florida, Georgia, Indiana, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Texas and Wisconsin and by KMC Virginia in Virginia.

Applicants filed this Application in connection with an Asset Purchase Agreement entered into as of February 2, 2005 between KMC Holdings, KMC, KMC II, KMC III, KMC Virginia, and KMC Financial Services LLC and Buyer. Through the Agreement, the Buyer will acquire a portion of the 5ESS switches and related assets, network operations, and customer bases of the KMC Operating Companies in Daytona Beach, Fort Meyers, Greater Pinellas, Melbourne, Pensacola, Sarasota, and Tallahassee Florida; Augusta and Savannah, Georgia; Bethesda, Frederick and Rockville, Maryland; Fayetteville, Greensboro, Hickory, Wilmington, and Winston-Salem, North Carolina; Charleston, Columbia and Spartanburg, South Carolina; Bristol Johnson City, and Kingsport, Tennessee; and Hampton Roads and Roanoke Virginia. Buyer will be responsible for providing service to the KMC Operating Companies' customers transferred as a result of the Transaction.<sup>8</sup>

Applicants assert that the proposed Transaction will serve the public interest, because the assignment of the KMC Operating Companies' customer accounts, together with the transfer of the equipment and other assets required to serve those customers, will ensure that the customers continue to receive uninterrupted interstate and international services. At the same time, the proposed Transaction will allow KMC Holdings to continue to restructure its operations and allow KMC Holdings to continue to implement its business strategies going forward. The Applicants state that the proposed assets transfer will not inconvenience, confuse or otherwise harm the KMC Operating Companies' customers. Indeed, the proposed Transaction will be virtually transparent to customers in terms of the services those customers receive. The Applicants add that the Buyer is well qualified to continue to provide such services. In sum, the proposed Transaction is expected to enhance competition in the affected markets by introducing Buyer or expanding its presence as a viable competitor while at the same time allowing KMC Holdings to continue the on-going restructuring of the company's operations.

## **GENERAL INFORMATION**

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before March 28, 2005** and **reply comments on or before April 4, 2005**.<sup>9</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and

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<sup>8</sup> Although virtually all of the KMC Operating Companies' voice customers are being transferred as a result of the Transaction, the KMC Operating Companies will continue to provide data services to certain customers and therefore will still operate on a limited basis in the affected states. As a result, the KMC Operating Companies do not seek approval to discontinue interstate or international service.

<sup>9</sup> See 47 C.F.R. § 63.03(a).

related control on the 31<sup>st</sup> day after the date of this notice.<sup>10</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, [www.bcpweb.com](http://www.bcpweb.com); phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);

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<sup>10</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (3) Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-, Washington, D.C. 20554; e-mail:
- (4) Terri B. Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: [terri.natoli@fcc.gov](mailto:terri.natoli@fcc.gov);
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov);
- (6) James Bird, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Denise Coca at (202) 418-0574.

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