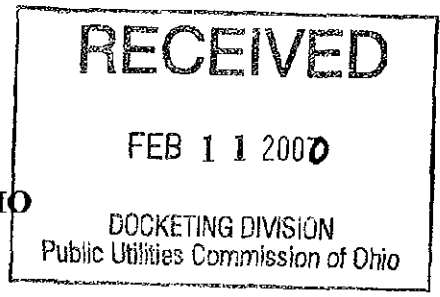


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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission)	
Investigation Into the Treatment of Reciprocal)	
Compensation for Internet Service Provider)	Case No. 99-941-TP-ARB
Traffic)	

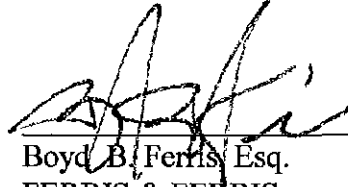
MOTION TO INTERVENE OF KMC TELECOM III, INC.

KMC Telecom III, Inc. ("KMC"), by its undersigned counsel, respectfully requests, pursuant to Ohio Administrative Code, Rule 4901-1-11, that it be allowed to intervene and participate in the captioned proceeding. In support of the motion, as more fully detailed in the attached Memorandum in Support of Motion to Intervene of KMC, KMC states that it has a real and substantial interest in the proceedings, that disposition of the proceedings could impair or impede its ability to protect that interest, and KMC's interest are not adequately represented by the existing parties. Further, KMC's intervention will contribute to a just and expeditious resolution of the issues and will not result in any undue delay or prejudice to other parties in the proceedings.

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Accordingly, KMC requests that it be allowed to intervene and participate fully in these proceedings.

Respectfully submitted,



Boyd B. Ferris, Esq.
FERRIS & FERRIS
2733 West Dublin-Granville Road
Columbus, OH 43235-2798
Tel: (614) 889-4777
Fax: (614)889-6515

Richard M. Rindler, Esq.
Robin L. Redfield, Esq.
SWIDLER BERLIN SHEREFF
FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: (202) 424-7775
Fax: (202) 424-7645

Counsel for KMC Telecom III, Inc.

February 11, 2000

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission)
Investigation Into the Treatment of Reciprocal)
Compensation for Internet Service Provider) Case No. 99-941-TP-ARB
Traffic)

**MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE OF KMC TELECOM III, INC.**

PRELIMINARY STATEMENT

KMC Telecom III, Inc. ("KMC") respectfully requests that it be allowed to intervene in this investigation into the treatment of reciprocal compensation for Internet service provider ("ISP") traffic. KMC, similar to the petitioners¹ in this case, has interconnection agreements with incumbent local exchange carriers ("ILECs") in Ohio, that contain provisions related to reciprocal compensation for ISP traffic.

Petitioners filed this action seeking resolution of numerous ongoing disputes between ILECs and competitive local exchange carriers ("CLECs"), including whether reciprocal compensation is to be paid for terminating ISP-bound traffic. The petitioners seek a uniform policy governing the issue for all telecommunications providers in Ohio. The petitioners state that they "seek resolution of this issue in a generic proceeding in which all interested parties would have an opportunity to comment and be heard."² As discussed more fully below, KMC is entitled to participate in this action because it has a real and substantial interest in the proceedings, disposition of the proceedings

¹ Petitioners are Time Warner Telecom of Ohio, L.P., ICG Telecom Group, Inc, CoreComm, Newco Inc., and Telecommunications Resellers Association.

² See Petition to Investigate and Decide the Treatment of Reciprocal Compensation for Internet Service Provider Traffic at 1.

could impair or impede its ability to protect that interest, and KMC's interests are not adequately represented by the existing parties. Moreover, KMC's participation will contribute to a just and expeditious resolution of the issues and intervention at this stage will not cause undue delay or prejudice to the parties in this proceeding.

BACKGROUND

KMC is a CLEC authorized to provide local telecommunications services in Ohio. KMC is currently providing services under interconnection agreements with ILECs in Ohio. It is anticipated that KMC and the ILECs will begin exchanging ISP-bound traffic.

KMC recently became aware that the petitioners initiated this proceeding on August 12, 1999, seeking an investigation into the treatment of reciprocal compensation for ISP-bound traffic. Petitioners are requesting that the Commission conduct an investigation into this issue for the sake of efficiency, economy of resources and to satisfy the need for predictability. In the Commission's Entry in this docket of January 13, 2000, it invited interested parties to intervene. KMC has a substantial interest in the outcome of these proceeding and it requests, for the following reasons, that it be permitted to intervene and participate fully as a party.

ARGUMENT

A. KMC Is Entitled to Intervene in This Proceeding as a Matter of Right

Intervention is permitted as a matter of right under Rule 4901-1-11 (A) of the Ohio Administrative Code, if the intervenor has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented

by existing parties.³ KMC is entitled to intervention as a matter of right because it is able to satisfy each of these elements.

The purpose of this proceeding, as stated by the petitioners, is to address the treatment of reciprocal compensation for ISP-bound traffic to avoid repeatedly facing this issue in two-party arbitrations on generation two interconnection agreements. KMC, as a provider of local telecommunications services in Ohio, like the petitioners, is also faced with the prospect of having to address the issue of reciprocal compensation for ISP traffic in separate interconnection agreements and arbitrations of disputes. KMC has the same interest that the petitioners have in obtaining a ruling that addresses this situation, so that any unnecessary expense and protracted disputes with various ILECs can be avoided.

Further, disposition of this matter would undoubtedly have the potential of impairing or impeding KMC's ability to protect its interests. If this Commission were to conclude that ISP-bound traffic is not subject to reciprocal compensation, such a ruling would have a detrimental effect on KMC. As a result of such a ruling, KMC would incur significant costs to terminate ISP-bound traffic, but not be able to receive compensation to cover those costs. Only KMC, and not the other petitioners, can address the impact of this result on KMC. The Commission has granted the right

³ See *In re So-Glen Gas Company, LLC*, Case No. 98-1687-GA-ARJ, 1999 WL 359803 (Ohio P.U.C. February 25, 1999)(Commission found that East Ohio Gas Company had a real and substantial interest in proceeding filed by So-Glen Gas Company to obtain the right to begin a landfill gas project in Solon, Cuyahoga County; East Ohio alleged that if So-Glen were successful it would obtain an unfair competitive advantage in the County.)

to intervene in other cases where the intervenor has demonstrated that a Commission ruling would impair or impede the value of the intervenor's assets.⁴

B. Alternatively, The Commission Should Exercise Its Discretion and Allow KMC To Intervene In this Proceeding

Under Ohio Administrative Code, Rule 4901-11(B), intervention may be permitted as a matter of the Commission's discretion. In determining whether intervention should be granted under this standard, the Rule requires consideration of: (1) the nature of the person's interest, (2) the extent to which the person's interest is represented by existing parties, (3) the person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding, and (4) whether granting intervention would cause undue delay or unjust prejudice to existing parties. Although KMC believes it is entitled to intervention as a matter of right, alternatively it seeks permission to intervene as a matter of the Commission's exercise of its discretion.

KMC has previously addressed the nature of its interest and the extent to which its interest are not represented by existing parties. In addition, KMC's presence in the proceedings will contribute to a just and expeditious resolution of the issues. Finally, since this proceeding is in the very early stages, intervention will not cause any delay. The petition was filed on August 12, 1999, mediation is scheduled for the week of February 14, 2000, but no hearing date has been set.

⁴ See *In re Ohio Suburban Water Company*, Case No. 95-318-WS-UNC, 1995 WL 493566 *4 (Ohio P.U.C. August 3, 1995) (Huber Heights was granted right to intervene in proceedings by Ohio Suburban Water for the sale of its water and wastewater systems where there was a possibility that the Commission might impose obligations on Huber's acquisition of Ohio Suburban's utility facilities.).

CONCLUSION

Thus, based on the foregoing, KMC requests that it be allowed to intervene in the proceedings as a matter of right and, alternatively, that the Commission exercise its discretion and grant intervention.

Respectfully submitted,

February 11, 2000



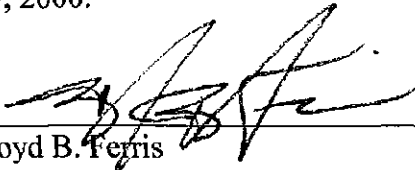
Boyd B. Ferris, Esq.
FERRIS & FERRIS
2733 West Dublin-Granville Road
Columbus, OH 43235-2798
Tel: (614) 889-4777
Fax: (614)889-6515

Richard M. Rindler, Esq.
Robin L. Redfield, Esq.
SWIDLER BERLIN SHEREFF
FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: (202) 424-7775
Fax: (202) 424-7645

Counsel for KMC Telecom III, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion to Intervene and Memorandum in Support of KMC Telecom III, Inc. has been served upon all parties listed below, by ordinary U.S. Mail, postage prepaid, this 11th day of February, 2000.


Boyd B. Ferris

Benita Kahn
Vorys Sater Seymour & Pease LLP
52 E. Gay Street
P. O. Box 1008
Columbus OH 43216-1008

Joseph R. Stewart
50 W. Broad Street, Suite 3600
Columbus OH 43215

Lee T. Lauridsen
Sprint Communications Company LP
8140 Ward Parkway
Kansas City MO 64114

Thomas E. Lodge
Thompson Hine & Flory LLP
One Columbus
10 W. Broad Street, Suite 700
Columbus OH 43215-3435

Douglas E. Hart
Jack B. Harrison
Frost & Jacobs LLP
201 E. Fifth Street
Cincinnati OH 45202

Christopher J. Wilson
Staff Counsel
Cincinnati Bell Telephone Company
201 E. Fourth Street, 6th Floor
Cincinnati OH 45201

Michael T. Mulcahy
Ameritech - Legal Department
45 Erieview Plaza, Suite 1400
Cleveland OH 44114

William S. Newcomb, Jr.
Stephen M. Howard
Vorys Sater Seymour & Pease LLP
P. O. Box 1008
Columbus OH 43216-1008

David C. Bergmann
Dirken D. Winkler
Ohio Consumers' Counsel
77 S. High Street, 15th Floor
Columbus OH 43266-0550

Sally W. Bloomfield
Bricker & Eckler LLP
100 S. Third Street
Columbus OH 43215-4291

David J. Chorzempa
AT&T Corporation
222 W. Adams, Suite 1500
Chicago IL 60606

Judith B. Sanders
Barth E. Royer
Bell Royer & Sanders Co. LPA
33 S. Grant Avenue
Columbus OH 43215-3927

David W. McGann
MCI Worldcom
205 N. Michigan Avenue, Suite 3700
Chicago IL 60601

Thomas J. O'Brien
Corecomm Newco Inc.
450 W. Wilson Bridge Road, Suite 100
Worthington OH 43085

Marsha Rockey Schermer
Time Warner Telecom of Ohio
65 E. State Street, Suite 1800
Columbus OH 43215

Roger P. Sugarman
Kegler Brown Hill & Ritter
65 E. State Street, Suite 1800
Columbus OH 43215

Daniel R. Conway
Porter Wright Morris & Arthur
41 South High Street
Columbus OH 43215

Richard M. Rindler
Robin L. Redfield
Swidler Berlin Shereff Friedman LLP
3000 K Street, NW, Suite 300
Washington DC 20007

David A. Turano
Harris Turano & Mazza
941 Chatham Lane, Suite 201
Columbus OH 43221