

LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

March 2, 2004

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 030852-TP

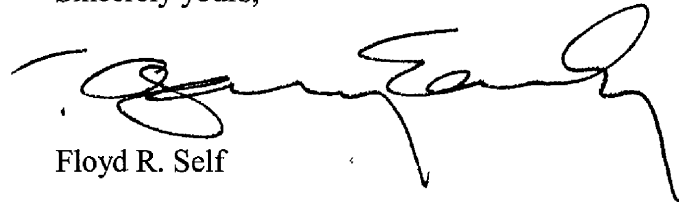
Dear Ms. Bayó:

Enclosed for filing on behalf of KMC Telecom III, LLC are an original and fifteen copies of KMC's Response to Supplemental Brief in Support of Verizon Florida Inc.'s Motion to Compel KMC Discovery in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER-DATE

03102 MAR-2 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of Requirements)	
Arising From Federal Communications)	
Commission Triennial UNE Review:)	Docket No.: 030852-TP
For DS1, DS3, and Dark Fiber Loops)	Filed: March 2, 2004
And Route-Specific Review for DS1, DS3,)	
And Dark Fiber Transport)	
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**KMC's RESPONSE TO SUPPLEMENTAL BRIEF IN SUPPORT OF
VERIZON FLORIDA INC.'S MOTION TO COMPEL KMC DISCOVERY**

KMC Telecom III, LLC, pursuant to Rules 28-106.204 and 28-106.206 of the Florida Administrative Code and Rules 1.280 and 1.380 of the Florida Rules of Civil Procedure, hereby respond to the Supplemental Brief in Support of Verizon Florida Inc.'s Motion to Compel KMC Discovery, and states:

1. KMC believes that its discovery responses were complete, responsive and within the parameters prescribed by the Order Establishing Procedure, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003, and Second Order on Procedure, Order No. PSC-03-1265PCO-TP issued November 7, 2003, by the Florida Public Service Commission (hereinafter "Commission"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280, 1.340, 1.350 and 1.380 of the Florida Rules of Civil Procedure.

2. Verizon's motion focuses on the following objection to interrogatories propounded by Verizon:

KMC further notes that KMC's response to this interrogatory is based on the definition and evaluation criteria set forth in the Triennial Review. The triggers adopted by the FCC in Triennial Review require a transport evaluation on a "route-specific" basis. TRO ¶ 401. Specifically, 47 C.F.R. § 51.319 (e) defines a "route" as "a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches." Transport between non-ILEC wire centers and switches is not defined a "route" for the purposes of the Triennial Review's trigger analysis. KMC will construe

the terms contained in this interrogatory, and all other interrogatories, in accordance with 47 C.F.R. § 51.319 (e) and applicable law.

3. Verizon's First Set of Interrogatories to KMC provided that "[t]he terms 'transport services' or 'transport facilities' include but are not limited to transport services or facilities that directly or indirectly connect a Verizon wire center or switch to another Verizon wire center or switch." *Id.* at 6. KMC's responses and supplemental responses to the interrogatories that dealt with those terms were responsive to the questions asked. KMC does not have any such facilities except as were specifically identified in the responses.

4. Despite its objection, as contained in the individual responses, KMC provided Verizon with all of the information available to it regarding its fiber facilities. Information regarding fiber and transport facilities was provided in KMC's Responses to Staff's First Interrogatories and to BellSouth's First Interrogatories. In those responses, KMC disclosed the provider (both ILEC and otherwise), location and size of KMC collocation facilities, all of which are fiber. These responses have been provided to Verizon by counsel for KMC. Verizon's claim that "KMC failed to meaningfully respond to virtually all of Verizon's Interrogatories, Requests for Production of Documents and Requests for Admission" (Supplemental Brief at 7) is incorrect. KMC hereby adopts its Responses to Staff's First Set of Interrogatories and BellSouth's First Set of Interrogatories as though fully set forth herein.

5. The Verizon Motion seeks to compel KMC to provide responses beyond those required by the TRO and by the definitions provided by Verizon, relief that is beyond the scope of a Motion to Compel. If Verizon believes that KMC's responses are incorrect, or are an inaccurate reflection of KMC's Florida-based facilities and services, then Verizon may cross examine the KMC witnesses at the hearing about the facilities and services that AT&T provides in Florida.

6. KMC objected to providing information regarding the points at which its network connects to the network of other CLECs due to the fact that it is not relevant and not likely to lead to the discovery of admissible evidence in any loop and transport trigger or potential deployment case. Where a CLECs network interconnect internally or connects to the networks of others is not relevant to "transport" as defined in the TRO. The TRO, at ¶¶335 and 410 discuss the factors to be considered by a state Commission in a potential deployment case. The points at which the KMC network connects to the networks of carriers other than Verizon has no relevance to whether KMC could potentially deploy a high capacity loop from its network to a specific customer location or provide high capacity transport between Verizon wire centers.

7. The discovery requests at issue seek information regarding KMC's transport facilities without regard to whether or not those facilities are "dedicated transport" facilities as defined by the TRO. The TRO defines "dedicated transport" in the "Definition of Dedicated Transport." TRO at ¶¶365-67. In Paragraph 359 of the TRO, the FCC notes that "[a]s an initial matter, we limit our definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers." Paragraph 365 of the TRO defines "dedicated transport" as "transmission facilities connecting incumbent LEC switches and wire centers within a LATA." TRO at ¶365 (footnote omitted). KMC's network does connect from an ILEC wire center to another ILEC wire center as required by the definition of "dedicated transport" in the TRO.

8. While backhaul facilities were previously included in the FCC definition of "dedicated transport," the definition currently includes "only those 'features, functions, and capabilities' of equipment facilities that coincide with the incumbent LEC's transport network - the transmission links connecting incumbent LEC switches or wire centers." TRO at ¶366.

Verizon's position eliminates the FCC distinction between backhaul and dedicated transport. In ¶367 of the TRO, the FCC explained that "the economics of dedicated facilities used for backhaul between networks are sufficiently different from transport within an incumbent LEC's network that our analysis must adequately reflect this distinction." Footnote 1119 in ¶367 states that:

Although we are not in this subsection conducting an impairment analysis, we find that this economic difference significantly distinguishes our analysis of intra-incumbent LEC transmission facilities - which we define to be transport - from inter-network transmission facilities used for backhaul.


Despite this clear distinction, Verizon insists that KMC's backhaul facilities constitute dedicated transport. Verizon's contention is without merit.

9. Verizon's motion rests on the mistaken premise that KMC is withholding relevant information about transmission facilities deployed in the Verizon territory in Florida. To the contrary, KMC has filed responses to discovery in this case that clearly identifies where it has deployed transport facilities to collocations in the Verizon territory. KMC should not be required to respond further to overbroad requests that are not designed to elicit information about actual commercial deployment in the state of Florida. *See* TRO ¶ 405.

10. In light of the fact that KMC's facilities do not qualify as "dedicated transport" facilities, the Verizon discovery requests are irrelevant, burdensome and not likely to lead to the discovery of admissible evidence. KMC's objections to the discovery requests propounded by Verizon should be sustained and the Verizon Motion should be denied.

WHEREFORE, for the reasons set forth herein, KMC Telecom III, LLC requests that the Commission enter an Order denying Verizon's Motion to Compel KMC Discovery.

Respectfully submitted this 2nd day of March, 2004.



Eloyd Self, Esq.
Messer, Caparello & Self, P.A.
215 S. Monroe Street, Suite 701
Tallahassee, FL 32302
(850) 222-0720

Marva Brown Johnson
KMC Telecom III LLC
1755 North Brown Road
Lawrenceville, Georgia 30043

Andy Klein
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Washington, DC 20036

Attorneys for KMC Telecom III LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*), electronic mail, and/or U. S. Mail this 2nd day of March, 2004.

Adam Teitzman, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Jason Rojas, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Susan S. Masterton, Esq.
Sprint-Florida, Incorporated
Sprint Communications Company Limited
Partnership
P.O. Box 2214
Tallahassee, FL 32316-2214

Richard A. Chapkis, Esq.
Verizon Florida Inc.
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

Nanette Edwards
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802

Mr. James White
ALLTEL
601 Riverside Avenue
Jacksonville FL 32204-2987

Ms. Laurie A. Maffett
Frontier Telephone Group
180 South Clinton Avenue
Rochester NY 14646-0700

Mr. R. Mark Ellmer
GT Com
P. O. Box 220
Port St. Joe FL 32457-0220

Mr. Robert M. Post, Jr.
ITS Telecommunications Systems, Inc.
P. O. Box 277
Indiantown FL 34956-0277

Ms. Harriet Eudy
NEFCOM
11791 110th Street
Live Oak FL 32060-6703

Ms. Lynn B. Hall
Smart City Telecom
P. O. Box 22555
Lake Buena Vista FL 32830-2555

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Assoc., Inc.
246 E. 6th Avenue
Tallahassee, FL 32301

Tracy W. Hatch, Esq.
AT&T Communications of the Southern States, LLC
101 N. Monroe Street, Suite 701
Tallahassee, FL 32301

Lisa Sapper
AT&T
1200 Peachtree Street, NE, Suite 8100
Atlanta, GA 30309

Donna McNulty, Esq.
MCI WorldCom Communications, Inc.
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

De O'Roark, Esq.
MCI WorldCom Communications, Inc.
6 Concourse Parkway, Suite 600
Atlanta, GA 30328

Vicki Kaufman, Esq.
Joe McGlothlin, Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, FL. 32301

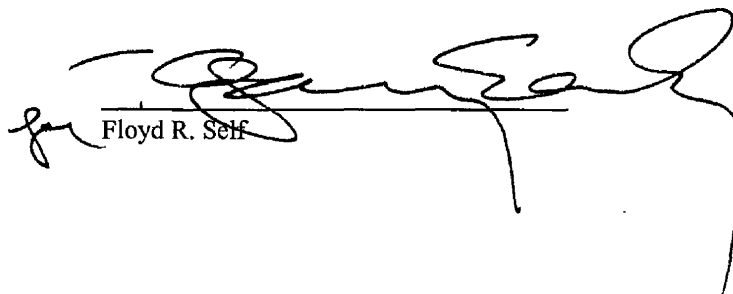
Marva Brown Johnson, Esq.
KMC Telecom III, LLC
1755 North Brown Road
Lawrenceville, GA 30034-8119

James C. Falvey, Esq.
Senior Vice President, Regulatory Affairs
Xspedius Communications, LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

Norman H. Horton, Jr.
Messer, Capareello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876

J. Jeffry Wahlen
Ausley & McMullen
P.O. Box 391
Tallahassee, Florida 32302

Mr. Jake E. Jennings
NewSouth Communications Corp.
Two N. Main Center
Greenville, SC 29601



Floyd R. Self

Jon C. Moyle, Jr., Esq.
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301

Charles E. Watkins
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

Matt Feil
Scott A. Kassman
FDN Communications
2301 Lucien Way, Suite 200
Orlando, FL 32751

Jorge Cruz-Bustillo, Esq.
Supra Telecommunications and
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133

Mr. Jonathan Audu
Supra Telecommunications and
Information Systems, Inc.
1311 Executive Center Drive, Suite 220
Tallahassee, FL 32301

Mr. Bo Russell
Vice President
Regulatory and Legal Affairs
Nuvox Communications, Inc.
301 North Main Street
Greenville, SC 29601

Thomas M. Koutsky
Vice president, Law and Public Policy
Z-Tel Communications, Inc.
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Charles Beck
Office of the Public Counsel
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

Michael B. Twomey
P.O. Box 5256
Tallahassee, FL 32314-5256