

December 30, 1997

**VIA FEDERAL EXPRESS**

16-11-TP

Blanca S. Bayo  
Director, Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

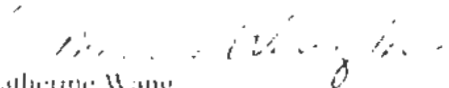
**Re: Application for KMC Telecom Inc.**

Dear Ms. Bayo:

Transmitted herewith, on behalf of KMC Telecom Inc., are an original and five copies of an application for Approval of an Intracorporate Reorganization and Related *Pro Forma* Transfer Transactions. In accordance with the Commission's filing requirements enclosed is a diskette (high density) copy, using Windows 3.1, WordPerfect 6.0 format.

Please date stamp the attached extra copy of the application and return it to us in the enclosed self-addressed, postage prepaid envelope. Please call us if you have questions.

Very truly yours,

  
Catherine Wang  
Mary Albert

Counsel for KMC Telecom Inc.

Enclosures

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re Application of	)	
	)	
<b>KMC TELECOM INC.</b>	)	Docket No
	)	
for Approval of an Intracorporate	)	
Reorganization and Related <i>Pro Forma</i> Transfer	)	
Transactions	)	
	)	

**APPLICATION**

KMC Telecom Inc. ("KMC Telecom"), by its undersigned counsel, hereby applies pursuant to F.S.A. § 364.33 for approval *nunc pro tunc*, to the extent necessary, of a series of *pro forma* transactions related to the intracorporate reorganization of the company into a holding company-subsidary structure. In the alternative, to the extent that the Commission determines, upon review of the instant application, that approval of these transactions is not required under applicable statutes and regulations, KMC Telecom requests that the Commission issue an order declining to exercise jurisdiction and dismissing the application.

As explained in detail below, the new organizational structure will give KMC Telecom greater access to working capital and allow it to establish expanded and more efficient marketing and administrative operations. These intracorporate changes are expected to strengthen the company's competitive position and improve its capacity to provide high quality telecommunications services to consumers in Florida and elsewhere. The reorganization will not substantially affect the company's Florida management or operations and will not change *de facto* control of the company. Moreover, given that the changes are entirely intracorporate, the reorganization and related

transactions will not disrupt service or otherwise cause confusion or inconvenience to Florida customers. As explained below, because the company has completed these intracorporate changes, KMC respectfully requests authority *nunc pro tunc*.

Applicant submits the following information in support of this Application:

**I. DESCRIPTION OF THE APPLICANT**

KMC Telecom is a privately held Delaware corporation authorized to do business in the State of Florida. Applicant's registered agent in Florida is

CT Corporation Systems  
1200 South Pine Island Rhode  
Plantation, Florida 33324

Applicant maintains its principal place of business at

1545 Route 206, Suite 300  
Bedminster, New Jersey 07921-2567  
(908) 719-2200 (Tel)

By this Commission Orders dated February 13, 1997 (Docket No. 961267-11), February 27, 1997 (Docket No. 961394-TA) and September 23, 1996 (Docket No. 960756-TX) KMC Telecom is authorized to provide intrastate interexchange telecommunications services and alternative local exchange and exchange access telecommunication services in Florida. KMC Telecom is legally, technically, managerially and financially qualified to provide the intrastate services authorized. KMC Telecom holds the following certificates: Certificate Numbers 4792,

---

<sup>1/</sup> KMC Telecom entered into these transactions as described below primarily to accommodate important and time-sensitive business and corporate considerations. Because the reorganization and related intracorporate transactions have no impact on the nature, quality or terms of services be provided or on Florida customers and does not affect a change in actual management of KMC Telecom's Florida operations, the company inadvertently did not seek prior approval of such transactions. Consequently, KMC now seeks authority *nunc pro tunc*. The company will, in the future, seek all necessary Commission approvals on a timely basis.

4733 and 4822. KMC Telecom is also authorized by other state public utility commissions to provide resold interexchange telecommunications services and competitive local exchange and access services in seventeen states.

KMC Telecom was formed as a corporation whose stock was 100% owned by Harold Kamine. As explained in detail in Section III below, KMC Telecom is now a wholly owned corporate subsidiary of KMC Holdings, Inc. ("KMC Holdings"). Mr. Kamine owns a majority of the common stock of KMC Holdings. The current corporate structure is outlined in Section III below. This transaction will not affect service to any customer, and will promote provision of high quality competitive telecommunications services to the citizens of Florida.

## **II. DESIGNATED CONTACTS**

The designated contacts for correspondence and questions concerning this Application are:

Catherine Wang  
Mary Albert  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)

with a copy to:

Tricia Breckenridge, Vice President Market Development  
KMC Telecom Inc  
1580 S. Milwaukee Avenue  
Suite 305  
Libertyville, Illinois 60048  
(847) 573-0000 (Tel)  
(847) 573-0033 (Fax)

### **III. REQUEST FOR APPROVAL NUNC PRO TUNC OF INTRACORPORATE REORGANIZATION AND RELATED TRANSACTIONS**

KMC Telecom has determined that it can strengthen its competitive position and ultimately provide greater benefits to its customers by reorganizing into a holding company-subsidary structure. The specific corporate structure adopted is expected to enhance significantly the company's access to working capital, and to assist the company in realizing important marketing, operational, management and administrative efficiencies and other corporate benefits that will ultimately benefit KMC Telecom's customers. The company has established a structure whereby the former direct shareholders of KMC Telecom now hold ownership interests in the holding company, KMC Holdings, which, in turn, owns three wholly owned subsidiaries: KMC Telecom, KMC Telecom II, Inc. ("KMC II") and KMC Telecom of Virginia, Inc. ("KMC-VA"). The previous and current corporate structures are depicted at Exhibit A. In order to maintain maximum business flexibility and to take advantage of a variety of financing vehicles, certain administrative and business activities will be centralized in the holding company and the company's telecommunications services will be provided through its operating subsidiaries.

The holding company structure was established through the following intracorporate transactions. On September 15, 1997, the company created KMC Holdings, a Delaware corporation, which became the holding company of KMC Telecom. Simultaneously, KMC Holdings created a new subsidiary, KMC II, also a Delaware company.

Prior to the restructuring, Mr. Harold N. Kamme was the direct majority shareholder of common stock in KMC Telecom. Today, Mr. Kamme owns 82.2% of the common stock of KMC Holdings, the parent company of KMC Telecom and KMC II. The remaining 17.8% of common stock is held by Nassau Capital Partners, L.P. (1.85%), A1&T Credit Corporation (15%), and

CoreStates Holdings, Inc. (.93%), all of whom were minority shareholders of KMC Telecom. These minority shareholders also own certain convertible preferred shares, options, and warrants.<sup>2</sup> On October 31, 1997, KMC Holdings and the existing owners of the company's capital stock entered into a stockholder's agreement that provides that unless and until the common stock and preferred stock holdings of Mr. Kamine and Nassau Capital are reduced below certain thresholds, Mr. Kamine and Nassau Capital are entitled to elect all of the Directors of KMC Holdings, three of whom are nominated by Mr. Kamine, three of whom are nominated by Nassau Capital and one of whom is nominated by agreement of Mr. Kamine, Nassau Capital, and either AT&T Credit or a majority of the holders of Series C preferred stock.<sup>3</sup>

As a result of these transactions, the same shareholders that owned interests directly in KMC Telecom hold interests in KMC Holdings. Mr. Kamine continues to own the majority of the common stock (albeit at the holding company level), and exercises senior management responsibility for the parent company and the operating subsidiaries. The intracorporate transactions described herein are entirely *pro forma* in nature.

### **III. PUBLIC INTEREST CONSIDERATIONS**

Approval of the restructuring of the KMC companies and related intracorporate transactions will serve the public interest in promoting competition among telecommunications carriers. The restructuring will allow KMC Telecom to do business under a more efficient and rational business

---

<sup>2</sup> Assuming, for the purpose of calculation only, the immediate conversion of all convertible securities and future interests into common stock, on a fully diluted basis, the largest shareholders of the company's common stock would be Mr. Kamine at 29.29% and Nassau Capital at 31.56%. Such conversions have not occurred and today Mr. Kamine retains his majority common stock ownership of KMC Holdings.

<sup>3</sup> The company has Series A, C and D stock outstanding.

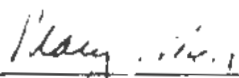
structure and give the company greater access to working capital and improved marketing and administrative operations.

While the *pro forma* intracorporate transfers involved in the restructuring of the company will meet important business needs, the transactions are virtually transparent to prospective consumers and will have no impact on the company's services. As such, this reorganization will in no way disrupt service or cause customer inconvenience or confusion. Accordingly, grant of this application is consistent with the public interest because it will promote competition among telecommunications carriers in Florida and will allow KMC Telecom to provide high quality service to Florida customers.

#### IV. CONCLUSION

For the reasons stated herein, KMC Telecom respectfully submits that the public interest would be served by a grant, to the extent necessary, of this application. Alternatively, if the Commission determines that approval is not in fact required, KMC Telecom requests that the Commission issue an order declining to exercise jurisdiction and dismissing the application.

Respectfully submitted,

  
\_\_\_\_\_  
Catherine Wang  
Mary Albert  
SWIDLER & BERLIN, CHARTERED  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7500 (Tel)  
(202) 424-7645 (Fax)

Counsel for  
KMC Telecom Inc.

Dated: December 30, 1997

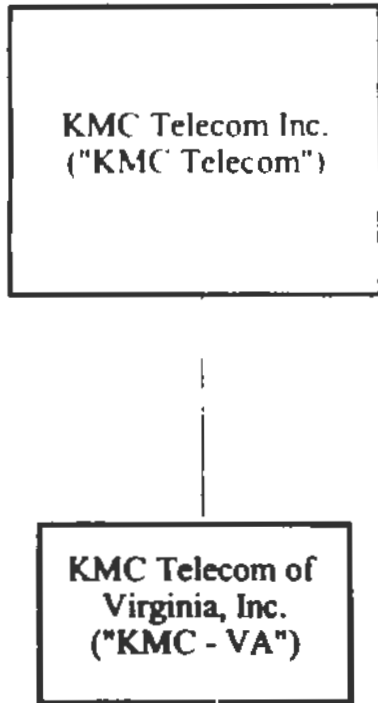
**EXHIBIT A**

**Diagram of Previous and Current  
Corporate Structures**

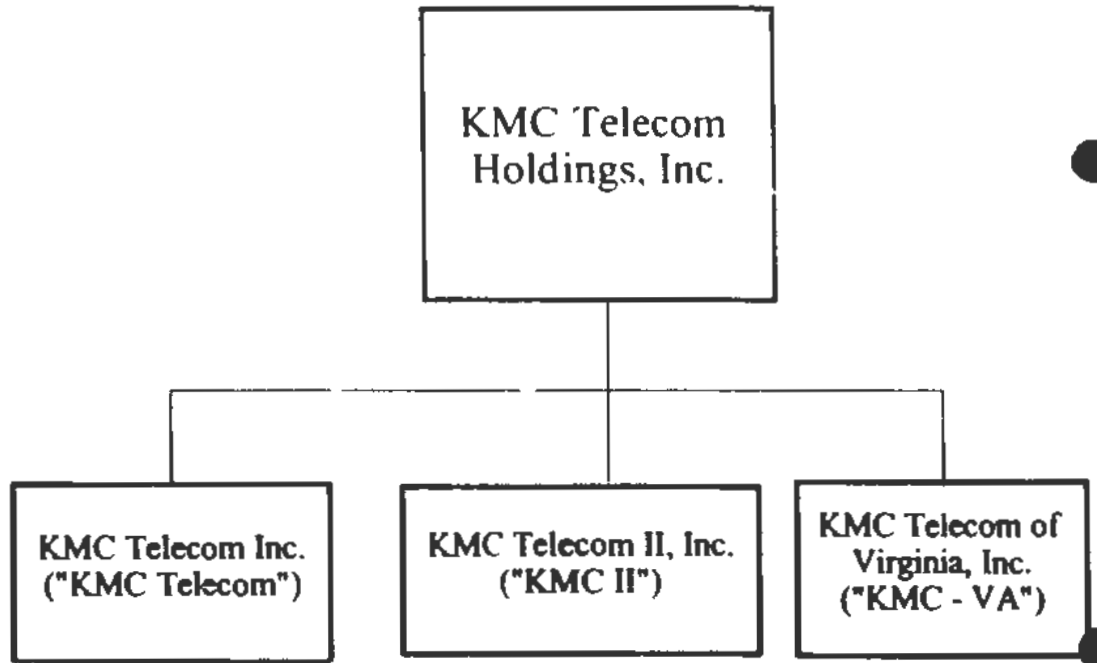


# KMC

## Pre Reorganization



## Post Reorganization



VERIFICATION

I, Michael A. Sternberg, hereby declare that I am President of KMC Telecom Inc.; that I am authorized to make this Verification on its behalf; that I have read the foregoing Application and exhibits thereto and I declare that the same are true and correct to the best of my knowledge, information and belief.



Michael A. Sternberg

Subscribed and sworn to before me this 24<sup>th</sup> day of December 1997.



Notary Public

JEANNETTE BARRETTA  
A Notary Public of New Jersey  
My Commission Expires March 18, 2002

My Commission expires: \_\_\_\_\_