

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of consolidation of KMC Telecom Inc. (holder of ALEC Certificate No. 4733, IXC Certificate No. 4792, and AAV Certificate No. 4822), and KMC Telecom II, Inc. (holder of ALEC Certificate No. 5617 and IXC Certificate No. 5616) into KMC Telecom III, Inc. (holder of ALEC Certificate No. 7093 and IXC Certificate No. 7092), whereby all customers and operations of KMC Telecom, Inc. and KMC Telecom II, Inc. will be transferred to KMC Telecom III, Inc.; for cancellation of ALEC Certificates 4733 and 5617, cancellation of IXC Certificates 4792 and 5616; and for transfer and name change on AAV Certificate 4822 from KMC Telecom Inc. to KMC Telecom III, Inc.

DOCKET NO. 010328-TP
ORDER NO. PSC-01-1565-PAA-TP
ISSUED: July 30, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING CORPORATE REORGANIZATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are

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substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Section 364.33, Florida Statutes, provides that a person may not acquire ownership or control of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval from this Commission.

By letter dated March 6, 2001, KMC Holdings, Inc. (KMC Holdings) advised us of its proposed intra-company reorganization involving its affiliates KMC Telecom Inc., (KMC I), KMC Telecom II, Inc., (KMC II), and KMC Telecom III, Inc. This intra-company reorganization is being effectuated so that KMC Holdings may consolidate three of its wholly-owned regulated subsidiaries operating in Florida into one entity. Upon completion of the reorganization the subsidiaries will be consolidated into KMC III and operate under the name "KMC Telecom III, Inc."

KMC I is the holder of Alternative Local Exchange (ALEC) Certificate No. 4733, Interexchange Telecommunications (IXC) Certificate No. 4792, and Alternative Access Vendor (AAV) Certificate No. 4822. Under the reorganization KMC I will transfer all of its customers and operations associated with the provision of intrastate local and long distance telecommunications services in Florida to KMC III. After the reorganization, the former customers and operations of KMC I will be served by KMC III under its existing ALEC and IXC certificates. Therefore, Certificates Nos. 4733 and 4792 shall be cancelled. Under the reorganization plan, KMC I will transfer its AAV Certificate No. 4822 to KMC III. The name on the AAV Certificate will be changed from "KMC Telecom, Inc." to "KMC Telecom III, Inc."

KMC II is the holder of ALEC Certificate No. 5617 and IXC Certificate No. 5616. KMC II will also transfer all of its customers and operations associated with the provision of intrastate local and long distance telecommunications services in Florida to KMC III. KMC II's Certificates Nos. 5617 and 5616 shall be cancelled and KMC II's customers will be served by KMC III's ALEC and IXC Certificates after KMC II ceases to exist.

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KMC III holds ALEC Certificate No. 7093 and IXC Certificate No. 7092 and will continue to operate under these certificates after the restructuring. All three affiliates operate under the same management team, have the same directors and parent company, and share the same pool of underlying financial and technical resources.

In accordance with our authority under Section 364.33, Florida Statutes, to approve the acquisition or transfer of majority organizational control or controlling stock ownership of a telecommunications company providing service in Florida, we have reviewed the Petition of KMC Holdings, and find it appropriate to approve it. We have based our review and decision upon an analysis of the public's interest in efficient, reliable telecommunications service.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that KMC Holdings, Inc.'s request for approval of corporate reorganization is hereby approved. It is further

ORDERED that KMC Telecom Inc.'s Alternative Local Exchange Certificate No. 4733 and Interexchange Telecommunications Certificate No. 4792 are hereby cancelled. It is further

ORDERED that KMC Telecom Inc. shall remit regulatory assessment fees for the year 2001. It is further

ORDERED that the request for transfer of and name change on Alternative Access Vendor Certificate No. 4822 from KMC Telecom Inc. to KMC Telecom III, Inc. is hereby approved. It is further

ORDERED that Alternative Access Vendor Certificate No. 4822 shall be amended to reflect that KMC Telecom III, Inc. is the holder of this certificate. It is further

ORDERED that KMC Telecom III, Inc.'s Alternative Access Vendor Certificate No. 4822 is subject to the terms and conditions set forth in the body of this Order. It is further

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ORDERED that this Order shall serve as KMC Telecom III, Inc.'s Alternative Access Vendor certificate and should be retained by KMC Telecom III, Inc. as proof of the name change. It is further

ORDERED that KMC Telecom III, Inc. shall remit Regulatory Assessment Fees for the year 2001. It is further

ORDERED that KMC Telecom II, Inc.'s Alternative Local Exchange Telecommunications Certificate No. 7093 and Interexchange Telecommunications Certificate No. 5616 are hereby cancelled. It is further

ORDERED that KMC Telecom II, Inc. shall remit regulatory assessment fees for the year 2001. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 30th Day of July, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 20, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.