

ORIGINAL

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements	)	
arising from Federal Communications	)	Docket No. 030852-TP
Commission's Triennial UNE Review:	)	
Location-Specific Review for DS1, DS3	)	Filed: February 20, 2004
and Dark Fiber Loops, and Route-Specific	)	
Review for DS1, DS3 and Dark Fiber	)	
Transport	)	

**VERIZON FLORIDA INC.'S MOTION TO COMPEL KMC DISCOVERY**

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, Verizon Florida Inc. ("Verizon"), by and through its undersigned counsel, hereby submits this Motion to Compel Discovery requesting the Florida Public Service Commission ("Commission") to order KMC Telecom III, LLC ("KMC") to respond fully and completely to Verizon's First Request for Admissions ("Request for Admissions"), First Set of Interrogatories ("Interrogatories") and First Request for Production of Documents ("Request for Production of Documents") (collectively, "Verizon's First Set") (Exhibit 1). Verizon served KMC with these discovery requests, which concern KMC's fiber optic transport facilities in Florida, on December 22, 2003. On December 29, 2003, KMC filed Preliminary Objections to Verizon's First Set ("Preliminary Objections") (Exhibit 2). KMC's Preliminary Objections contain various general objections and one specific objection that

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CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM 5 \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH \_\_\_\_\_

KMC asserts in response to all of Verizon's requests. KMC did not respond subsequent to its Preliminary Objections or file additional objections.

Pursuant to Rule 28-106.204(3), Verizon has conferred with KMC regarding this motion:

In response to several inquiries from counsel for Verizon regarding the status of KMC's

DOCUMENT NUMBER-DATE

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responses to Verizon's First Set, KMC stated in an e-mail dated February 19, 2004 (Exhibit 3) that it could not provide a date certain by which KMC would produce such responses.

## BACKGROUND

As part of its *Triennial Review Order*, the Federal Communications Commission (“FCC”) has delegated certain unbundling determinations to state commissions, in the belief that “state commissions are well situated to conduct the granular analysis required” by the FCC.<sup>1</sup> In order to complete this analysis, the FCC has asked state commissions “to take on some fact finding responsibilities.”<sup>2</sup> And the focus of this fact finding must be the deployment of network facilities by competing carriers, since the FCC is “most interested in granular evidence that new entrants are providing retail services in the relevant market using non-incumbent LEC facilities[.]”<sup>3</sup>

With regard to transport in particular, the FCC has delegated to state commissions the authority to make findings of fact on a granular scale with respect to whether requesting carriers are not impaired without access to unbundled transport.<sup>4</sup> State commissions are to make these findings of fact with regard to the “two ways for an incumbent LEC or other party to show where requesting carriers are not impaired without unbundling transport” established by the FCC: “(1) by identifying specific point-to-point routes where carriers have the ability to use alternatives to the incumbent ILEC’s network, or (2) by identifying specific point-to-point routes where self-provisioning transport facilities is economic.”<sup>5</sup> Moreover, the FCC “adopted two triggers

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<sup>1</sup> See Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 ¶ 190 (2003) (“*Triennial Review Order*”).

<sup>2</sup> *Id.* ¶ 188.

<sup>3</sup> *Id.* ¶ 93.

<sup>4</sup> *Id.* ¶ 360.

<sup>5</sup> *Id.*

designed to identify where carriers are not impaired without access to incumbent LEC transport based on the two primary ways carriers can overcome impairment.”<sup>6</sup> As the FCC explained:

The first trigger is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities. Specifically, where three or more competing carriers, not affiliated with each other or the incumbent LEC, and have deployed non-incumbent LEC transport facilities along a specific route, regardless of whether these carriers make transport available to other carriers, we find that to be sufficient evidence that competing carriers are capable of self-deploying. The second trigger is designed to identify where competitive wholesale alternatives are available. Specifically, we find that competing carriers are not impaired where competing carriers have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity along a given route between incumbent LEC switches or wire centers.<sup>2</sup>

This proceeding concerns whether these “triggers” have been met in Florida.

In order to obtain the granular evidence that this Commission needs, Verizon served its First Set on KMC on December 22, 2003. In its First Set, Verizon sought detailed information regarding KMC's fiber optic transport facilities in Florida, including the number of fibers deployed, the number of “lit” fibers, the ILEC switches and wire facilities to which the fibers are connected, the capacity of the facilities, and the facilities made available to other carriers.

KMC's objections to the First Set, filed December 29, 2003, were "preliminary in nature and . . . made at this time for the purpose of complying with the seven-day requirement set forth in the [Commission's] *Procedural Order*." KMC's Preliminary Objections To Verizon's First Set, at 1. These objections consist solely of boilerplate objections that KMC asserts as to each data request in the First Set. KMC has not indicated that it will provide the full and complete responses that the Commission needs in order to evaluate the two transport triggers under the *Triennial Review Order*.

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<sup>6</sup> *Id.* ¶ 399.

<sup>2</sup> *Id.* ¶ 400.

On or about February 18, 2004, KMC produced to Verizon copies of certain responses by KMC to staff interrogatories (Exhibit 4). While these responses appear to have some information regarding KMC's transmission facilities, they do not provide all of the categories of information sought by Verizon's First Set, including, for example, information about the optical speed or capacity of those services.

## ARGUMENT

### **I. Verizon Has Satisfied the Standard for Discovery of the Information Requested in its First Set.**

As this Commission has recognized, discovery is proper and may be compelled if it is not privileged and is or likely will lead to relevant and admissible information:

The test for determining whether discovery is appropriate is set forth in Rule 1.280(b)(1) of the Florida Rules of Civil Procedure which provides that “parties may obtain discovery regarding any matter, not privileged, that is relevant for the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Section 90.401 of the Florida Evidence Code defines “relevance” as evidence tending to prove or disprove a material fact.<sup>1/</sup>

Verizon's discovery requests are both relevant and likely to lead to the discovery of additional relevant and admissible information. Verizon's First Set targets the information that is necessary for the Commission to evaluate the two triggers established by the *Triennial Review Order*, discussed above. Specifically, Verizon sought detailed information regarding KMC's fiber optic transport facilities in Florida, including the number of fibers deployed, the number of “lit” fibers, the ILEC switches and wire facilities to which the fibers are connected, the capacity of the facilities, and the facilities made available to other carriers. This information is directly relevant to the self-provisioning trigger. Verizon also sought detailed information regarding the transport

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<sup>1/</sup> Order Denying Public Counsel's Motion to Compel, *Jasmine Lakes Util. Corp. for Increased Water and Wastewater Serv. Rates in Pasco County*, Docket No. 920148-WS, Order No. PSC-93-0652-PCO-WS, at 2 (Fla. P.S.C. April 28, 1993).

facilities that KMC uses or possesses but does not own, including the ILEC switches and wire centers to which these facilities are connected, the optical speed of these transport facilities, and the non-incumbent LEC supplier providing the facilities. This information is directly relevant to the competitive wholesale alternatives trigger. Thus, the information requested by the First Set is relevant and indeed necessary to Commission's transport analysis under the *Triennial Review Order*. KMC has not demonstrated otherwise.

KMC's objections consist solely of boilerplate general objections that KMC does not even attempt to explain or apply to any of Verizon's specific discovery requests. The Commission has made clear that preliminary objections such as those filed by KMC "are generally insufficient to withstand a motion to compel without further specificity and should not be used as merely a delay tactic."<sup>2/</sup> KMC's objections are precisely the type that do not withstand a motion to compel. For example, KMC objects on the basis that responding would be overly burdensome. Preliminary Objections at 2-4. Under Florida law, however, objections to discovery that is "burdensome" or "overly broad" must be quantified.<sup>10/</sup> KMC has completely failed to quantify the burden of responding to Verizon's First Set. KMC also objects to the extent that Verizon requests information constituting "trade secrets." Florida law requires that assertions of privilege as a "trade secret" must be set forth in such a way that parties can assess

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<sup>2/</sup> Order on Citizen's Second Motion to Compel Responses to Interrogatories from Sprint, *Petition by Verizon Florida Inc. to Reform Intrastate Network Access and Basic Local Telecommunications Rates in Accordance with Section 364.164, Florida Statutes*, Docket No. 030867-TL, Order No. PSC-03-1304-PCO-TL, at 3 (Fla. P.S.C. Nov. 14, 2003).

<sup>10/</sup> *First City Devs. of Florida, Inc. v. Hallmark of Hollywood Cond. Ass'n, Inc.*, 545 So. 2d 502, 503 (Fla. Dist. Ct. App. 1989).

the applicability of the alleged privilege.<sup>11</sup> KMC has clearly failed to comply with this requirement.

KMC's single specific objection -- to requests seeking information regarding "KMC's projections regarding future services, revenues, marketing strategies, equipment deployments, or other such future business plans" -- is not applicable to this case. *See* Preliminary Objections at 5. Verizon does not request any information pertaining to future services, revenues, marketing strategies, equipment deployments, or other such future business plans. In sum, KMC's objections are facially inadequate and fail to excuse KMC from providing full and complete responses to Verizon's First Set.

Finally, as noted above, on or about February 18, 2004, KMC produced to Verizon copies of its responses to certain Staff discovery requests. Production of these responses, however, does not relieve KMC of its independent obligation to respond to Verizon's discovery responses. Verizon seeks information from KMC that was not included in KMC's responses to Staff -- for example, information about optical speed and capacity -- and, in any event, Verizon is entitled to have separate answers to its own First Set.

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<sup>11</sup> *TIG Ins. Corp. of America v. Johnson*, 799 So. 2d 339 (Fla. Dist. Ct. App. 2001).

## CONCLUSION

For the foregoing reasons and in light of the impending discovery cut-off on February 25, 2004 and subsequent hearings beginning March 3, 2004, the Commission should order KMC immediately to provide full and complete responses to Verizon First Set.

Respectfully submitted,

Verizon Florida Inc.

By:  BF

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*Counsel for Verizon Florida Inc.*

February 20, 2004

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion to Compel KMC Discovery in Docket No. 030852-TP were sent via electronic mail and U.S. mail on February 20, 2004 to:

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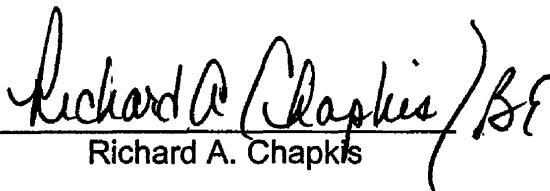
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# EXHIBIT ONE

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising ) Docket No. 030852-TP  
from Federal Communications Commission's ) Filed: December 22, 2003  
triennial UNE Review: Location-Specific )  
Review for DS1, DS3, and Dark Fiber Loops )  
and Route-Specific Review for DS1, DS3 and )  
Dark Fiber Transport )  
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**VERIZON FLORIDA INC.'S  
FIRST REQUEST FOR ADMISSIONS (NOS. 1-2),  
FIRST SET OF INTERROGATORIES (NOS. 1-22) AND  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-11) TO  
KMC TELECOM III, LLC**

Verizon Florida Inc. ("Verizon") hereby requests that KMC Telecom III, LLC ("Respondent" or "KMC") respond to the following Combined Requests for Admission, Interrogatories, and Production of Documents (collectively, "Requests"). These Requests are to be answered by the Respondent's corporate officers, employees, or agents who know the requested information and are authorized to respond on behalf of Respondent, with said answers being served upon Verizon within 20 calendar days of service of these Requests pursuant to Order No. PSC-03-1265-PCO-TP. These Requests are continuing in nature and therefore require Respondent to submit supplemental answers or documents should additional responsive information become known or documents supplied in response prove to be incorrect or defective.

**I. INSTRUCTIONS**

A. If you object to any part of a Request, answer all parts of such Request to which you do not object, and as to each part to which you do object, set forth the specific basis for the objection.

B. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to a Request contained in a non-written communication, state the following with respect to the non-written communication:

1. The date;
2. The identity of each of the participants in the non-written communication;
3. The identity of each person present during all or any part of the non-written communication;
4. A description of the non-written communication that is sufficient to identify the particular communication without revealing the information for which a privilege or protection from non-disclosure is claimed;
5. The nature of your claim of non-discoverability (e.g., attorney-client privilege); and
6. Each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit Verizon to make a full determination as to whether your claim is valid.

C. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to a Request contained in a document, set forth with respect to the document:

1. The date and number of pages;

2. The identity of the author(s) or preparer(s);
3. The identity of the addressee, if any;
4. The title;
5. The type of tangible thing (e.g., letter, memorandum, telegram, chart, report, recording disc);
6. The subject matter (without revealing the information as to which privilege or protection from non-disclosure is claimed);
7. The identity of each person who has received the document or to whom knowledge of the contents of the document was communicated;
8. The identity of the present custodian(s);
9. The nature of your claim of non-discoverability (e.g., attorney-client privilege); and
10. The facts on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit Verizon to make a full determination as to whether your claim is valid.

D. On each Request response, list the name and title of the person or persons who prepared the response or who is responsible for the information contained therein.

## **II. DEFINITIONS**

As used in these Requests, the following terms have the meaning as set forth below:

A. The terms "your company" shall include all of your subsidiaries and affiliates, including without limitation all former and present officers, attorneys, servants, agents, and representatives. For example, a request to AT&T includes without limitation TCG, and a request to MCI or WorldCom includes without limitation Intermedia.

B. The term "Verizon" shall include former GTE, including without limitation all former and present officers, attorneys, servants, agents, and representatives.

C. The terms "relates to" or "relating to" mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

D. The term "including" means "including, but not limited to."

E. The terms "document" or "documents" shall include, without limitation, any writings and documentary material of any kind whatsoever, both originals and copies (regardless of origin and whether or not including additional writing thereon or attached thereto), and any and all drafts, preliminary versions, alterations, modifications, revisions, changes and written comments of and concerning such material, including but not limited to: correspondence, letters, memoranda, notes, reports, papers, files, books, contracts, contract amendments or supplements, contract offers, and records of any sort (printed, recorded or otherwise) of any oral

communication whether sent or received or neither, and other written records or recordings, in whatever form, stored or contained in or on whatever medium including computerized or digital memory or magnetic media.

F. The term "date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof, including relationship to other events.

G. The term "person" or "persons" means and includes any individual, committee, task force, division, department, company, contractor, state, federal or local government agency, corporation, firm, association, partnership, joint venture or any other business or legal entity.

H. The terms "identify" and "identity" when used with reference to a natural person mean to state his or her full name, present or last known address, present or last known telephone number, present or last known place of employment, position or business affiliation, his or her position or business affiliation at the time in question, and a general description of the business in which he or she is engaged.

I. The terms "identify" and "identity" when used with respect to any other entity mean to state its full name, the address of its principal place of business and the name of its chief executive officers.

J. The terms "identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and



its present custodian. If any such document was but is no longer in Respondent's possession or subject to its control, state what disposition was made of it and explain the circumstances surrounding, and the authorization, for such disposition, and state the date or approximate date thereof.

K. The terms "identify" and "identity" with respect to any non-written communication mean to state the identity of the natural person(s) making and receiving the communication, their respective principals or employers at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.

L. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of the Requests.

M. The 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.

### **III. REQUESTS FOR ADMISSION: DEDICATED TRANSPORT**

In responding to each Request for Admission, specifically admit or deny the matter, or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

1. Admit that Respondent states on its website, in words or in substance, that it offers transport facilities or services to other carriers. (For the definitions of transport facilities or transport services for this and all other requests for admission, see Instruction M.)
2. Admit that Respondent does not state on its website, in words or in substance, that it does not offer transport facilities or services to other carriers in Florida.

#### **IV. INTERROGATORIES: DEDICATED TRANSPORT**

1. Identify all fiber optic transport facilities in Florida that you own, by street address of its origination and termination points (or if no termination point, by the location of a fiber ring), as well as a description of the route between those points. (For purposes of responding to this question, your own transport facilities include facilities that you own solely or jointly, as well as facilities that you have obtained from another entity on a long-term, indefeasible right of use basis.) (For the definitions of transport facilities or transport services for this and all other interrogatories, see Instruction M.)
2. For each transport facility identified in response to Question 1, provide a map in an electronic form (such as MapInfo, Arcview, or another GIS program) showing its location.
3. For each transport facility identified in response to Question 1, identify the number of fibers in the fiber cable(s) you deployed.
4. For each transport facility identified in response to Question 1, identify the number of fibers that you activated (*i.e.*, "lit") through the attachment of optronics.
5. For each transport facility identified in response to Question 1, identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers in Florida to which the transport facility is directly or indirectly connected.
6. For each incumbent LEC switch or wire center identified in response to Question 5, identify the optical speed at which the facilities connected to each is operating.
7. For each incumbent LEC switch or wire center identified in response to Question 5, identify the capacity or capacities of services (*e.g.*, DS-1, DS-3) carried by your transport facilities to and/or from the incumbent LEC switch or wire center.
8. For each incumbent LEC switch or wire center identified in response to Question 5, identify where you have fiber that has not been "lit" through the attachment of optronics (*i.e.*, dark fiber) and the number of unlit fibers in each transport facility terminating at that location.
9. Identify by the 11-digit CLLI code, all incumbent LEC switches or wire centers in Florida at which you have obtained dark fiber transport facilities from any supplier, including but not limited to from incumbent LECs.

10. For each dark fiber facility identified in response to Question 9, state (a) whether you have activated the dark fiber through the attachment of optronics (*i.e.*, whether the fiber is now "lit"), (b) the optical speed at which the facility operates, and (c) the capacity or capacities of services (*e.g.*, DS-1, DS-3) carried by each such transport facility.
11. Identify all transport facilities in Florida that you use or possess but do not own, by street address of its origination and termination points, as well as a description of the route between those points. (For purposes of responding to this question, your own transport facilities include facilities that you own solely or jointly, as well as facilities that you have obtained from another entity on a long-term, indefeasible right of use basis.)
12. For each transport facility identified in response to Question 11, identify by the 11-digit CLLI code, all incumbent ILEC switches and wire centers to which the transport facility is connected.
13. For each incumbent LEC switch or wire center identified in response to Question 12, identify the optical speed at which the transport facilities connected to each operates.
14. For each incumbent LEC switch or wire center identified in response to Question 12, identify the capacity or capacities of transport services (*e.g.*, DS-1, DS-3) carried by the transport facility or facilities to and/or from the incumbent LEC switch or wire center.
15. For all transport facilities identified in response to Questions 11 and 12, identify the non-incumbent LEC supplier from which you have obtained the facility.
16. Identify all transport facilities in Florida that you make available to other carriers, or have offered to make available to other carriers by street address of its origination and termination points, as well as a description of the route between those points.
17. For each transport facility identified in response to Question 16, identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers to which the transport facility is directly or indirectly connected.
18. For each incumbent LEC switch or wire center identified in response to Question 17, identify the optical speed at which the facilities connected to each operates.
19. For each incumbent LEC switch or wire center identified in response to Question 17, identify the capacity or capacities of services (*e.g.*, DS-1, DS-3) carried by the transport facilities to and/or from the incumbent LEC switch or wire center.

20. For each incumbent LEC switch or wire center identified in response to Question 17, identify the carrier or carriers to which you make the transport facility available, or to which you have offered to make the facility available.
21. Identify the points in Florida at which local network facilities that you own or use are connected to the networks of carriers other than the incumbent LECs, including interconnection with other CLECs, interexchange carriers, or internet service providers at any point of presence, network access point, collocation hotel, data center, or similar facility (collectively or individually, "interconnection points" or "IPs").
22. In the TRO, the FCC restated KMC's description of how it has "deployed over 2100 route miles of local SONET transport networks in several geographic markets, an average of 60 miles each, serving customers using self-deployed and unbundled loops at the DS1 capacity and higher." (See FCC's Triennial Review Order, ¶388 n.1206.) Identify KMC's local SONET transport networks with DS1 capacities; identify KMC's local SONET transport networks with DS3 capacities. Provide a map of KMC's SONET transport networks.

**V. REQUESTS FOR PRODUCTION OF DOCUMENTS: DEDICATED TRANSPORT**

1. Provide all documents identifying the fiber optic dedicated transport in Florida that you make available, or have offered to make available (e.g., through lease, indefeasible right of use), to other carriers.
2. Provide all document identifying the incumbent LEC switches or wire centers in Florida at which you have operational collocation arrangements.
3. Provide all documents that discuss or describe your willingness to provide dedicated transport in Florida to other carriers.
4. Provide all documents that discuss or describe the optical speeds at which your dedicated transport in Florida operates.
5. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer to other carriers, or have offered to other carriers.
6. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer in Florida to retail customers, or have offered to retail customers.

7. Provide all documents that discuss or describe whether you are willing to provide dark fiber dedicated transport in Florida to other carriers.
8. Provide all documents that discuss or describe the dedicated transport in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LECs.
9. Provide all documents that discuss or describe the capacity or capacity of services (*e.g.*, DS-1, DS-3) in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.
10. Provide all documents that discuss or describe dark fiber in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.
11. Provide the confidential filings with respect to dedicated transport that you made with the FCC in the Triennial Review docket. (*See, e.g.*, FCC's Triennial Review Order, ¶ 392 n.1216)

## EXHIBIT TWO

LAW OFFICES  
**Messer, Caparello & Self**  
A Professional Association

Post Office Box 1876  
Tallahassee, Florida 32302-1876  
Internet: [www.lawfla.com](http://www.lawfla.com)

December 29, 2003

**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 Preliminary Objections to Verizon's First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos 1-11) 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

**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: December 29, 2003
And Route-Specific Review for DS1, DS3,	)	
And Dark Fiber Transport	)	
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**KMC's PRELIMINARY OBJECTIONS TO VERIZON FLORIDA INC.'S  
FIRST REQUEST FOR ADMISSIONS (NOS. 1-2),  
FIRST SET OF INTERROGATORIES (NOS. 1-22) AND  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-11)**

KMC Telecom III, LLC, pursuant to the *Order Establishing Procedure*, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003 (hereinafter "*Procedural Order*") by the Florida Public Service Commission ("Commission"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, hereby generally and specifically objects to Verizon Florida, Inc.'s First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-22) and First Request for Production of Documents (Nos.1-11) to KMC, served on December 22, 2003. The Objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the seven-day requirement set forth in the *Procedural Order*.

**A. General Objections**

KMC makes the following General Objections to Verizon's First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents, including the applicable definitions and general instructions therein ("Verizon discovery"), which as appropriate will be incorporated into each relevant response when KMC's responses are served on Verizon.



1. KMC objects to the Verizon discovery to the extent that such discovery seeks to impose an obligation on KMC to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules. KMC further objects to any and all Verizon discovery that seeks to obtain information from KMC for KMC subsidiaries, affiliates, or other related KMC entities that are not certificated by the Commission.

2. KMC has interpreted the Verizon discovery to apply to KMC's regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any Verizon discovery is intended to apply to matters that take place outside the state of Florida and which are not related to Florida intrastate operations subject to the jurisdiction of the Commission, KMC objects to such request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. KMC objects to the Verizon discovery to the extent that such discovery calls for information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. KMC objects to the Verizon discovery insofar as such discovery is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests. Any responses provided by KMC in response to the Verizon discovery will be provided subject to, and without waiver of, the foregoing objection.

5. KMC objects to the Verizon discovery insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

6. KMC objects to the Verizon discovery insofar as it seeks information or documents, or seek to impose obligations on KMC which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

7. KMC objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission or which is already in the possession, custody, or control of Verizon.

8. KMC objects to the Verizon discovery to the extent that such discovery is overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

9. KMC objects to each and every request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes. To the extent that Verizon's requests seek proprietary confidential business information which is not the subject of the "trade secrets" privilege, KMC will make such information available to the Verizon pursuant to the terms of the Commission's Protective Order and the requirements of section 364.183 and Florida Administrative Code Rule 25-24.006, subject to any other general or specific objections contained herein.

10. KMC is a large corporation with employees located in many different locations in Florida and in other states. In the course of its business, KMC creates countless documents that are not subject to Florida Public Service Commission or FCC retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every

document has been identified in response to these requests. KMC will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the Verizon discovery purports to require more, KMC objects on the grounds that compliance would impose an undue burden or expense.

11. KMC objects to the Verizon discovery that seeks to obtain “all,” “each,” or “every” document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome. Any answers that KMC may provide in response to the Verizon discovery will be provided subject to, and without waiver or, this objection.

12. KMC objects to the Verizon discovery to the extent such discovery seeks to have KMC create documents not in existence at the time of the request.

13. KMC objects to the Verizon discovery to the extent that such discovery is not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

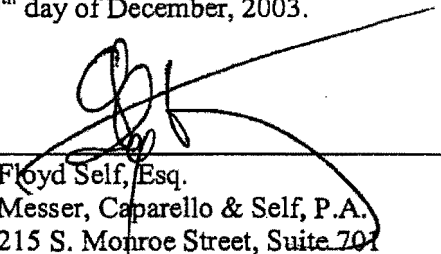
14. In light of the short period of time KMC has been afforded to respond to the Verizon discovery, the development of KMC’s positions and potentially responsive information to the Verizon requests is necessarily ongoing and continuing. Accordingly, these are preliminary objections to comply with the *Procedural Order*, and KMC reserves the right to supplement, revise, or modify its objections at the time that it serves its actual responses to the Verizon discovery. However, KMC does not assume an affirmative obligation to supplement its answers on an ongoing basis.

B. Specific Objections

KMC makes the following Specific Objections to Verizon's First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents, including the applicable definitions and general instructions expressed therein ("Verizon discovery"), which as appropriate will be incorporated into each relevant response when KMC's responses are served on Verizon.

15. KMC objects to each and every interrogatory or request for production that seeks information regarding KMC's projections regarding future services, revenues, marketing strategies, equipment deployments, or other such future business plans as such requests are trade secrets and, for purposes of this proceeding, would be highly speculative and irrelevant to the issues to be decided in this docket.

Respectfully submitted this 29<sup>th</sup> day of December, 2003.



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**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 29<sup>th</sup> day of December, 2003.

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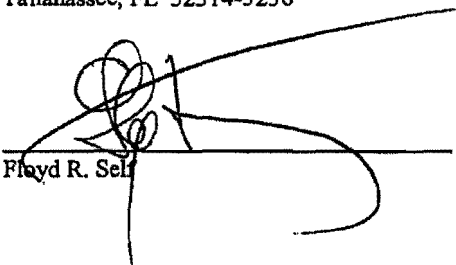
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Floyd R. Self

# EXHIBIT THREE

-----Original Message-----

**From:** Floyd Self [mailto:fself@lawfla.com]  
**Sent:** Thursday, February 19, 2004 7:12 PM  
**To:** Mendel, David  
**Subject:** RE: VZ's discovery to KMC, Docket 030852-TP

David,

This week KMC has responded to Staff 1 and 2 in switching and Staff 1 in loop/transport. Public responses has been emailed pursuant to the FPSC service list. The confidential responses have been emailed to Richard Chapkis.

KMC will be responding to Staff 3 in switching on Friday.

I spoke with Marva today who was working on the Verizon responses in loop/transport, but I do not know when they will be finalized.

As I know more, I will let you know.

Thanks.

\*\*\*\*\*  
Floyd R. Self, Esq.  
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Email Address: <fself@lawfla.com>  
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\*\*\*\*\*

>>> "Mendel, David" <David.Mendel@wilmer.com> 02/16/04 03:24PM >>>  
Floyd,

Thank you for the update. Can you please ensure that copies of KMC's responses to staff are e-mailed to me no later than 11:00 am on February 17? Also, can you please provide at least an estimated date by which KMC will respond to Verizon's discovery? Thanks.

David

-----Original Message-----

**From:** Floyd Self [mailto:fself@lawfla.com]  
**Sent:** Sunday, February 15, 2004 10:04 PM  
**To:** Mendel, David  
**Cc:** marva.johnson@kmctelecom.com; richard.chapkis@verizon.com; Ronis, Catherine  
**Subject:** Re: VZ's discovery to KMC, Docket 030852-TP

David,

This is to follow up on the voice message I left you today.



KMC should have completed and filed its responses to Staff discovery in the Florida TRO case on Monday, February 16. Copies will be provided to Verizon. As for responses to the Verizon discovery to KMC, it is my understanding that it is KMC's intent to complete such discovery, subject to any appropriate objections, and to provide such responses to Verizon. I do not know how quickly KMC will be able to complete such information given the massive volume of discovery in the Florida TRO cases.

I will update you as soon as I know more.

Thank you.

\*\*\*\*\*  
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Email Address: <fself@lawfla.com>  
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\*\*\*\*\*

>>> "Mendel, David" <David.Mendel@wilmer.com> 02/12/04 02:28PM >>>

Floyd,

This follows up on our February 9 telephone conversation regarding KMC's response to Verizon's First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos. 1-11) in the Florida Triennial proceedings, Docket No. 030852. As I mentioned during our call, Verizon has not received anything responding to these requests other than KMC's preliminary objections. I understand that on several occasions Marva Johnson told Chuck Shubart of Verizon that KMC would, at a minimum, send Verizon what it produced to Staff. No such production has been forthcoming, however, and Verizon has not located any KMC submission to Staff on the Commission's website. Also, you said you would inquire with your client about this situation and get back to me by COB February 10, but thus far I have not heard from you.

Unless KMC responds fully and completely to Verizon's discovery requests by COB February 12, Verizon will be forced to consider additional steps to enforce its discovery requests, including the filing of a motion to compel.

I appreciate your consideration of these issues.

David

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Redacted

EXHIBIT FOUR

**KMC CONFIDENTIAL INFORMATION**

**RESPONSE TO STAFF'S FIRST  
INTERROGATORIES NOS. 1(A), 3, 5(A),  
5(B), 5(C) AND 7(A) (6 PAGES)**