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March 1, 2004

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Supplemental Brief in Support of Verizon Florida Inc.'s Motion to Compel KMC Discovery for filing in the above matter. Service of the Motion has been made as indicated on the Certificate of Service. An additional copy of the Motion has been included to be file stamped and returned. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Chapkis / sc".

Richard A. Chapkis  
Vice President & General Counsel –  
Southeast Region

RAC:mbc  
Enclosures

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**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: March 1, 2004
and Dark Fiber Loops, and Route-Specific	)	
Review for DS1, DS3 and Dark Fiber	)	
Transport	)	

**SUPPLEMENTAL BRIEF IN SUPPORT OF 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 FL"), by and through its undersigned counsel, hereby submits this Supplemental Brief in support of Verizon FL's Motion to Compel KMC Discovery, which was filed with the Commission on February 20, 2004. This motion requests 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").

On February 25, 2004, KMC filed (1) a Response to Verizon Florida Inc.'s Motion to Compel Discovery ("Response to Verizon FL's Motion to Compel") ("Exhibit 1"); and (2) Responses and 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) ("Responses and Objections") ("Exhibit 2"). On February 27, 2004, KMC filed Supplemental Responses to Verizon Florida Inc.'s First Set of Interrogatories. ("Supplemental Responses") ("Exhibit 3"). In its Response to Verizon FL's Motion to Compel, KMC claims

that “[b]ased on the filing of discovery responses on this date, the Verizon Motion to Compel KMC Discovery is moot.” Response to Verizon FL’s Motion to Compel at 1. For the reasons explained below, KMC’s Responses, Supplemental Responses, and Objections are wholly inadequate and are based substantially upon KMC’s misapprehension of the FCC’s definition of transport.<sup>1/</sup> Because Verizon FL’s discovery requests are both relevant and likely to lead to the discovery of additional relevant and admissible information, Verizon FL respectfully submits this supplemental brief in support of its motion to compel KMC to provide immediately full and complete responses to Verizon FL’s First Set, without objection.

## **BACKGROUND**

### **A. The Subject Matter of this Proceeding**

As part of its *Triennial Review Order*, the 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>2/</sup> In order to complete this analysis, the FCC has asked state commissions “to take on some fact finding responsibilities.”<sup>3/</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>4/</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

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<sup>1/</sup> KMC’s argument mimics that of AT&T, who made the same argument in response to Verizon FL’s transport discovery requests.

<sup>2/</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; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 ¶ 190 (2003) (“*Triennial Review Order*”).

<sup>3/</sup> *Id.* ¶ 188.

<sup>4/</sup> *Id.* ¶ 93.

are not impaired without access to unbundled transport.<sup>2/</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 unbundled transport” established by the FCC: “(1) by identifying specific point-to-point routes where carriers have the ability to use alternatives to the incumbent LEC’s network, or (2) by identifying specific point-to-point routes where self-provisioning transport facilities is economic.”<sup>3/</sup> Moreover, the FCC “adopt[ed] two triggers 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>4/</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, each 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>5/</sup>

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

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<sup>2/</sup> *Id.* ¶ 360.

<sup>3/</sup> *Id.*

<sup>4/</sup> *Id.* ¶ 399.

<sup>5/</sup> *Id.* ¶ 400.

## **B. KMC's Responses to Verizon's First Set**

Verizon FL's First Set sought information relevant to the Commission's transport trigger analysis, and KMC responded to the First Set, as follows.

### **1. Interrogatories and Requests for Production Regarding Facilities Owned By KMC**

Verizon FL's first eight interrogatories and Request for Production No. 4 seek information about fiber optic facilities owned by KMC.<sup>2/</sup> Specifically, Verizon FL asked KMC to "[i]dentify all fiber optic transport facilities in Florida that [KMC] own[s], 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." Interrogatory No. 1. For each transport facility identified in response to Interrogatory No. 1, Verizon FL asked KMC to (a) provide a map in electronic form showing the facility's location; (b) identify the number of fibers in the fiber cable[s] deployed and/or activated; and (c) 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. *See* Interrogatory Nos. 2-5. In addition, for all of the KMC facilities connected to an incumbent LEC switch or wire center, Verizon FL asked KMC to identify (a) the optical speed at which those facilities are operating; (b) the capacities of the services (*e.g.* DS-1, DS-3) carried by those facilities to and/or from the incumbent LEC switch or wire center; and (c) the numbers of "dark fibers" -- *i.e.* fibers that have not been activated through attachment of optronics -- in those facilities. *See* Interrogatory Nos. 6-8. Request for Production No. 4 asked KMC to provide all documents that discuss or describe the optical speeds at which KMC's dedicated transport in Florida operates. *See* Request for Production No. 4.

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<sup>2/</sup> Request for Production No. 2 seeks information regarding the incumbent LEC switches or wire centers at which KMC has operational collocation arrangements. Verizon FL no longer seeks to compel a response to this Request for Production.

In response to Interrogatory No. 1 and Request for Production No. 4, KMC provided the following response:

KMC adopts and incorporates its General Objection 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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 ILEC's wire centers or switches and another of the incumbent ILEC's wire centers or switches." Transport between non-ILEC wire centers and switches is not defined [as] 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.

See Responses to Interrogatory No. 1., Request for Production No. 4. Subject to these objections, KMC denied that it provides transport services, "as defined in the TRO." *Id.* KMC responded to the remaining seven Interrogatories concerning facilities owned by KMC by stating that the requested information is "not applicable." See Responses to Interrogatory Nos. 2 - 8.

2. Interrogatories and Requests for Production Regarding Facilities Leased Or Obtained From Suppliers.

In Interrogatories nine through 15, Verizon FL sought information from KMC regarding dark fiber and other transport facilities that it has obtained from suppliers. Specifically, Verizon asked KMC to identify all incumbent ILEC switches or wire centers in Florida at which KMC has obtained dark fiber from any supplier, as well as information about the optical speed and capacities of those fibers and whether KMC has lit the fibers using optronics. See Interrogatory Nos. 9-10. KMC responded "none," and "not applicable," respectively, to these two Interrogatories. See Responses to Interrogatory Nos. 9, 10. Without further support, KMC also responded that Interrogatory Nos. 14 and 15 are "not applicable." See Responses to Interrogatory Nos. 14, 15.

Verizon FL also asked KMC to identify all transport facilities in Florida that it uses or possesses but does not own, and to provide information about those facilities, such as optical speed and capacity and the names of the suppliers. *See* Interrogatory Nos. 11-15. In both its Response and its Supplemental Responses to Interrogatory 11, KMC reiterated its argument regarding the FCC's definition of "transport." *See* Response and Supplemental Response to Interrogatory No. 11. KMC further stated that it "purchases transport, as defined in the TRO, from the ILEC," and referred Verizon FL to "Confidential Attachment A." Supplemental Response to Interrogatory No. 11; *see also* Supplemental Response to Interrogatory Nos. 12, 13. "Confidential Attachment A" is attached to KMC's Supplemental Responses and is completely redacted. KMC claims that it "will provide to Verizon certain confidential information . . . pursuant to the separate protective agreement of the parties and the Protective Order Governing Handling of Confidential Information, Order No. PSC-03-1263-PCO-TP, issued in this docket on November 7, 2003." Supplemental Responses at 1. Verizon FL has not received this confidential information.

Requests for Production Nos. 8 through 10 request documents discussing or describing the dedicated transport and dark fiber in Florida that KMC obtains from non-incumbent LECs and the capacity or capacities of services in Florida that KMC obtains from non-incumbent LECs. *See* Request for Production Nos. 8-10. KMC's response states that it "does not obtain dedicated transport from other non-incumbent LEC carriers in Florida." *See* Response to Request for Production No. 8.

3. Interrogatories and Requests for Production of Documents Regarding Facilities That KMC Makes Available To Others

In Interrogatories 16 through 20, Verizon sought similar types of information from KMC regarding transport facilities that it "make[s] available to other carriers, or [has] offered to make

available to other carriers.” Interrogatory No. 16; *see also* Interrogatory Nos. 17-20. KMC responded to Interrogatory No. 16 with the same definitional argument that it provided in response to Interrogatory Nos. 1 and 11. *See* Response to Interrogatory No. 16. KMC responded that Interrogatory Nos. 17 through 20 were “not applicable.” *See* Responses to Interrogatory Nos. 17-20.

Request for Production of Documents Nos. 1, 3, 5, 6, and 7 also request documents discussing or describing the transport and dark fiber facilities that KMC makes available to other carriers. KMC has responded with the same argument concerning the definition of transport, discussed above. *See* Responses to Requests for Production Nos. 1, 3, 5, 6, and 7.

#### 4. Verizon's Requests for Admissions

Finally, Verizon’s first Request for Admission asks KMC to admit that it “states on its website, in words or in substance, that it offers transport facilities or services to other carriers.” KMC refused to answer this request for the same reason that it refused to answer Verizon's interrogatories and the Commission's data requests: that its facilities do not constitute “transport” because they pass through intermediate facilities. KMC Response to Request for Admission No. 1. KMC refused to answer Verizon's Second Request for Admission based on the same general objections it asserted in its Preliminary Objections. *See* KMC Response to Request for Admission No. 2.

In sum, KMC failed to meaningfully respond to virtually all of Verizon’s Interrogatories, Requests for Production of Documents, and Requests for Admission. As explained below, this omitted information is relevant and necessary to evaluating whether the dedicated transport triggers have been satisfied.



## 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(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>10</sup>

The information sought by Verizon FL's First Set is relevant and likely to lead to the discovery of additional relevant and admissible information. As described above, this request 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, and the optical speed and capacity of the facilities and services. This information is directly relevant to the self-provisioning trigger. Verizon also sought detailed information regarding the transport 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; Verizon sought similar information for any facilities that KMC makes available to other carriers. All of this information is directly relevant to both the self-provisioning *and* competitive wholesale alternatives triggers. In sum, the information requested by Verizon FL's

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<sup>10</sup> Order Denying Public Counsel's Motion to Compel, *Jasmine Lakes Utilities Corporation*, Docket No. 920148-WS, Order No. PSC-93-0652-PCO-WS, at 2 (Fla. Pub. Serv. Comm'n April 28, 1993).

First Set is relevant and indeed necessary to Commission's transport analysis under the *Triennial Review Order*. KMC has not demonstrated otherwise.

## **II. KMC's Incomplete Responses Are Based on a Misapprehension of the FCC's Definition of Dedicated Transport.**

KMC's refusal to provide key information about its facilities is untenable because it is based on a misapprehension of "dedicated transport," as defined in FCC rules and the *Triennial Review Order*. KMC contends,

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 [as] a "route" for the purposes of the Triennial Review's trigger analysis.

*See* KMC Response at 5-14. Based on this erroneous premise, KMC has refused to provide information about these facilities on the ground that the facilities are irrelevant to the Commission's trigger analysis under the *Triennial Review Order*.

KMC's argument regarding the definition of "dedicated transport" contradicts both the letter and the purpose of the relevant FCC rules and the *Triennial Review Order*. KMC's objection language is misleading because it selectively quotes, out of context, only a portion of FCC Rule 51.319(e), which defines dedicated transport. Critically, the full text of Rule 51.319(e) not only states that transport consists of a "transmission path" between two ILEC wire centers or switches, but *also* expressly posits: "A route between two points (e.g., wire center or switch 'A' and wire center or switch 'Z') may pass through one or more intermediate wire centers or switches (e.g., wire center or switch 'X')." 47 C.F.R. § 51.319(e). For purposes of this definition, therefore, only the end points are relevant in defining the route, even when the intermediate point is a non-ILEC wire center or switch. If KMC's fiber network provides a

connection between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches, those facilities count toward the trigger, regardless of whether KMC routes those facilities through non-ILEC switching facilities such that part of the route is between an ILEC switch or wire center and a non-ILEC switch. This inclusive definition makes abundant sense: the relevant question under this trigger analysis is whether a CLEC can self-provision transport from Point A to Point B using its own network facilities, and thus does not need access to the ILEC's facilities for that purpose. It would make no sense for the answer to that question to turn on the details of how the CLEC's transport facilities are configured within its network.

The relevant sections of the *Triennial Review Order* similarly contemplate that dedicated transport can be routed through CLEC switch facilities. In the paragraphs that discuss triggers for dedicated transport, the *Order* defines a route as “a connection between wire center or switch ‘A’ and wire center or switch ‘Z.’”<sup>11</sup> The *Triennial Review Order* further states: “Even if, on the incumbent LEC's network, a transport circuit from ‘A’ to ‘Z’ passes through an intermediate wire center ‘X,’ the competitive providers must offer service connecting wire centers ‘A’ and ‘Z,’ but do not have to mirror the network path of the incumbent LEC through wire center ‘X.’”<sup>12</sup>

The *Triennial Review Order*'s description, in Paragraph 361, of how “competing carriers generally use interoffice transport” further demonstrates that networks such as KMC's were precisely those that the trigger analysis sought to capture, and, therefore, that the details of such networks sought by Verizon's discovery requests are relevant. The *Order* states that “[c]ompeting carriers generally use interoffice transport as a means to ‘aggregate end-user traffic .

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<sup>11</sup> *Triennial Review Order* ¶ 401.

<sup>12</sup> *Id.* (emphasis added)

. . . by using dedicated transport to carry traffic from their end users' loops, often terminating at incumbent LEC central offices, through other central offices to a point of aggregation."<sup>13'</sup> Thus, the *Order* confirms that the purpose of the trigger analysis is not for state commissions to identify CLEC dedicated transport that mirrors ILEC networks, but instead to "identify[] specific point-to-point routes where carriers have the ability to use alternatives to the incumbent LEC's network."<sup>14'</sup> Such "alternatives" may include network configurations such as KMC's, which apparently consist at least in part of routes that transit non-ILEC wire centers and switches, because this is the network configuration that is most efficient for certain CLECs to bypass the ILEC's network.<sup>15'</sup>

Because routes that transit non-ILEC wire centers and switches are quite typical of CLEC networks, accepting KMC's argument would mean that there are no CLEC facilities in Florida or any other state that would "count" toward the transport triggers. In direct contrast to KMC's claim, however, the FCC found in the *Triennial Review Order* that "particularly in dense urban areas, alternative transport facilities are readily available."<sup>16'</sup> The FCC further concluded that "[t]here is substantial evidence that carriers lease non-incumbent LEC transport at the DS3 capacity where competitive alternatives are available or self-deploy transport when multiple DS3 transport circuits are required to carry aggregated traffic along a route."<sup>17'</sup> KMC's suggestion

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<sup>13'</sup> *Id.* ¶ 361 (emphasis added); see also *id.* ¶ 370.

<sup>14'</sup> *Id.* ¶¶ 360, 400; see also *id.* ¶ 406 n.1257 ("impairment analysis recognizes alternatives outside the incumbent LEC's network").

<sup>15'</sup> See *id.* ¶¶ 361, 367, 370.

<sup>16'</sup> *Id.* ¶ 387

<sup>17'</sup> *Id.*

that transport facilities that transit CLEC switches do not constitute “transport” under the *Triennial Review Order* thus contradicts the FCC’s express statements.<sup>187</sup>

In sum, it is irrelevant that KMC, for reasons of economic efficiency, may choose to route all of its fiber facilities through non-ILEC switching facilities or wire centers. The only relevant questions under the triggers are whether KMC’s competitive fiber facilities provide connections between Verizon’s central offices, and whether KMC’s network is operationally ready to provide dedicated bandwidth to particular customers or carriers. By failing to meaningfully respond to Verizon’s Interrogatories, Requests for Admission, and Requests for Production of Documents, KMC has denied the Commission and Verizon the information necessary to answer these questions.

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<sup>187</sup> Implicit in KMC’s argument is the suggestion that the Commission should ignore the *Triennial Review Order*’s discussion of how CLECs use dedicated transport and the purpose of the trigger analysis (set forth in paragraphs 370 *et seq.*), and instead apply -- for the purpose of determining whether triggers are met -- the limits the FCC adopted on the obligation of *ILECs* to unbundle their own *dedicated transport facilities* (set forth in paragraphs 365-69). But the FCC plainly did not intend to confine the *trigger* analysis to the types of facilities that *ILECs* are required to unbundle for purposes of the impairment analysis. Rather, the FCC re-defined the dedicated transport UNE to exclude backhaul facilities running from incumbent LEC networks to competitor LEC networks *only with respect to* the “definition of dedicated transport *under section 251(c)(3)*,” which applies only to *ILECs*. *Triennial Review Order* ¶ 365 (emphasis added). But this redefinition does not apply to the evaluation of CLEC networks for purposes of the trigger analysis. In making this change, the FCC acknowledged the reality that backhaul facilities are the most competitive segment of the transport market, and, therefore, should be exempt from unbundling -- *to the benefit of the incumbent LECs*. *See id.* ¶ 367 n.1122 (“Competing carriers agree that the most competitive type of transport is the link between an incumbent LEC wire center and a competitor’s network.”). This redefinition by no means affected the FCC’s definition of dedicated transport *for purposes of the trigger analysis*. By definition, an *ILEC* cannot normally use *ILEC-CLEC* entrance facilities to route traffic between two of its own central offices (*i.e.*, for “interoffice transport”), since the switch in the middle belongs to the CLEC. Here, in contrast, the CLEC can and does use the transport links in question to route its own traffic between *ILEC* central offices—and that, again, is the only relevant question.

**III. The Commission Should Not Foreclose Discovery that May Assist with Refining and Applying the FCC's Definition of Dedicated Transport**

Even if the plain language of the FCC's rules and the *Triennial Review Order* left room for KMC to argue that it and other CLECs are not self-providers of transport, which it does not, it would still be appropriate to permit the discovery sought here. The Commission may decide to conduct hearings to determine the precise circumstances under which KMC and other CLECs provide dedicated transport. Information pertaining to KMC's and other CLECs' network architectures, such as the origination and termination points of CLEC fiber optic transport facilities in Florida and the ILEC switches and wire centers connected by such facilities,<sup>19/</sup> will be useful and relevant to this determination. The Commission should not permit KMC to withhold this information based on its self-serving and factually unsupported assertion that it does not provide dedicated transport within the meaning of the *Triennial Review Order*.

For the foregoing reasons, the Commission should order KMC to respond to Verizon's First Set in accordance with the definition of "dedicated transport" set forth in FCC Rule 51.319(e) and the *Triennial Review Order*. Specifically, KMC should be ordered to provide full and complete responses and/or supplement its responses, as necessary, to Interrogatory Nos. 1-20; to Requests for Production Nos. 1, 3-10; and to both Requests for Admission.

**IV. The Commission Should Reject KMC's Objections to Providing Verizon FL's Requested Information and Order KMC Immediately to Provide this Information.**

In its Responses and Supplemental Responses, KMC reiterates a number of General Objections from its Preliminary Objections to Verizon's First Set ("Preliminary Objections"), filed December 29, 2003. *See* Response to Interrogatory Nos. 1, 11, 16; Response to Request for Production Nos. 1 - 8; Response to Request for Admission Nos. 1 -2. For the same reasons set

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<sup>19/</sup> *See* Interrogatory Nos. 1, 5.

forth in Verizon FL's Motion, the Commission should reject these Objections. 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 KMC may not continue to rely on such objections to avoid producing the requested information.<sup>20/</sup>

The Commission should also order KMC to immediately provide an unredacted version of Confidential Attachment A. Verizon FL has complied with the Protective Order Governing Handling of Confidential Information, Order No. PSC-03-1263-PCO-TP. There is therefore no reason for KMC to continue withholding the information requested by Verizon FL in Interrogatory Nos. 11 through 13. KMC should not be able to continue employing this delay tactic, especially in light of the impending hearings in this proceeding on March 3, 2004.

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<sup>20/</sup> Order on Citizens' 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. Pub. Serv. Comm'n Nov. 14, 2003).

## CONCLUSION

For the foregoing reasons and in light of the impending hearings in this proceeding (scheduled to begin March 3, 2004), the Commission should order KMC immediately to provide full and complete responses to Verizon FL's First Set. Specifically, KMC should be ordered to provide full and complete responses and/or supplement its responses, as necessary, to Interrogatory Nos. 1-20; to Requests for Production Nos. 1, 3-10; and to both Requests for Admission.

Respectfully submitted,

Verizon Florida Inc.

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March 1, 2004



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Supplemental Brief in Support 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 March 1, 2004 to:

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---

Richard A. Chapkis

# EXHIBIT ONE

LAW OFFICES  
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A Professional Association

Post Office Box 1876  
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Internet: [www.lawfla.com](http://www.lawfla.com)

February 25, 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

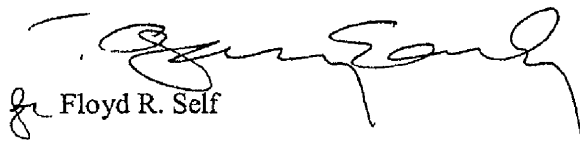
Dear Ms. Bayó:

Enclosed for filing on behalf of KMC Telecom III, LLC, are an original and fifteen copies of KMC's Response to 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,

  
F. Floyd R. Self

EGE/amb  
Enclosures

**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: February 25, 2004
And Route-Specific Review for DS1, DS3,	)	
And Dark Fiber Transport	)	
<hr/>		

**KMC's RESPONSE TO VERIZON FLORIDA INC.'S  
MOTION TO COMPEL 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 responds to Verizon Florida Inc.s' Motion to Compel KMC Discovery, and states:

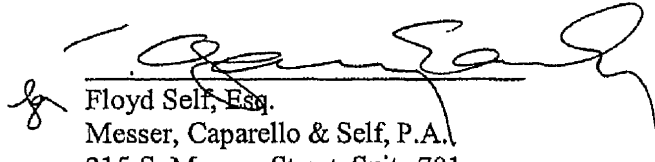
1. On February 25, 2004, responses to the discovery that is the subject of Verizon's Motion was made.

2. The e-mail attached to the Motion indicated no intent to disregard the discovery, but rather indicated that substantial efforts were being made to respond to all of the outstanding discovery, including that propounded by Staff and Verizon. The e-mail indicated that responses to the Verizon discovery were being formulated, with the only question being the exact date upon which discovery responses would be complete. The e-mail did not intimate that discovery responses were being disregarded. Throughout the process, KMC made responses to Staff discovery available to Verizon as it was completed.

3. Based on the filing of discovery responses on this date, the Verizon Motion to Compel KMC Discovery is moot. Thus, the Motion should be denied on that ground.

WHEREFORE, for the reason 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 25<sup>th</sup> day of February, 2004.

A handwritten signature in black ink, appearing to read "Floyd Self", is written over a horizontal line. The signature is fluid and cursive.

Floyd Self, Esq.  
Messer, Caparello & Self, P.A.  
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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 25<sup>th</sup> day of February, 2004.

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Tallahassee, FL 32399-0850

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c/o Nancy H. Sims  
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Joe McGlothlin, Esq.  
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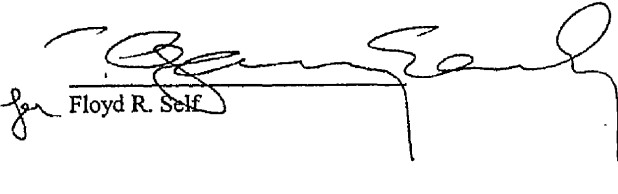
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# EXHIBIT TWO

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February 25, 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 one copy of KMC's Responses and Objections to Verizon Florida Inc.'s First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents.

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,

  
for Floyd R. Self

EGE/amb  
Enclosures

LAW OFFICES  
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A Professional Association

Post Office Box 1876  
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Internet: [www.lawfla.com](http://www.lawfla.com)

February 25, 2004

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 030852-TP - KMC's Responses and Objections to Verizon Florida Inc.'s  
First Request for Admissions, First Set of Interrogatories and First Request for  
Production of Documents


Dear Ms. Bayó:

KMC Telecom III, LLC, pursuant to Section 364.183(1), Florida Statutes, hereby claims that certain information provided in the Responses and Objections to Verizon Florida Inc.'s First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents, contains confidential and proprietary business information that should be held exempt from public disclosure. Pursuant to Rule 25-22.006(5), Florida Administrative Code, in the attached envelope is one paper copy of the confidential responses.

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

Thank you for your assistance with this filing.

Sincerely,

  
for Floyd R. Self

FRS/amb  
Enclosures

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**


In Re: Implementation of Requirements )  
Arising From Federal Communications )  
Commission Triennial UNE Review: )  
Location Specific Review For DS1, DS3, )  
and Dark Fiber Loops And Route-Specific )  
Review for DS1, DS3, And Dark Fiber )  
Transport )

Docket No.: 030852-TP  
Filed: February 24, 2004

**KMC'S NOTICE OF SERVICE OF ITS RESPONSES AND 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, by and through its undersigned counsel, hereby files and serves Notice that it has served its Responses and Objections to Verizon Florida Inc.'s First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents by e-mail on Richard Chapkis, Esq. at richard.chapkis@verizon.com on February 25, 2004, and by Overnight to to Richard Chapkis, Richard A. Chapkis, Esq., Verizon Florida Inc., 201 N. Franklin, Tampa, FL 33602 on February 25, 2004.

Respectfully submitted,

  
\_\_\_\_\_  
Floyd Self, Esq.  
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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 25<sup>th</sup> day of February, 2004.

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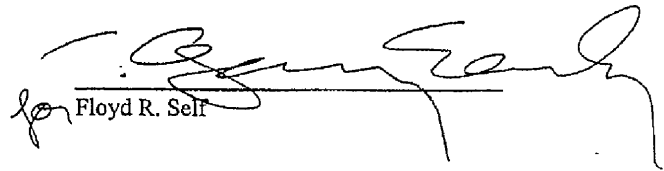
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Tallahassee, FL 32399-1400

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

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Implementation of Requirements )  
Arising From Federal Communications )  
Commission Triennial UNE Review: )  
For DS1, DS3, and Dark Fiber Loops )  
And Route-Specific Review for DS1, DS3, )  
And Dark Fiber Transport )  
\_\_\_\_\_ )

Docket No.: 030852-TP  
Filed: February 25, 2004

**KMC's RESPONSES AND 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, 1.340, 1.350 and 1.370 of the Florida Rules of Civil Procedure, hereby responds, and 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. Pursuant to the separate agreement between Verizon and KMC, KMC is providing its responses today and will provide to Verizon certain confidential information, identified below, pursuant to the separate protective agreement of the parties and the Protective Order Governing Handling of Confidential Information, Order No. PSC-03-1263-PCO-TP, issued in this docket on November 7, 2003.

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.

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

**REQUEST FOR ADMISSION 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.)

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. KMC further notes that KMC's response to this request for admission 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. Subject to, and without waiving these objections, KMC denies that it states on its website, in words or in substance, that it offers transport facilities or services, as defined in the TRO, to other carriers.

**REQUEST FOR ADMISSION 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.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. KMC further notes that request is vague, unclear, and irrelevant and as such, KMC cannot formulate a response at this time.

### **INTERROGATORIES: DEDICATED TRANSPORT**

**INTERROGATORY 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.)

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC denies that it offers transport facilities or services, as defined in the TRO, to other carriers.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 3.** For each transport facility identified in response to Question 1, identify the number of fibers in the fiber cable(s) you deployed.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** None.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.)

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, 7, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. In an effort to be responsive, subject to, and without waiving these objections, KMC states as follows: KMC purchases transport, as defined in the TRO, from the ILEC. KMC is in the process of preparing Confidential Attachment A identifying all transport that KMC purchases from ILECs in the state of Florida. This Confidential Attachment will be filed no later than February 27, 2004.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** See Confidential Attachment A.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** See Confidential Attachment A.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide transport services as defined in the TRO to other carriers.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** Not applicable.

**INTERROGATORY 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").

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** See KMC Response to Interrogatory #3 of Staff's First Set of Loop and Transport Interrogatories to KMC.

**INTERROGATORY 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.

Objections provided by Counsel. Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide transport services as defined in the TRO to other carriers.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS: DEDICATED TRANSPORT**

**REQUEST FOR PRODUCTION 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, infeasible right of use), to other carriers.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide transport services as defined in the TRO to other carriers, and as such, no such documents exist.

**REQUEST FOR PRODUCTION 2.** Provide all document identifying the incumbent LEC switches or wire centers in Florida at which you have operational collocation arrangements.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, 7, and 13, and its Specific Objection 15 as if set forth herein verbatim. Subject to, and without waiving these objections, see KMC Response to Staff's First Set of Interrogatories to KMC Telecom III, LLC, (Nos. 1-14).

**REQUEST FOR PRODUCTION 3.** Provide all documents that discuss or describe your willingness to provide dedicated transport in Florida to other carriers.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide such transport, and as such, no such documents exist.

**REQUEST FOR PRODUCTION 4.** Provide all documents that discuss or describe the optical speeds at which your dedicated transport in Florida operates.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide such transport, and as such, no such documents exist.

**REQUEST FOR PRODUCTION 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.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide such transport, and as such, no such documents exist.

**REQUEST FOR PRODUCTION 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.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 5 and 7 as if set forth herein verbatim. KMC further notes that KMC's response to this request for production is based on the definition and evaluation criteria set forth in the Triennial Review: Please see KMC's Florida Tariff for a description of the capacity or capacity of services that KMC offers to retail customers in Florida.

**REQUEST FOR PRODUCTION 7.** Provide all documents that discuss or describe whether you are willing to provide dark fiber dedicated transport in Florida to other carriers.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. Subject to, and without waiving these objections, KMC states as follows: KMC does not provide such transport, as such, no such documents

exist.

**REQUEST FOR PRODUCTION 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.

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3, 4, 5, 6, and 13, and its Specific Objection 15 as if set forth herein verbatim. KMC states as follows: KMC does not obtain dedicated transport from other non-incumbent LEC carriers in Florida.

**REQUEST FOR PRODUCTION 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.

**KMC RESPONSE:** Not applicable.

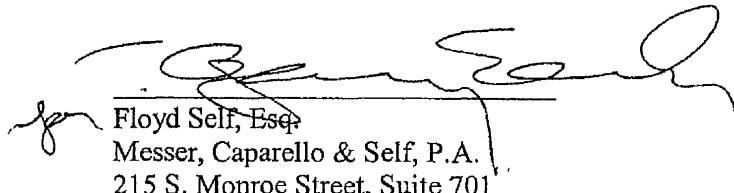
**REQUEST FOR PRODUCTION 10.** Provide all documents that discuss or describe dark fiber in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.

**KMC RESPONSE:** Not applicable.

**REQUEST FOR PRODUCTION 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)

**KMC RESPONSE:** KMC adopts and incorporates its General Objections 3 and its Specific Objection 15 as if set forth herein verbatim. Subject to, and without waiving these objections, KMC states as follows: Please see Confidential Attachment B – Mike Duke, Triennial Review Affidavit.

Respectfully submitted this 25<sup>th</sup> day of February, 2004.

  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling	)	
Obligations of Incumbent Local Exchange	)	CC Docket No. 01-338
Carriers	)	
	)	
Implementation of the Local Competition	)	
Provisions of the Telecommunications Act of	)	CC Docket No. 96-98
1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	

AFFIDAVIT OF MICHAEL P. DUKE  
KMC TELECOM, INC.

I, Michael P. Duke, pursuant to 28 U.S.C. Section 1746, do hereby declare, under penalty of perjury, that the following is true and correct:

1. I am employed by KMC Telecom, Inc. ("KMC") as Director of Governmental Affairs.
2. My business address is 1755 North Brown Road, Lawrenceville, GA 30043.
3. KMC is a facilities-based integrated communications provider offering a full range of advanced voice, data, and Internet infrastructure services in 35 markets across the eastern half of the United States. Since its start in 1995, KMC's business plan has been to serve business customers in Tier III markets (ranging between 100,000 and 750,000 in population) with a full array of telecommunications services over our own facilities. These facilities include a Lucent 5ESS switch and a robust advanced fiber-optic SONET backbone ring. KMC's business plan calls for a network design and deployment sufficient to reach approximately 80% of the commercial buildings in each local market through either direct fiber connections ("on-net") into customer locations, or through the lease of unbundled network elements ("UNEs") from the incumbent local exchange carrier ("ILEC") (an "off-net" arrangement). This 80% figure represents in the aggregate approximately 97,000 buildings eligible for on-net service, plus 168,000 buildings that are available only via a UNE architecture, totaling 265,000 buildings. To obtain such market coverage, KMC has made a significant investment in a local SONET network and has typically collocated at three ILEC offices in each market: the local tandem office and two end offices.



4. KMC, like many competitive local exchange carriers, has had to dramatically reduce its capital expenditure ("capex") budget for new network build projects. Our 2001 budget was **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** less than our 2000 capex budget. Our 2002 capex is even further reduced by **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** from last year's budget.
  5. The purpose of my Affidavit is twofold. First, I will show that KMC, despite having made excellent progress in developing a redundant local network, still must have access to ILEC unbundled loops in order to deploy the services it wishes to provide. Secondly, I will explain why KMC could not act as a third-party vendor to other CLECs for the provision of local network elements.
- I. KMC MUST CONTINUE TO OBTAIN LOOPS, INCLUDING HIGH-CAPACITY LOOPS, FROM ILECs ON AN UNBUNDLED BASIS**
6. KMC has deployed over 2,100 route miles of fiber, for an average of 60 miles of fiber in each of its markets. In deploying this fiber, KMC has focused its efforts to pass as many business locations as possible, using Dun and Bradstreet geo-coded market data. In each of our markets, KMC's fiber passes within 1200 feet of nearly 97,000 business locations. Yet KMC has only been able to self-provision fiber into **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** buildings. This figure represents only **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** of the market in these areas.
  7. The process of self-provisioning loops is extremely expensive and time-consuming. In order to build loops to its customers, KMC must apply and pay for the required rights-of-way and permits. Once it receives approval, it must plan out how physically to install the loops, which generally requires actually digging up city streets.
  8. We have calculated that the cost of self-provisioning high-capacity loops to a building is **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** per building. This figure assumes a distance of 800 to 1200 feet from the KMC backbone to the building. It includes **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** for engineering fees, **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** for the fiber itself, **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** for labor and **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** to purchase the necessary electronics.
  9. The tremendous expense of this process is difficult to justify financially, as KMC must recover its cost through extremely competitive rates and a small customer base, relative to ILEC volumes. We therefore have self-provisioned loops only in **BEGIN PROPRIETARY [REDACTED] END PROPRIETARY** instances until our customer base can support additional expenditures.

10. Thus, KMC has had to collocate in 132 ILEC central offices for the purpose of obtaining unbundled loops to serve its customers. Specifically, KMC requires high-capacity loops – loops at the DS-1 level or higher – in order provide its integrated voice and advanced services. KMC presently provides service to **BEGIN PROPRIETARY** [REDACTED] **END PROPRIETARY** locations over ILEC loops, which is **BEGIN PROPRIETARY** [REDACTED] **END PROPRIETARY** of all the buildings in its service areas.

11. Without access to unbundled high-capacity loops, KMC would be forced to forego service in these **BEGIN PROPRIETARY** [REDACTED] **END PROPRIETARY** locations. KMC has still not found any third party that can provide it with alternatives to ILEC loops to fit its proposed service plan. The loss of ILEC unbundled loops would thus severely impair KMC in seeking to provide competitive services to end users.

## II. KMC IS NOT AN ALTERNATIVE SOURCE OF FACILITIES FOR OTHER CLECs

12. Although KMC has deployed a significant amount of fiber facilities in its markets, it is not able to act as a third-party supplier to other CLECs. In order to minimize its deployment costs, KMC operates its transport at a very high fill rate. The transport facilities that it has self-provisioned are thus nearly at capacity, which does not permit other CLECs to buy capacity on our lines.

13. Nor does KMC have the necessary back office systems to support a wholesale transport offering to other CLECs. We have not developed interfaces to connect with the systems of other CLECs. Rather, KMC back office systems are devoted to interfacing with the ILECs and tracking our own orders, installations, and repair and maintenance. We do not have the capital budget to create systems to support a wholesale operation, even if we had the capacity to provide to CLECs in the first instance.

14. Therefore, the Commission should not view KMC's impressive deployment as evidence of a viable alternative market for transport facilities. KMC has simply not reached a level where it is able to develop a wholesale UNE offering.

**KMC CONFIDENTIAL INFORMATION**  
Provided only pursuant to protective order

Florida PSC Docket No. 030852-TP  
KMC Response to Verizon 1st RFA,  
1st Interrogatories and 1st POD  
PUBLIC Confidential Attachment B  
Page 4 of 4

This concludes my affidavit.

Executed this \_\_\_th day of April, 2002.

\_\_\_\_\_  
Michael P. Duke  
KMC Telecom, Inc.

MCI -000010

# EXHIBIT THREE

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**


In Re: Implementation of Requirements )  
Arising From Federal Communications )  
Commission Triennial UNE Review: )  
Location Specific Review For DS1, DS3, )  
and Dark Fiber Loops And Route-Specific )  
Review for DS1, DS3, And Dark Fiber )  
Transport )

Docket No.: 030852-TP  
Filed: February 27, 2004

**KMC'S NOTICE OF SERVICE OF SUPPLEMENTAL RESPONSES TO  
VERIZON FLORIDA INC.'S FIRST SET OF INTERROGATORIES**

KMC Telecom III, LLC, by and through its undersigned counsel, hereby files and serves Notice that it has served its Supplemental Responses to Verizon Florida Inc.'s First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents by e-mail on Richard Chapkis, Esq. at richard.chapkis@verizon.com on February 27, 2004, and by Overnight to to Richard Chapkis, Richard A. Chapkis, Esq., Verizon Florida Inc., 201 N. Franklin, Tampa, FL 33602 on February 27, 2004.

Respectfully submitted,

  
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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 27<sup>th</sup> day of February, 2004.

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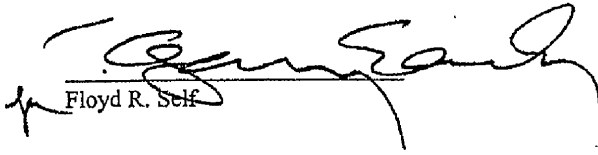
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Implementation of Requirements	)	
Arising From Federal Communications	)	
Commission Triennial UNE Review:	)	Docket No.: 030852-TP
For DS1, DS3, and Dark Fiber Loops	)	
And Route-Specific Review for DS1, DS3,	)	
And Dark Fiber Transport	)	
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**KMC's SUPPLEMENTAL RESPONSES TO  
VERIZON FLORIDA INC.'S FIRST SET OF INTERROGATORIES**

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, 1.340 and 1.350 of the Florida Rules of Civil Procedure, hereby serves supplemental responses to Interrogatories 11 - 13 of Verizon Florida, Inc.'s First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents to KMC, served on December 22, 2003. Pursuant to the separate agreement between Verizon and KMC, KMC is providing its supplemental responses today and will provide to Verizon certain confidential information, identified below, pursuant to the separate protective agreement of the parties and the Protective Order Governing Handling of Confidential Information, Order No. PSC-03-1263-PCO-TP, issued in this docket on November 7, 2003. All supplemental responses are made subject to objections identified in the original set of responses.

**INTERROGATORY 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.)



Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** KMC adopts and incorporates its General Objection 3, 4, 5, 6, 7, and 13, and its Specific Objection 15 as if set forth herein verbatim. 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. In an effort to be responsive, subject to, and without waiving these objections, KMC states as follows: KMC purchases transport, as defined in the TRO, from the ILEC. See Confidential Attachment A identifying all transport that KMC purchases from ILECs in the state of Florida.

**INTERROGATORY 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.

Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** See Confidential Attachment A.

**INTERROGATORY 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.

Substantive response provided by Michael P. Duke.

**KMC RESPONSE:** See Confidential Attachment A.

Respectfully submitted this 27th day of February, 2004.



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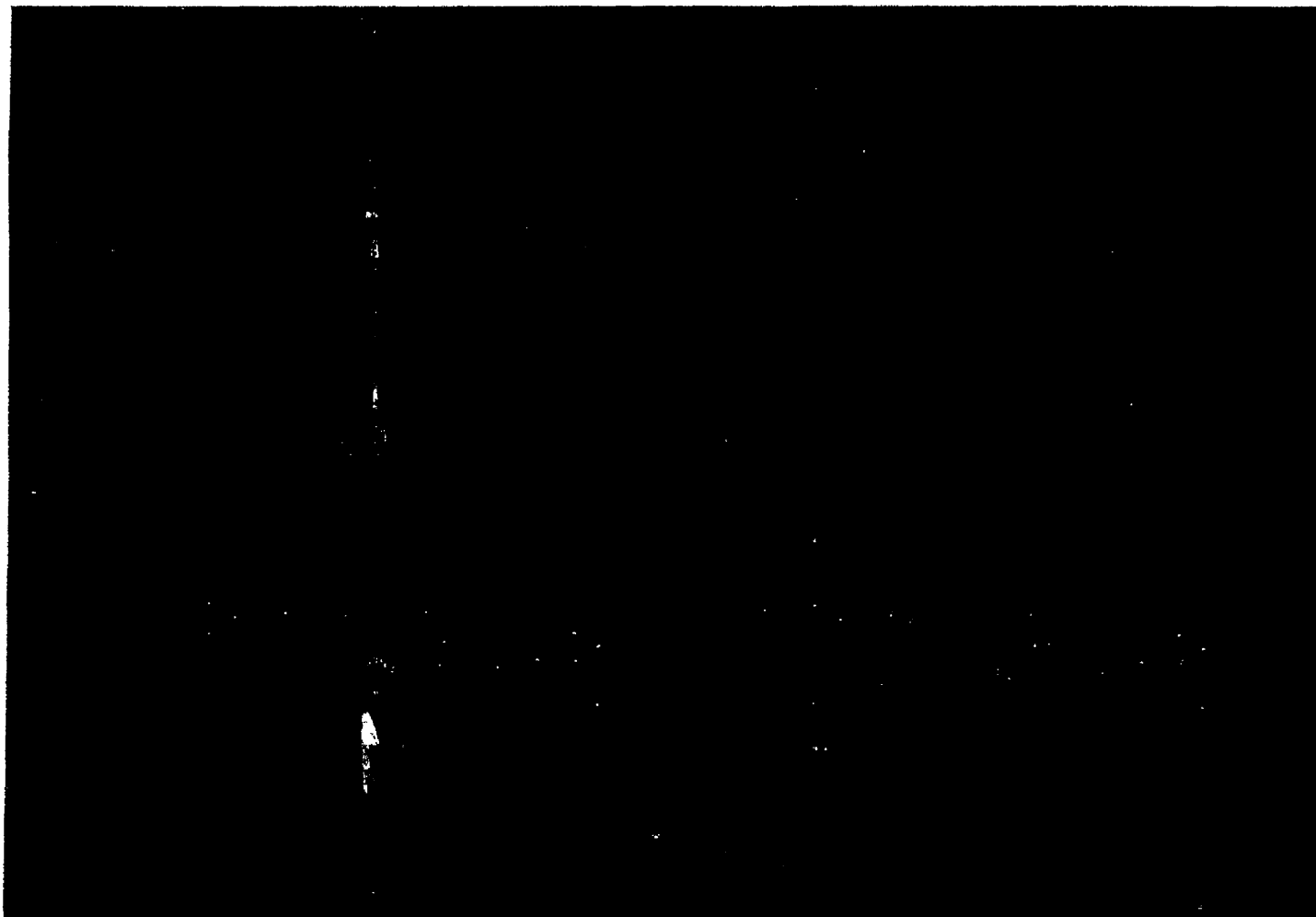
Attorneys for MCImetro Access Transmission Services, LLC and MCI WorldCom  
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KMC CONFIDENTIAL INFORMATION  
Provided only pursuant to protective agreement

Docket No. 030852-TP  
KMC Response and Supplemental Response  
to Verizon 1st Interrogatories  
Confidential Attachment A  
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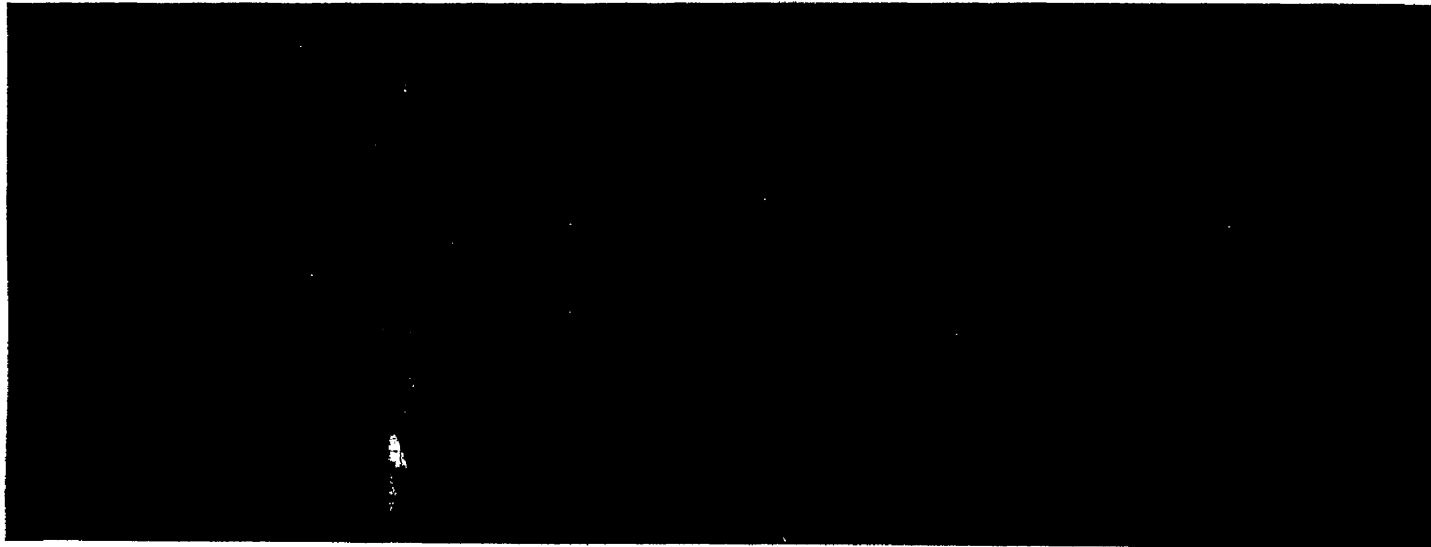
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