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February 24, 2005

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. 040156-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of KMC Telecom III LLC, KMC Telecom V, Inc. And KMC Data LLC are an original and fifteen copies of KMC Telecom III LLC, KMC Telecom V, Inc. And KMC Data LLC's Petition to Intervene 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,



Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER-DATE
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

DOCKET NO. 040156-TP

Filed: February 24, 2005

PETITION TO INTERVENE

Intervenors, KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data LLC, pursuant to Rules 25-22.039, F.A.C. and 28-106.205, F.A.C., hereby petition the presiding officer for leave to intervene in this proceeding, and state:

1. The name and address of the agency affected by this Petition is the Florida Public Service Commission (the "Commission"). The PSC Docket number is 040156-TP.

2. The Intervenors are KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data LLC (collectively "KMC" or "Intervenors").

3. KMC Telecom III, LLC is a Delaware Limited Liability Company authorized to do business in Florida. KMC Telecom III, LLC 's principle address is 1545 Route 206, Suite 300, Bedminster, New Jersey 07921, and its mailing address is 1755 North Brown Road, Lawrenceville, Georgia 30043-8119. KMC Telecom III, LLC is a telecommunications carrier, as defined by 47 U.S.C. §153(44). KMC Telecom III, LLC operates pursuant to Commission certificate 7093 to provide competitive local exchange telecommunications services in the State of Florida.

4. KMC Telecom V, Inc. is a Delaware corporation authorized to do business in Florida. KMC Telecom V, Inc.'s principle address is 1545 Route 206, Suite 300, Bedminster, New Jersey 07921, and its mailing address is 1755 North Brown Road, Lawrenceville, Georgia

30043-8119. KMC Telecom V, Inc. operates pursuant to Commission certificate 7530 to provide competitive local exchange telecommunications services in the State of Florida.

5. KMC Data LLC is a Delaware Limited Liability Company authorized to do business in Florida. KMC Data LLC's principle address is 1545 Route 206, Suite 300, Bedminster, New Jersey 07921, and its mailing address is 1755 North Brown Road, Lawrenceville, Georgia 30043-8119. KMC Data LLC is a telecommunications carrier, as defined by 47 U.S.C. §153(44). KMC Data LLC operates pursuant to Commission certificate 7955 to provide competitive local exchange telecommunications services in the State of Florida.

6. The name, address, and telephone number of the Intervenor's representatives shall be those of the undersigned, which shall be the addresses for service purposes during the course of this proceeding.

7. This docket involves a Petition for Arbitration filed by Verizon, Florida, Inc. ("Verizon"). The petition seeks arbitration of the terms and conditions of an amendment to Verizon's interconnection agreements with Florida competitive local exchange carriers ("CLECs") to implement the Federal Communications Commission's ("FCC's") *Triennial Review Order ("TRO")* and its *Triennial Review Remand Order ("TRRO")* regarding Verizon's ongoing obligation to provide unbundled network elements ("UNEs") pursuant to Sections 251 and 252 of the federal Telecommunications Act of 1996 ("Telecom Act").

8. The Intervenor's substantial interests will be affected by the Commission's action regarding the nature and scope of allowable amendments to Verizon interconnection agreements with CLECs doing business with Verizon in Florida. The Intervenor will lose any meaningful opportunity to exercise their rights under the current interconnection agreements with Verizon if the Commission does not permit intervention, and does not allow the Intervenor to submit

testimony and briefs to the Commission regarding Verizon's decision to terminate the provision of UNEs under the auspices of the FCC's *TRO* and *TRRO* decisions.

9. The Intervenors were named as parties to Verizon's related February 20, 2004 arbitration petition in this docket. The Commission dismissed Verizon's original petition for failure to meet the procedural requirements established in Section 252(b)(2) of the Telecommunications Act, and granted leave for Verizon to refile its Petition, including specified information concerning the parties, the issues in dispute and the relevant portion of the parties' interconnection agreements. (See Order No. PSC-04-0671-FOF-TP, p.6).

10. On September 9, 2004, Verizon filed a revised Petition for Arbitration. None of the Intervenors was included as a party to Verizon's September 9, 2004 Petition. Verizon's expressed reason for its failure to include the Intervenors in its September 9, 2004 Petition was its position that it can unilaterally cease providing certain UNEs to CLECs because those UNEs are no longer subject to the unbundling obligations under 47 U.S.C. §251(c)(3) and 47 C.F.R. Part 51. (See Verizon Petition at page 2). Verizon's belief is incorrect.

11. The interconnection agreements between Verizon and the Intervenors provide that Verizon and the Intervenors are to modify their respective Agreements to bring them into compliance with any subsequent statute, regulation, rule, ordinance, judicial decision or administrative ruling. If Verizon and the Intervenors fail to agree on the appropriate "change in law" modifications to their Agreements within sixty days of a change in law, either party may seek Commission resolution. Further, Section 252 of the Telecom Act and paragraph 233 of the *Triennial Review Remand Order* make it clear that the FCC intends the *Triennial Review Remand Order* to be implemented through the "change of law" process outlined in carriers' interconnection agreements. Thus, Verizon cannot unilaterally modify the UNE pricing, terms

and conditions of its existing interconnection agreements with the Intervenors, which is precisely the effect of Verizon's decision to exclude the Intervenors from this arbitration.

12. Over the past several months, the Intervenors (through counsel) and Verizon have engaged in negotiations in an effort to incorporate the changes in UNE unbundling obligations adopted in the *TRO* and the *Triennial Review Remand Order* into their Agreements. Those discussions have not been successful. Although the Intervenors remain willing to negotiate in good faith with Verizon to address the issues affected by the *TRO* and the *Triennial Review Remand Order*, the expedited procedural schedule imposed by the Commission in this Docket (Order No. PSC-04-1236-PCO-TP) precludes the Intervenors from fully implementing that "change in law" process set forth in their Agreements without having their interests substantially affected by the outcome of this proceeding. As such, the Intervenors will lose any meaningful opportunity to exercise their rights under their Agreements with Verizon if the Commission does not permit immediate intervention in this docket.

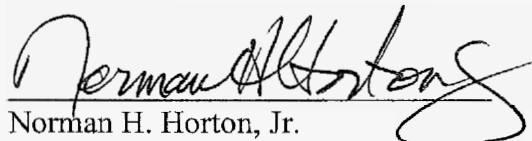
13. The Intervenors' substantial interests will be affected by the Commission's decision on the issues in this docket because that decision will inevitably affect the manner in which Verizon will implement the *TRO* and *Triennial Review Remand Order* in its interconnection agreements with CLECs that are not parties to this proceeding. The Intervenors recognize that they are entitled to file a separate action against Verizon to resolve these issues as between the Intervenors and Verizon. However, allowing the Intervenors to participate in this proceeding will advance the interests of administrative economy, and will eliminate the need for the Commission to review numerous individual arbitration petitions as to similar interconnection agreement issues. Thus, parties seeking *TRO* and *Triennial Review Remand Order* related

amendments to their interconnection agreements with Verizon should be allowed to participate in the pending arbitration proceeding.

14. No other current party to this arbitration will adequately represent the Intervenors' rights and interests in this matter because, among other reasons, the Intervenors must be parties in order for their interconnection agreements to be amended.

WHEREFORE for the reasons set forth herein, KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data LLC petition the Commission to allow them to intervene in this proceeding, and to participate as a full party of record in order to protect their interests under their interconnection agreements with Verizon.

Respectfully Submitted.



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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 (*) and/or U.S. Mail on this 24th day of February, 2005.

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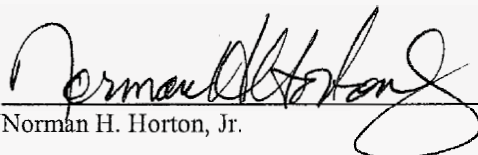
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