State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: May 5, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (M. Watts, Holman)
Office of the General Counsel (Rojas)

RE: Docket No. 050182-TP – Joint petition for waiver of carrier selection requirements of Rule 25-4.118, FAC, to allow KMC Telecom III LLC to transfer certain customer accounts to TelCove Investment, LLC.

AGENDA: 05/17/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050182.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from KMC Telecom III LLC to TelCove Investment, LLC?

Recommendation: Yes. **(M. Watts/Holman/Rojas)**

Staff Analysis: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

   (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;

(b) The provider has received a customer-initiated call for service . . . ;

(c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to intrastate interexchange telecommunications companies (IXCs).

Rule 25-24.455(4), Florida Administrative Code, states in part:

> An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to competitive local exchange telecommunications companies (CLECs).

Section 364.337(2), Florida Statutes, states in pertinent part:

> A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

TelCove Investment, LLC (TelCove) has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to KMC Telecom III LLC's (KMC's) customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, TelCove and KMC provided the following statements in a letter dated May 3, 2005, regarding outstanding consumer complaints:

> TelCove and KMC expect to close on the proposed transaction on June 30, 2005. Therefore, KMC Telecom Holdings Company, Inc., the parent company of KMC Telecom III, LLC will resolve all outstanding customer complaints that have been

billed or filed against KMC Telecom III, LLC and that, as of June 30, 2005, have not been paid or resolved.

Beginning July 1, 2005, TelCove will resolve all customer complaints that have been billed or filed against TelCove, including complaints by customers transferred from KMC that arise on or after July 1, 2005.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their local and long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Upon investigation, staff found that TelCove has some irregularities in its CLEC regulatory assessment fee (RAF) history. Staff initiated a financial review of the company to determine whether the company owes any past due monies. During the review, staff also found some irregularities in TelCove's IXC RAF account and broadened the scope of the review to include all of TelCove's RAF accounts. The company is cooperating with staff's review and staff believes that the issues will be settled expeditiously. KMC does not have any outstanding RAFs, penalty, or interest.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345 and 364.603, Florida Statutes.

Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(Rojas)**

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.