

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 23, 2006

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

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Fordham)

RE: Docket No. 050641-TP – Request for cancellation of AAV Certificate No. 4822, and CLEC Certificate No. 7093, and for acknowledgment of cancellation of IXC Registration No. TJ228, by KMC Telecom III LLC, effective September 22, 2005.

AGENDA: 03/07/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050641.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny KMC Telecom III LLC a voluntary cancellation of its alternative access vendor (AAV) Certificate No. 4822, competitive local exchange company (CLEC) Certificate No. 7093, and IXC tariff and Registration No. TJ228 and cancel the certificates and tariff and remove the company's name from the register on the Commission's own motion with an effective date of September 22, 2005?

Recommendation: Yes, the company should be denied a voluntary cancellation as listed on Attachment A. (Isler, Fordham)

Docket No. 050641-TP
Date: February 23, 2006

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company fails to pay the Regulatory Assessment Fees within fourteen (14) calendar days after the issuance of the Consummating Order, the company's AAV and CLEC certificates and IXC tariff should be cancelled administratively, the company's name should be removed from the register, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's AAV and CLEC certificates and IXC tariff are cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing alternative access vendor, competitive local exchange, and intrastate interexchange telecommunications services in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees or upon cancellation of the company's AAV and CLEC certificates and IXC tariff and removal of its name from the register. (Fordham)

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of AAV
Certificate No. 4822, and CLEC Certificate
No. 7093, and for acknowledgment of
cancellation of IXC Registration No. TJ228, by
KMC Telecom III LLC, effective September
22, 2005

DOCKET NO. 050641-TP
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO R. ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING ALTERNATIVE ACCESS VENDOR COMPANY AND COMPETITIVE
LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY CERTIFICATES AND
INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS TARIFF AND
REGISTRATION ON THE COMMISSION'S OWN MOTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

KMC Telecom III LLC currently holds Alternative Access Vendor (AAV) Certificate No. 4822, issued by this Commission on August 27, 2001, and Competitive Local Exchange Telecommunications (CLEC) Certificate No. 7093, issued by this Commission on August 6, 1999. The company also holds Intrastate Interexchange Telecommunications (IXC) Registration No. TJ228, issued by this Commission on August 3, 1999. Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 for each certificate or registration if the certificate or registration was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. In addition, Rules 25-24.735 and 25-24.820, Florida Administrative Code, provide that a company requesting

cancellation of its certificates must state its intent and date to pay the current Regulatory Assessment Fees. Rule 25-24.474, Florida Administrative Code, provides that intrastate interexchange companies must pay any current and past due Regulatory Assessment Fees with its request for cancellation. All entities that apply for certification and registration receive a copy of our rules governing alternative access vendor, competitive local exchange, and intrastate interexchange telecommunications services.

On September 22, 2005, the Commission received a letter from Mr. Michael Duke, Director of Government Affairs, requesting cancellation of its certificates and registration and advising its assets and customers were transferred to TelCove. The company did not include the 2005 Regulatory Assessment Fees nor state its intent to pay the fees. On September 28, 2005, our staff e-mailed Mr. Duke a note explaining that before a voluntary cancellation could be recommended, the fees should be paid. Mr. Duke called our staff on October 4, 2005, and advised that the company had no assets and very few employees left. Mr. Duke stated that KMC's customers were transferred to TelCove on June 30, 2005. He stated that he would attempt to "get some numbers together" and get back with our staff. Our staff called Mr. Duke on December 1, 2005, and Mr. Duke stated that the company had gone from 1,400 employees to about 50 and that they were "winding down" operations. Mr. Duke also stated that they were going to start a new company with a different name and officers in January 2006. Mr. Duke stated that he was aware that the 2005 fees were due by January 30, 2006. Commission records reflect the company's AAV certificate and IXC registration owe the 2005 return forms and fees and its CLEC certificate owes the July through December 2005 return form and any applicable fee. As of February 16, 2006, the return forms and payments have not been received.

For the reasons described above, we deny KMC Telecom III LLC's request for voluntary cancellation of its AAV and CLEC certificates and IXC tariff and removal of its name from the register. However, we find it appropriate to involuntarily cancel the AAV and CLEC certificates and IXC tariff and remove the company's name from the register, effective September 22, 2005, on this Commission's own motion for failure to comply with Rules 25-24.735, 25-24.820, and 25-24.474, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes.

Since it appears KMC Telecom III LLC does not provide service in Florida and has requested cancellation of its certificates and registration, there would be no purpose in requiring the company to pay a penalty. By cancelling the company's AAV and CLEC certificates and IXC tariff, and removing its name from the register on this Commission's own motion, however, we would be able to track the company should it apply for another certificate or register with us in the future. The cancellation of the AAV and CLEC certificates, IXC tariff, and removal of its name from the register in no way diminishes the entity's obligation to pay the applicable Regulatory Assessment Fees. If this Order is not protested, the company's AAV Certificate No. 4822, CLEC Certificate No. 7093, and IXC tariff shall be cancelled, and Registration No. TJ228 removed from the register, effective September 22, 2005. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If KMC Telecom III LLC's AAV and CLEC certificates and IXC tariff are cancelled, and its name is removed from the register in accordance with this Order, the company shall immediately cease and desist providing alternative access vendor, competitive local exchange, and intrastate interexchange telecommunications services in Florida. If KMC Telecom III LLC's AAV and

CLEC certificates and IXC tariff are cancelled, and the company subsequently decides to reapply for a certificate as an alternative access vendor, competitive local exchange company, or to register as an intrastate interexchange telecommunications company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.337, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED that pursuant to Rule 25-24.735, Florida Administrative Code, KMC Telecom III LLC's AAV Certificate No. 4822 is hereby cancelled effective September 22, 2005, on this Commission's own motion for failure to pay the past due Regulatory Assessment Fee pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that pursuant to Rule 25-24.820, Florida Administrative Code, KMC Telecom III LLC's CLEC Certificate No. 7093 is hereby cancelled effective September 22, 2005, on this Commission's own motion for failure to pay the past due Regulatory Assessment Fee pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that pursuant to Rule 25-24.474, Florida Administrative Code, KMC Telecom III LLC's IXC tariff and Registration No. TJ228 is hereby cancelled and its name removed from the register effective September 22, 2005, on this Commission's own motion for failure to pay the past due Regulatory Assessment Fee pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that the cancellation of the AAV and CLEC certificates and IXC tariff, including removal of its name from the register, in no way diminishes KMC Telecom III LLC's obligation to pay the applicable Regulatory Assessment Fees. If KMC Telecom III LLC's AAV and CLEC certificates and IXC tariff are cancelled and its name removed from the register, and the company subsequently decides to reapply for a certificate as an alternative access vendor, competitive local exchange company, and to register as an intrastate interexchange telecommunications company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late payment charges. It is further

ORDERED that if KMC Telecom III LLC's AAV and CLEC certificates and IXC tariff are cancelled and its name removed from the register in accordance with this Order, the company shall immediately cease and desist providing alternative access vendor, competitive local exchange, and intrastate interexchange telecommunications services in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate

petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon receipt of the Regulatory Assessment Fees, or upon cancellation of the AAV and CLEC certificates and IXC tariff, and removal of the company's name from the register.

By ORDER of the Florida Public Service Commission this _____ day of _____, _____.

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

(S E A L)

LT/AT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

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

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

Docket No. 050641-TP
Date: February 23, 2006

Attachment A

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