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MEMORANDUM

FEBRUARY 26, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (ISLER) *ik dw*
DIVISION OF LEGAL SERVICES (PEÑA) *W ned*

RE: DOCKET NO. 971677-TP - KMC TELECOM INC. - APPLICATION FOR APPROVAL OF AN INTRACORPORATE REORGANIZATION AND RELATED PRO FORMA TRANSACTION

AGENDA: MARCH 10, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971677TP.RCM

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve KMC Telecom Inc.'s request for approval of its intracorporate reorganization into a holding company-subsidiary structure effective the date of the reorganization?

RECOMMENDATION: Yes. (Isler)

STAFF ANALYSIS: On December 31, 1997, the Commission received KMC Telecom Inc.'s application for approval of its intracorporate reorganization and related pro forma transfer transactions. KMC Telecom Inc. holds interexchange telecommunications certificate number 4792, alternative local exchange certificate number 4733, and alternative access vendor certificate number 4822.

The company's application stated that KMC Holdings, Inc. was created on September 15, 1997, which became the holding company of KMC Telecom Inc. The company stated it believed the intracorporate changes would strengthen its competitive position and improve its capacity to provide high quality telecommunications services to consumers. The reorganization does not substantially affect the company's Florida management or operations and does not change de facto control of the company. In addition, the company

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stated that because the changes were entirely intracorporate, the reorganization and related transactions would not disrupt service or cause confusion or inconvenience to Florida customers.

In addition, the company stated it did not realize it needed prior approval and requested that the Commission's Order be effective September 15, 1997, the date of the reorganization. The company stated that in the future, it will seek "all necessary Commission approvals on a timely basis."

Ordinarily, Commission Orders are prospective in nature. However, in this case, because the company did not realize it had to request prior approval and because it was cooperative with staff, we believe its request to make the effective date the same as that of the reorganization should be granted. Therefore, it is staff's recommendation that the Commission approve KMC Telecom Inc.'s request for approval of its intracorporate reorganization into a holding company-subsiary structure effective September 15, 1997.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed if no person whose substantial interests are affected timely files a protest within 21 days of the Commission's proposed agency action (Peña)

STAFF ANALYSIS: If no substantially affected person files a request for a Section 120.57 hearing within 21 days of the issuance of the Order, this docket should be closed.