

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**April 19, 2006**

**IN RE:**

**JOINT APPLICATION OF HYPERCUBE, LLC  
AND KMC DATA, LLC FOR GRANT OF THE  
AUTHORITY TO COMPLETE A SERIES OF  
TRANSACTIONS RESULTING IN THE TRANSFER  
OF CONTROL OF AN AUTHORIZED CARRIER**

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**DOCKET NO.  
05-00341**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on February 6, 2006 for consideration of the *Joint Application* filed by Hypercube, LLC (“Hypercube”) and KMC Data, LLC (“KMC Data”) (collectively the “Applicants”) seeking TRA approval for a transfer of authority to provide telecommunications services.

**The Joint Application**

KMC Data is an indirect, wholly-owned subsidiary of KMC Telecom Holdings, Inc. (“KMC Holdings”), which is owned by a diverse group of investors. KMC Holdings controls a family of companies that provide various regulated communications and other services (collectively, the “KMC Companies”). Members of the KMC Companies, including KMC Telecom III, LLC, KMC Telecom V, Inc. and KMC Data, hold (or have held in the past) authority to provide regulated services in states nationwide. Those KMC companies also hold (or have held) authority from the Federal Communications Commission (“FCC”) to provide interstate and international services.

KMC Data's operations are focused on the provision of tandem services to wireless carriers, interexchange carriers, competitive local exchange carriers and incumbent local exchange carriers. In Tennessee, KMC Data is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to authority granted by the TRA on January 29, 2002 in Docket No. 01-00705.

Hypercube is a newly formed limited liability company which is overseen by former members of the senior executive team of the KMC Companies. Hypercube was formed for the purpose of acquiring KMC Data in order to allow the continued provision of service to customers of the KMC tandem services business.

The *Joint Application*, filed on December 27, 2005, requests Authority approval to consummate a series of transactions whereby direct ownership and control of KMC Data will be transferred to Hypercube. The Applicants assert that the transaction is necessary to ensure that customers of KMC Data's existing tandem services business, to whom KMC Data will continue to provide service following the transactions, can continue to receive service in an uninterrupted manner.

On November 15, 2005, the Applicants entered into an Asset Purchase Agreement ("Agreement"), whereby Hypercube will acquire the membership interests of KMC Data in return for a \$1.6 million subordinated promissory note, along with certain other consideration including the assumption by Hypercube of certain liabilities of the KMC Companies. The *Joint Application* states that the Applicants have agreed to complete a series of transactions whereby KMC Data will become a wholly-owned subsidiary of Hypercube.

According to the *Joint Application* the proposed transactions are part of an overall plan by Hypercube to acquire the tandem services business. Recently, due to certain adverse events and financial circumstances, the KMC companies have decided to discontinue service to some customers in some areas. The Applicants maintain that following the proposed transactions, KMC Data will continue to be

financially well-qualified to provide service. In particular, KMC Data has received significant cash reserves in connection with the proposed transactions, which are now on the company's balance sheet. KMC Data will continue to hold the strong financial position it currently enjoys following the proposed transactions, including access to substantial cash reserves and accounts receivable. Those financial resources, along with the on-going revenues generated by KMC Data's operations, are expected to be entirely sufficient to sustain KMC Data's operations without the need for further funding in the foreseeable future.

The *Joint Application* states that although the proposed transactions will result in a change in the ownership of KMC Data, the transactions will not affect the assets KMC Data currently holds or adversely affect any of the customers who receive service in connection with KMC Data's on-going operations. Following the consummation of the transactions, KMC Data's customers will continue to receive service under the same rates, terms and conditions of service and continue to receive service under the KMC brand name. As a new subsidiary of Hypercube, KMC Data will continue to operate and provide services to its customers under its existing authorization from the Authority and will retain the assets used in the provisions of those services. The Applicants assert that they anticipate that KMC Data's senior management team and key technical employees will remain largely intact and continue to oversee KMC Data's operations. As a result, the transactions will be virtually transparent to KMC Data's customers in terms of the services they receive.

The Applicants maintain that this transaction serves the public interest in promoting competition in the Tennessee telecommunications market by ensuring the ability of KMC Data to remain a viable and effective competitor. The transactions will ensure that customers of the tandem services business can continue to receive service on an uninterrupted basis, and the transactions will be seamless in nature and, therefore, virtually transparent to customers.

The *Joint Application* asserts that Hypercube is well qualified to acquire ownership and control of KMC Data. Hypercube's operations are overseen by virtually the same high quality management team that currently oversees KMC Data operations. The transaction will be virtually seamless from an operational, technical, and managerial perspective. In addition, the *Joint Application* states that the transaction could be considered *pro forma* in nature because there will be continuity in the organization when viewed from a management perspective.

#### **FEBRUARY 6, 2006 AUTHORITY CONFERENCE**

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

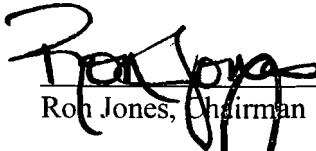
Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on February 6, 2006, the voting panel assigned to this docket found that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-113 (2004) rather than Tenn. Code ann. § 65-4-112 (2004) because the latter section applies to transactions between two public utilities, which is not true of the parties in this docket. The panel found that the transfer furthers the public interest such that, but not limited to, the fact that the transfer will not reduce the number of providers in the State. Also, according to the

parties' representations, the transfer will ensure KMC Data's ability to remain a "viable and effective competitor" and ensure that customers will receive uninterrupted service. Based on its findings and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-113 (2004), the panel voted unanimously to grant approval of the *Joint Application* contingent upon FCC approval.

**IT IS THEREFORE ORDERED THAT:**

- 1) The indirect transfer of authority of KMC Data, LLC to Hypercube, LLC as described in the *Joint Application* and discussed herein is approved contingent upon the FCC's approval of the Domestic and International Section 214 Application for the Transfer of Control of KMC Data, LLC to Hypercube, LLC.
- 2) Because this transaction is an indirect transfer of authority, KMC Data, LLC will become a direct, wholly owned subsidiary of Hypercube, LLC and will retain its certificate of public convenience and necessity.
- 3) The Applicants shall file with the Authority the FCC's approval of their Domestic and International Section 214 Application.

  
Ron Jones, Chairman

  
Pat Miller, Director

  
Sara Kyle, Director