

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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)

Case No. TM-2006-0289

**MOTION TO DISMISS APPLICATION
FOR LACK OF JURISDICTION**

COMES NOW the Staff of the Missouri Public Service Commission, by counsel, and for its motion states:

1. On January 6, 2006, Hypercube, LLC and KMC Data LLC filed a Joint Application requesting authority to transfer control of KMC Data to Hypercube. They also filed a Motion for Expedited Treatment, in which they request that the Commission rule on the application on or before February 24, 2006.

2. On January 9, 2006, the Commission directed the Staff to file, no later than January 19, 2006, a pleading notifying the Commission of the date certain when Staff anticipates filing its recommendation and memorandum regarding the application. The Staff files this motion in lieu of a recommendation and memorandum.

3. The Joint Application was filed pursuant to Section 392.300 RSMo and 4 CSR 240-3.520. Subsection 1 of Section 392.300 provides, in relevant part, that no telecommunications company shall sell, assign, lease, transfer, mortgage or otherwise dispose of the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system or franchises, or any part thereof without first having secured from the Commission an order authorizing it to do so. Subsection 2 of Section 392.300 RSMo provides, in relevant part,

that no stock corporation, domestic or foreign, shall, without the consent of the Commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state. Commission Rule 4 CSR 240-3.520 sets forth the required contents of applications to sell, assign, lease or transfer assets.

4. As paragraph 14 of the Joint Application notes, the parties do not propose the transfer of assets. Therefore, Section 392.300.1 RSMo and 4 CSR 240-3.520 do not apply.

5. The Joint Application proposes to transfer all of the outstanding membership interests of KMC Data LLC to Hypercube, LLC. KMC Data LLC is a limited liability company formed under the laws of the State of Delaware and is a certificated telecommunications company in Missouri.

6. In Case No. TM-2000-524, *In the Matter of NEXTLINK Missouri, Inc., and NEXTLINK Long Distance Services, Inc.*, the Commission dismissed for lack of jurisdiction under Section 392.300.2 RSMo an application seeking approval of the stock of two Washington corporations certificated in Missouri as telecommunications companies. Similarly, in Case No. XM-2005-0219, *In the Matter of the Application of SBC Long Distance, Inc., and SBC Telecom, Inc.*, the Commission found that it had no jurisdiction to approve or disapprove the transfer of the stock of a Delaware corporation certificated in Missouri as a telecommunications company.

7. Additionally, the orders granting KMC Data interexchange authority (Case No. TA-2001-595) and basic local authority (Case No. TA-2001-594) both waived the application of Section 392.300.2 to KMC Data.

WHEREFORE, the Commission moves the Commission to dismiss the Joint Application for lack of jurisdiction.

Respectfully submitted,

/s/ William K. Haas

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 12th day of January 2006.

/s/ William K. Haas

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