

**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**

**ORDER DIRECTING FILING**

Issue Date: January 26, 2006

Effective Date: January 26, 2006

This order directs the parties to supplement their pleadings.

On January 6, 2006, Hypercube, LLC and KMC Data LLC filed an Application. The applicants want authority to transfer control of KMC Data from KMC Telecom Holdings, Inc., to Hypercube.

Staff filed a Motion to Dismiss Application for Lack of Jurisdiction. In that motion, Staff alleges that neither Section 392.300.1 nor 392.300.2 RSMo gives the Commission jurisdiction over this transaction.

The Commission notes that Section 392.300.1 gives the Commission authority over sales or mergers of telecommunications companies “by any means, direct or indirect.” The Commission will direct the parties to explain how this proposed transaction does not fall within that portion of Section 392.300.1.

The Commission is mindful of the decisions Staff cites in its motion to dismiss, and notes that it has dismissed similar applications when the transfers were simply two

unregulated companies merging.<sup>1</sup> The Commission will order the parties to further explain how the proposed transaction is similar to ones in those cases. Also, the Commission is unsure what certificates of service authority, if any, KMC Data's parent companies have, and is therefore unsure if the Commission regulates those companies. The Commission will order the parties to list those certificates, if any.

**IT IS THEREFORE ORDERED:**

1. That the parties shall file pleadings as described above no later than February 6, 2006.
2. That this order shall become effective on January 26, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Ronald D. Pridgin, Regulatory  
Law Judge, by delegation of authority  
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 26<sup>th</sup> day of January, 2006.

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<sup>1</sup> In addition to the cases Staff cites in its Motion to Dismiss, see also *In re SBC Communications*, Commission Case No. TM-99-76, Report and Order (October 8, 1998), 7 Mo. PSC 3d 528.