

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

In the Matter of the Application of Hypercube Telecom,)
LLC f/k/a KMC Data, LLC for Re-Establishment and)
Expansion of its Certificate of Service Authority to Provide)
Basic Local Exchange Telecommunications Services and)
Re-Establishment of its Certificates to Provide Non-Switched) **File No. TA-2012-0048**
Local Exchange and Interexchange Telecommunications) **Tariff No. YC-2012-0059**
Service in the State of Missouri and to Classify Such)
Services and the Company as Competitive)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation, states as follows:

1. On August 11, 2011, Hypercube Telecom, LLC f/k/a KMC Data, LLC (“the Company”), applied for certificate of service authority to provide basic local exchange, non-switched local exchange and interexchange telecommunications services and authority and for competitive classification. A tariff was filed with the Application, and assigned the above-referenced tracking number.

2. The Company has twice extended the effective date of its tariff, in order to allow the Staff time to fully understand the Company’s proposed method of providing telecommunications services in Missouri, and to make such changes in the language of the proposed tariff sheets to clarify that the Company’s proposed activities comply with Missouri law.

3. In the attached Memorandum, the Staff recommends that the Missouri Public Service Commission (Commission) grant the Company’s request to reinstate and expand its basic local, non-switched local and interexchange telecommunications service authority.

The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. §§ 392.430 and 392.440 RSMo 2000.

4. Staff also recommends that the Commission classify the Company's services as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation, and that such lesser regulation is consistent with the protection of ratepayers and promotes public interest. §392.361.4. RSMo Supp. 2009. A majority of the services a competitive company provides must be classified as competitive. §392.361.3. RSMo Supp. 2009.

5. The Staff further recommends that the Commission state in its order that, pursuant to § 392.410 RSMo 2000, the authority conferred by the certificate of service authority shall be null and void unless it is exercised within one year of its issuance.

6. The Company is not delinquent in filing an annual report, paying the PSC assessment, MoUSF, and Relay Missouri.

7. The Staff recommends that the application be granted with the following conditions:

- a. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370 RSMo.
- b. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

8. In the attached Memorandum, the Staff opines that the tariff complies with applicable law and will comport with the Company's certificate of service authority. Staff specifically notes that the changes the Company has made to its proposed tariff are sufficient to overcome AT&T's objections, and recommends that the Commission either approve the tariff or allow it to take effect by operation of law.

WHEREFORE, Staff recommends that the Commission grant Hypercube Telecom, LLC f/k/a KMC Data, LLC's Application to reinstate and expand its basic local, non-switched local and interexchange telecommunications service authority, classify the company and its services in those exchanges as competitive, and either approve the Company's proposed tariff or allow it to take effect by operation of law.

Respectfully submitted,



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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 17th day of October, 2011.



MEMORANDUM

To: Missouri Public Service Commission Official Case File
Tariff File No. YC-2012-0059
Case No. TA-2012-0048

From: William Voight
Supervisor, Rates and Tariffs
Telecommunications Department

Subject: Staff's Recommendation to:

- Deny AT&T Missouri's Motion to Suspend.
- Approve Hypercube Telecom, LLC's P.S.C. Mo. No. 1 Switched Access Tariff.
- Approve a Name Change from KMC Data LLC to Hypercube Telecom, LLC.
- Grant Hypercube Additional Authority to provide Service in all CenturyTel of Missouri and Windstream Missouri Service Areas.

Date: October 13, 2011

Synopsis: This recommendation sets forth the Telecommunications Department Staff's (Staff's) support and recommendation to approve the Application and Tariff of Hypercube Telecom, LLC (Hypercube).

Background: On August 11, 2011 Hypercube Telecom, LLC (Hypercube) submitted for Commission approval a proposed P.S.C. Mo. No. 1 Switched Access Tariff. Hypercube also asked the Commission to approve a name change and for authority to operate in additional service areas of Missouri. Hypercube was originally certificated to provide basic telephone service on June 16, 2001 as KMC Data L.L.C. in Case Number TA-2011-594.

On October 3rd the Staff was ordered to file a recommendation no later than October 17th. Hypercube's proposed tariff bears an operation of law effective date of October 24th.

On September 9th, Southwestern Bell Telephone Company d/b/a AT&T Missouri (AT&T) filed a Motion requesting the Commission suspend Hypercube's tariff proposal. AT&T expressed concern that Hypercube's proposed tariff permits imposition of certain rate elements which may not be provided by Hypercube (Tariff Section 4.4.2 & 4.4.3). AT&T also states that Hypercube would be permitted to render service to other carriers without consent (Tariff Section 2.1.3.B).

Discussion: On October 13th, Hypercube submitted substitute tariff sheets which overcome initial concerns raised by the Telecommunications Department Staff (Staff). Hypercube's substitutions address the following areas of Staff's initial concerns:

- Hypercube has filed and made a part of its tariff certain call-flow block diagrams, which permit a clear and unambiguous interpretation of charges to interexchange carriers, such as AT&T (Section 3.1.1).
- Hypercube has provided thorough and complete descriptions of its service, including the manner of provisioning service (Section 3.2). In particular, Hypercube details the application of its rate categories: Carrier Common Line, Local Switching and the Local Transport rate elements (Section 4.2).
- Hypercube has made tariff assurances that preclude the possibility of double billing for access minutes of use (Section 4.2.1.A).
- Hypercube has inserted language into its proposed tariff that acknowledges adherence to Meet Point Billing arrangements of the Multiple Exchange Carrier Ordering and Billing (MECAB) guidelines (Section 2.9).
- With regard to Hypercube's proposed rates: rates proposed to be charged in AT&T service areas are no higher than the rates AT&T itself charges to its interexchange carrier customers.
- Hypercube's substitute tariff sheets have removed all references to Individual Case Basis a/k/a "Customer-specific" or "off-tariff" pricing that Staff found objectionable.

Recommendation: The Staff has examined Hypercube's tariff sheet substitutions and the entirety of its proposed switched access tariff, and the Staff recommends approval. Staff is of the opinion that Hypercube's proposed changes are sufficient to overcome AT&T's objections. The Staff is also mindful that Section 392.550.2 RSMo clearly and unambiguously requires remittance of switched access charges for Internet Protocol telephone service to the same extent as legacy telecommunications networks. In spite of AT&T's objections, the Staff finds Hypercube's proposed access tariff to be no different from similar tariffs of other local exchange carriers.

For the reasons set forth in this memorandum, the Staff recommends approval of Hypercube's proposed tariff, P.S.C. Mo. No. 1. The specific tariff sheets recommended for approval are: Original Title Page to Original Tariff Page 52. Alternatively, Staff recommends the Commission let the tariff go into effect by operation of law on October 24th. Staff further recommends rejection of AT&T's Motion to Suspend.

Lastly, the Staff wishes to note that Hypercube is current on its required report filings with the Commission, including its 2010 annual report. The Staff is unaware of any other matter that affects, or that would be affected by, this matter.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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Case No. TA-2012-0048

AFFIDAVIT OF William Voight

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying Staff recommendation, and that the facts therein are true and correct to the best of his knowledge and belief.

WILLIAM VOIGHT Bill Voight

Subscribed and affirmed before me this 14th day of October 2011.

SUSAN L. SUNDERMEYER
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: October 03, 2014
Commission Number: 10942086

Susan L. Sundermeyer
NOTARY PUBLIC