

**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)	<u>Case No. TM-2006-0289</u>
of Transactions Resulting in the Transfer of Control)	
of an Authorized Carrier)	

Dissenting Opinion of Commissioner Steve Gaw

This Commissioner dissents from this decision not in objection to the transfer but rather because once again this Commission is going out of its way to find it has no jurisdiction over this type of transfer. It relies on Staff's arguments that §392.300.1 RSMo 2005 does not apply because the case does not involve a transfer of assets. However, §392.300.1 only applies if the transferor is a certified telecommunications company in Missouri. Thus for this reason, in this case, §392.300.1 probably does not require PSC scrutiny.

According to staff, review of this transfer under §392.300.2¹ was waived as to this company. Waiver of §392.300.2, assuming it can be waived, does not render this Commission with no jurisdiction. The waiver arguably means that the Commission has previously ordered that such a transfer be prospectively approved. Yet the Commission opts for a declaration of no jurisdiction.

The Order does not stop with this rationale even though it has already declared that the two statutory provisions which might require review do not apply. The Order instead continues stating that the Commission does not have

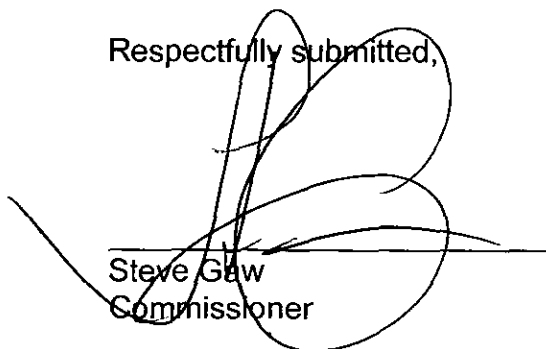
¹ Transfers in violation of §§392.300.1 or 392.300.2 are void.

jurisdiction over a transfer of a regulated telecommunications carrier simply because the company is incorporated under the laws of a state other than Missouri. This Commission gains jurisdiction over companies under its oversight because of the granting of a company's request for permission to do regulated business in this state. As such, the Commission should clearly gain jurisdiction over all companies authorized by the Commission to conduct business regardless of the state of incorporation. This Commission's Order discriminates against corporations choosing to incorporate in Missouri – creating a disincentive to do so. This is indeed a curious public policy for this Commission to espouse. While there is a court case in Missouri involving rail carriers distinguishing oversight of corporations based upon the state of incorporation there is no court case that interprets the exact language in §392.300 or that examines the overall scope of Commission jurisdiction under this section in light of the authority granted it under Chapters 392 and 386. The regulation of telecommunications carriers by the state when the statute was enacted was arguably broader than the oversight of rail carriers.

This matter should have been resolved procuring the Commission's ability to exercise its duty to protect consumers when necessary. That may not be an issue in this case but it could easily be an issue with a transfer involving an incumbent telecommunications carrier. This Commission has experience with the negative consequences of unscrutinized ownership of an incumbent telecommunication company. In Cass County Telephone Company, TR-2005-0357, this Commission discovered that the significant ownership and control was held by elements tied to organized crime. The Company was used to launder money and illegally gain millions of dollars from the Universal Service Fund. In light of that lesson this

Commission should be more interested in developing precedent that preserves its ability to protect consumers from a repeat performance.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right. The signature is written over a horizontal line.

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 8th day of March, 2006.