

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

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|---|---|---------------------------|
| 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 |) | File No. TA-2012-0048 |
| and Re-Establishment of its Certificates to Provide |) | Tracking No. YC-2012-0059 |
| Non-Switched Local Exchange and |) | |
| Interexchange Telecommunications Service in the |) | |
| State of Missouri and to Classify Such Services |) | |
| and the Company As Competitive |) | |

**ORDER GRANTING APPLICATION
AND APPROVING TARIFF**

Issue Date: October 19, 2011

Effective Date: October 19, 2011

The Missouri Public Service Commission is granting the application. The application seeks a certificate of service authority to provide telecommunications services (non-switched local, basic local, and interexchange), competitive classification, waiver of certain provisions of law, and recognition of a name change. The Commission is also approving the tariff.

I. Procedure

Applicant is a Delaware limited liability company with its principal office at 3200 West Pleasant Run Road. Suite 300, Lancaster, TX 75146. Applicant filed the application on August 11¹ with a tariff. On August 15, the Commission issued notice of the application setting a deadline for applications to intervene at September 14.

¹ All dates are in 2011.

The Commission received no application for intervention. The tariff was the subject of a motion to suspend filed² by ATT³ but, after the filing of substitute tariff sheets, ATT withdrew the motion to suspend.⁴ On the same date, Staff filed its recommendation in favor of granting the application and approving tariff, with a supplementary recommendation filed the next day.

No law requires a hearing on the unopposed application,⁵ so this action is not a contested case,⁶ and the Commission need not separately state its findings of fact.

II. Certification

Applicant asks the Commission to certify applicant to provide non-switched local, basic local, and interexchange telecommunications services. On review of the filings, the Commission independently finds and concludes that the public interest supports issuing the certificates⁷ and that the tariff supports safe and adequate service at just and reasonable rates. Therefore, the Commission will issue the certificates of authority and will approve the tariff.

III. Competitive Classification

Applicant asks the Commission to classify applicant and its services as competitive. The Commission finds that competition is in the public interest, and that the services that

² On September 29.

³ "ATT" consists of AT&T Communications of the Southwest, Inc. and Southwestern Bell Telephone Company d/b/a AT&T Missouri.

⁴ By letter dated October 17.

⁵ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁶ Section 536.010(4), RSMo Supp. 2010.

⁷ Sections 392.430, RSMo 2000.

applicant proposes to offer are competitive.⁸ Therefore, the Commission will classify applicant and its services as competitive.

IV. Waiver.

Applicant asks the Commission to waive the statutes and regulations listed in the application. On Staff's recommendation, the Commission finds and concludes that waiving the statutes and regulations set out in the ordered paragraph below is not detrimental to the public interest.⁹ Therefore, the Commission will waive those provisions of law.

V. Name Change.

Applicant asks the Commission to recognize its change of name and the Commission will grant that request.

VI. Other Matters

The Commission reminds the applicant that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the obligation to:

- A) File an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the applicant liable to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
- B) Pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.

⁸ Sections 392.361.3 and .4, RSMo Supp. 2010.

⁹ Sections 392.245.5(8), 392.361, and 392.420, RSMo Supp. 2010.

C) Comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply, it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

D) Keep the Commission informed of its current address and telephone number.

Also, the applicant is reminded that, if it is any entity other than an individual, non-attorneys may not represent the applicant before the Commission, and the applicant must be represented by an attorney licensed to practice law in Missouri. In addition, the applicant is reminded that Section 392.410.5, RSMo Supp. 2010, renders the company's certificate of service authority null and void one year from the date of this order unless it has exercised its authority under that certificate.

THE COMMISSION ORDERS THAT:

1. Applicant is granted a certificate of service authority to provide:

- non-switched local,
- basic local, and
- interexchange telecommunications services

in the state of Missouri, subject to all applicable statutes and Commission regulations except as specified in this order, in the exchanges listed in the application.

2. Paragraph 1 is conditioned as follows:

- 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 §§ 392.361.6 and 392.370 RSMo Supp. 2010.

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.

3. Applicant is classified as a competitive telecommunications company and applicant's services are classified as competitive.

4. The following statutes and Commission regulations shall be waived:

Statutes (Sections, RSMo)

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|-------------------------|--|
| Section 392.210.2, RSMo | uniform system of accounts |
| Section 392.240.1, RSMo | rates-rentals-service & physical connections |
| Section 392.270, RSMo | valuation of property (ratemaking) |
| Section 392.280, RSMo | depreciation accounts |
| Section 392.290, RSMo | issuance of securities |
| Section 392.300, RSMo | transfer of property and stock |
| Section 392.310, RSMo | stock and debt issuance |
| Section 392.320, RSMo | stock dividend payment |
| Section 392.330, RSMo | issuance of securities, debts and notes |
| Section 392.340, RSMo | reorganization(s) |

Regulations

| | |
|--------------------------------------|----------------------------|
| 4 CSR 240-3.550(4) and (5)(A) | Records and Reports |
| 4 CSR 240-10.020 | Depreciation fund income |
| 4 CSR 240-30.040 | Uniform system of accounts |
| 4 CSR 240-32.060 | Engineering, Maintenance |
| 4 CSR 240-32.070 | Quality of Service |
| 4 CSR 240-32.080 | Service Levels |
| 4 CSR 240-33.040(1)-(3) and (5)-(10) | Billing and Payment |
| 4 CSR 240-33.045 | Charge on Bills |
| 4 CSR 240-33.080(1) | Billing |
| 4 CSR 240-33.130(1), (4) and (5) | Operator Service. |

5. Tariff No. YC-2012-0059 is approved and the specific tariff sheets approved are:

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6. The change of name from KMC Data, LLC, to Hypercube Telecom, LLC, is recognized.

7. This order shall be effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 19th day of October, 2011.