

Before the
MISSOURI PUBLIC SERVICE COMMISSION

FILED⁴

JAN 06 2006

Missouri Public
Service Commission

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. _____

JOINT APPLICATION

Hypercube, LLC (“Hypercube”) and KMC Data LLC (“KMC Data”) (together “Applicants”), through their undersigned counsel and pursuant to 392.300 RSMo. and 4 CSR 240-3.520 hereby request that the Commission grant such authority as may be necessary or required to enable Applicants to consummate a series of transactions whereby direct ownership and control of KMC Data will be transferred to Hypercube. In particular, Applicants have agreed to complete a series of transactions whereby Hypercube will acquire (among other things) all of the outstanding membership interests of KMC Data, a certificated carrier authorized to provide service in Missouri. Upon completion of these proposed transactions, KMC Data will be a direct, wholly owned subsidiary of Hypercube.

Applicants respectfully request that the Commission approve this Application expeditiously in order to allow Applicants to consummate the proposed transactions as soon as possible, no later than February 24, 2006.

In support of this Application, Applicants state as follows:

I. Description of Applicants

A. KMC Data LLC (“KMC Data”)

1. KMC Data is a limited liability company formed under the laws of the State of Delaware and is registered in Missouri as an active foreign limited liability company. A copy of KMC Data’s certificate of good standing is attached hereto as Exhibit A. KMC Data is currently part of the KMC family of companies which has its principal place of business located at 1545 Route 206, Bedminster, NJ 07921. KMC Data is an indirect, wholly owned subsidiary of KMC Telecom Holdings, Inc. (“KMC Holdings”), which is owned by a diverse group of investors. KMC Holdings controls a family of companies that provide various regulated communications and other services (collectively, the “KMC Companies”). Members of the KMC family of companies, including KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data, hold (or have held in the past) authority to provide regulated services in states nationwide. Those KMC companies also hold (or have held) authority from the Federal Communications Commission to provide interstate and international services.¹

2. KMC’s Data operations are focused on the provision of tandem services to wireless carriers, interexchange carriers, competitive local exchange carriers and incumbent local exchange carriers. In today’s competitive telecommunications marketplace network integration and interconnection is critical to the seamless flow of telecommunication services. KMC Data’s primary focus is on the provision of additional competitive offerings designed to broaden and

¹ Until recently, for example, KMC Telecom III LLC (“KMC III”) was a provider of competitive local exchange services in a number of markets across the United States. KMC III recently completed a transaction whereby those competitive local exchange operations were sold to CenturyTel and Telcove. The proposed transactions described herein are separate from and entirely unrelated to those transactions.

enhance the ability of providers to interconnect their respective networks and allow carriers to more effectively and efficiently exchange traffic with one another. Historically, the incumbent carriers, through their market presence and ubiquitous in-region networks have been the default provider of choice for interconnection. However, ILEC tandem exhaust and associated complications have caused telecommunication providers to seek other providers for tandem services. Accordingly, KMC Data's service offerings include the provision of a competitive alternative to ILEC tandem services. KMC Data's tandem services can be used as a primary route for telecommunications traffic or provide a redundant route. In addition to these services, KMC Data expects and intends to expand its services more broadly as market conditions and opportunities allow.

3. In Missouri, KMC Data is authorized to provide (1) intrastate interexchange telecommunications services and nonswitched local exchange service, pursuant to authority granted by the Commission in Case No. TA-2001-595, on June 15, 2001 and, (2) resold and facilities-based local telecommunications services, pursuant to authority granted by the Commission in Case No. TA-2001-594, on June 16, 2001. Further information concerning KMC Data's legal qualifications to provide service was submitted with its applications for certification with the Commission and is, therefore, a matter of public record. Applicants respectfully request that the Commission take official notice of that information and incorporate it herein by reference. Although KMC Data will be overseen by a new Board of Managers, as described below, the KMC Data senior management team will remain largely intact and, as a result, the management and technical capabilities of KMC Data will be substantially unaffected by the proposed transactions. KMC Data will remain well qualified to provide service in Missouri following the proposed transaction.

B. Hypercube, LLC (“Hypercube”)

4. Hypercube is a limited liability company formed under the laws of the State of Delaware.² Hypercube’s principal place of business is located at 1545 Route 206, Bedminster, NJ 07921. Hypercube is a newly formed entity which is overseen by former members of the senior executive team of the KMC Companies. Hypercube was formed for the purpose of acquiring KMC Data in order to allow the continued provision of service to customers of the KMC tandem services business.

5. Hypercube’s ownership includes former owners of KMC Telecom Holdings, Inc.³ Specifically, most of the outstanding shares of Hypercube are owned by Nassau Capital LLC, Annex Holdings I LP, and Kamine Credit Corporation, entities which each separately held shares equating, in the aggregate, to a minority ownership of KMC Holdings, and thus KMC Data. Hypercube therefore shares continuity of ownership with KMC Data.

6. Hypercube is well qualified to acquire ownership and control of KMC Data. With respect to managerial and technical capabilities, Hypercube’s operations are overseen by virtually the same high quality management team that currently oversees KMC Data’s operations. That management team includes core management team members of KMC Data:

Ronald R. Beaumont Chief Executive Officer
Robert M. Hellauer Chief Financial Officer

² Commission rule 4 CSR 240-2.060 (C) requires an applicant that is a foreign corporation to attach a certificate from the Missouri Secretary of State’s office that the applicant is authorized to do business in the State of Missouri. Hypercube and joint applicant KMC respectfully request that the Commission waive this requirement pursuant to 4 CSR 240. 2.015. Hypercube has no intention of engaging in business in the State of Missouri and has been formed, as explained in this application, for the singular and distinct purpose of acquiring the memberships, and hence control, of KMC. The nature of Hypercube’s holdings will not require it to generally engage in any business in the state of Missouri, and its joint application here is an isolated transaction. The Applicants submit that good cause is present for the waiver.

³ Hypercube also expects to provide opportunities for certain members of its management team to participate in the ownership of Hypercube. While management’s aggregate ownership is not expected to exceed twenty percent in aggregate, it is possible that Mr. Ronald R. Beaumont’s ownership interest could exceed ten percent.

Doug Davis
James Mertz

Chief Technology Officer
Vice President – Government Affairs

Given that these management team members have close personal familiarity with the operations of KMC Data, the Hypercube management team is uniquely qualified to oversee the continuing operations of KMC Data. Indeed, given that this knowledge will be directly transferable to Hypercube's operations as it runs the KMC Data business following completion of the transaction, the transaction will be virtually seamless from an operational, technical and managerial perspective. As a result, in a sense, this transaction could be considered *pro forma* in nature because there will be continuity in the organization when viewed from a management perspective.

7. In addition to their work with KMC Data, these personnel also have collectively many years of managerial and technical experience from such companies as AT&T/Lucent, WorldCom, MFS, and Allegiance. The Hypercube management team, therefore, not only has extensive experience in the telecommunications industry in general but also extensive specific experience in the operations of KMC Data and the KMC companies. Further information on the Hypercube/KMC Data management team is provided in Exhibit B.

8. Following the proposed transactions, KMC Data will continue to be well financially qualified to provide service in Missouri. In particular, following the proposed transaction, KMC Data will continue to hold the strong financial position it currently enjoys, including access to substantial cash reserves and accounts receivable. Based on the Company's current business model, that financing, along with the on-going revenues generated by KMC Data's operations are expected to be entirely sufficient to sustain KMC Data's operations without the need for further funding for the foreseeable future.

II. Contact Information

9. Questions or inquiries concerning this Application may be directed to:

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and:

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III. Description of the Transactions

10. Applicants have agreed to complete a series of transactions whereby KMC Data will become a wholly owned direct subsidiary of Hypercube, a recently formed limited liability company that includes the senior management team of KMC Data. In connection with the proposed transactions, Applicants propose that Hypercube will directly acquire all of the

outstanding membership interests of KMC Data. The change in ownership will be structured as a direct acquisition by Hypercube of the KMC Data membership interests. An illustrative chart describing the proposed transactions is provided in Exhibit C.

11. In order to consummate the proposed transactions, Applicants have entered into an Asset Purchase Agreement (“Agreement”) dated as of November 15, 2005. Under the terms of the Agreement, Hypercube will acquire the membership interests of KMC Data in return for a \$1.6 million subordinated promissory note, along with certain other consideration including the assumption by Hypercube of certain liabilities of the KMC companies (including of KMC Data).

12. The proposed transactions are part of an overall plan by Applicants to acquire the tandem services business. Recently, due to certain adverse events and financial circumstances, the KMC companies have decided to discontinue service to some customers in some areas. Expeditious processing of this Application is therefore critical to ensure that customers of KMC’s existing tandem services business (to which KMC Data will provide service on a continuing basis following the transactions) can continue to receive service in an uninterrupted manner. Applicants therefore respectfully request that the Commission issue approval of the proposed transactions as rapidly as possible to ensure that any service interruption can be avoided.

13. Following the proposed transactions, Applicants will continue to be well financially qualified to provide service. In particular, in connection with the proposed transaction, KMC Data has received significant cash reserves which are now on the company’s balance sheet. KMC Data will continue to hold the strong financial position it currently enjoys following the proposed transactions. Those financial resources, along with the on-going revenues generated by KMC Data’s operations are expected to be entirely sufficient to sustain KMC Data’s operations without the need for further funding for the foreseeable future. Given that Applicants expect near

immediate operational profitability, Applicants respectfully submit that such financing is more than sufficient to ensure the financial viability of Hypercube and KMC Data.

14. Although the proposed transactions will result in a change in the ownership of KMC Data, the transactions will not affect the assets KMC Data currently holds or adversely affect any of the customers who receive service in connection with KMC Data's on-going operations. Immediately following the consummation of the transactions, those customers will continue to receive service under the same rates, terms and conditions of service and continue to receive service under the KMC brand name. As a new subsidiary of Hypercube, KMC Data will continue to operate and provide services to its customers and will retain the assets used in the provisions of those services. Applicants anticipate that KMC Data's senior management team and key technical employees of KMC Data will remain largely intact and will continue to oversee KMC Data's operations. As a result, the transactions will be virtually transparent to KMC Data's customers in terms of the services they receive.

15. Pursuant to the requirements of 4 CSR 240-2.060, Applicants state that they do not have any pending actions or unsatisfied final judgments or decisions against them in any state or federal agency or court which involve customer service or rates, which action, judgment or decision occurred within the last three (3) years. Also, Applicants have no annual report or assessment fees that are overdue. In addition, Applicants do not anticipate that the proposed transaction will have any impact on tax revenues of any political subdivision in which structures, facilities or equipment of the Applicants are located.

IV. Public Interest Considerations

16. Applicants respectfully submit that the proposed transactions serve the public interest. In particular, Applicants submit that: (1) the transactions will increase competition in the

Missouri telecommunications market by ensuring the ability of KMC Data to remain a viable and effective competitor; (2) the transactions will ensure that customers of the tandem services business can continue to receive service on an uninterrupted basis; and, (3) that the transactions will be seamless in nature and therefore virtually transparent to those customers.

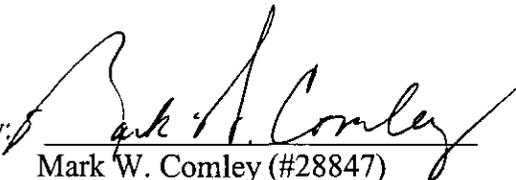
17. The proposed transactions described above will serve the public interest by ensuring the continued viability of KMC Data. In particular, as described above, the proposed transactions will establish KMC Data as financially stable stand-alone provider with a viable established business model. KMC Data will therefore be well positioned to operate and provide service to its tandem services customers and potentially expand its operations consistent with market opportunities. Given that KMC Data will continue to be overseen by the same highly qualified management team that currently oversees its operations, the proposed transactions will result in a KMC Data that is highly financially, technically and managerially qualified to provide service.

18. At the same time, the proposed changes in ownership of KMC Data will not inconvenience, confuse or otherwise harm customers. The KMC Data management team will remain in place and KMC Data is not changing its name. Furthermore, immediately following the proposed transactions, KMC Data customers will continue to receive service under the same rates, terms and conditions of service as those which customers currently receive. The proposed transactions therefore will be virtually transparent to customers in terms of the services they receive. In sum, the proposed transactions are expected to enhance the ability of KMC Data, to provide high-quality telecommunications services in Missouri which should invigorate competition and thereby benefit consumers of telecommunications services.

V. Conclusion

19. For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. Accordingly, Applicants respectfully request expedited treatment to permit Applicants to consummate the proposed transactions on or prior to February 24, 2006.

Respectfully submitted,

By: 

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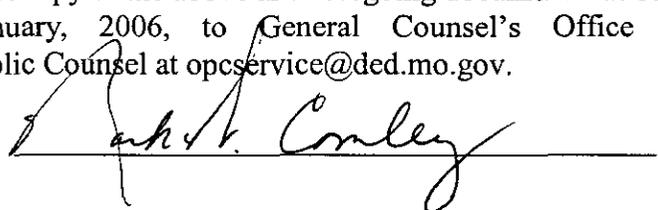
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COUNSEL FOR APPLICANTS

Dated: January 6, 2006

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 6th day of January, 2006, to General Counsel's Office at gencounsel@psc.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.



LIST OF EXHIBITS

- Exhibit A - Certificate of Good Standing
- Exhibit B - Management Biographies
- Exhibit C - Illustrative Chart
- Verifications

Exhibit A

Certificate of Good Standing

STATE OF MISSOURI



Robin Carnahan
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING

ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records
my office and in my care and custody reveal that

KMC DATA LLC

ing in Missouri the name

KMC DATA LLC
FL0047355

DELAWARE entity was created under the laws of this State on the 2nd day of February,
01, and is in good standing, having fully complied with all requirements of this office.

TESTIMONY WHEREOF, I have set my
and and imprinted the GREAT SEAL of the
ate of Missouri, on this, the 30th day of
ecember, 2005

Robin Carnahan

Secretary of State

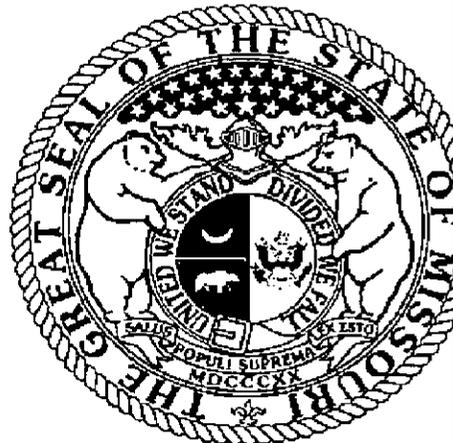


Exhibit B

Management Biographies

HYPERCUBE MANAGEMENT BIOGRAPHIES

Ronald R. Beaumont, Chief Executive Officer

Mr. Beaumont has over thirty-five years of communications industry experience. Most recently he served as Chief Executive Officer of KMC Telecom Solutions, LLC (March 2002-November 2005) where he led activity to define and launch a new business venture within the company to utilize existing data infrastructure to address the data marketplace specifically related to dial Internet access, carrier-to-carrier tandem functionality and voice over IP origination and termination. Mr. Beaumont also founded and was Chief Executive Officer (October 2002-March 2005) of Beaumont Key Services, LLC ("BKS"), a company that provides telecommunication industry consulting services to domestic and international companies and governments on telecommunications equipment, products and services. Specifically, BKS provides services to improve and optimize company internal operations and business performance as well domestic and international sales and marketing support in the commercial and federal government sectors.

Prior to joining KMC Telecom Solutions, LLC and forming BKS, Mr. Beaumont was with WorldCom for over 14 years. As Chief Operating Officer of WorldCom, Inc (May 2002-October 2002) and Chief Operating Officer of WorldCom Group (January 2000-April 2002), he played an integral role in building WorldCom's high-capacity broadband network which spans 47,000 U.S. domestic long-distance miles, 9,000 U.S. domestic local miles in more than 100 metropolitan areas, 9,000 local and long-distance miles in Europe and capacity on numerous undersea cables. Additionally, he has spearheaded WorldCom's network development throughout the Pacific Rim in major financial centers. Previously, he served as the president and CEO of WorldCom's Operations and Technology unit (January 1997-December 1999), leading a worldwide organization comprised of more than 30,000 employees dedicated to the technology, planning, engineering, operations and customer service needs of the Company.

Mr. Beaumont also served as president and chief executive officer of MFS North America, Inc.; president and chief executive officer of MFS Telecom; and president of MFS' Southern Division. He has also served as executive vice-president of Institutional Communications Corporation in Washington, D.C. - later acquired by MFS-and vice president of CONTEL Corporation's Government Systems Divisions and International Systems Integration subsidiary.

Mr. Beaumont earned a bachelor's degree in Electrical Engineering from Lamar University in Beaumont, Texas and a master's degree in Electrical Engineering from Stanford University in Palo Alto, California.

Robert M. Hellauer, Chief Financial Officer

Mr. Hellauer has over twenty-five years management experience with Fortune 200 companies in the telecommunications, consumer appliance, and pharmaceutical industries. Most recently he served as KMC Telecom's Senior Vice President for new business Development (January 2002-June 2004). In this role he spearheaded the financial support associated with establishing two new business units: Wholesale Voice and Wireless Transport Services. He also played a key role in reducing KMC's leasehold liabilities as part of an overall corporate restructure in 2002. He was previously the CFO of an affiliated company, KNT Network Technologies LLC, in

Bedminster, New Jersey (August 2000-January 2002). In that capacity, he created a small team of highly competent professionals who led KNT's financial start-up. With this team, he established the traditional finance functions (controller, tax, treasury, planning, analysis, etc.) and rapidly developed and deployed financial processes, controls and systems for a \$100m+ construction management company, which included:

- an economic model as the basis for all budgets and forecasts
- a ledger of record (LOR) and all subsidiary ledgers on the Great Plains ERP software
- an ASP environment for the financial and project management systems
- maintenance of commercial bank relationships
- monthly, quarterly and annual financial results
- daily cash management monitoring
- the acquisition of a subsidiary
- the shutdown and sale of a subsidiary
- establishing credit lines with critical vendors
- centralizing subsidiary financial systems and processes (including payroll) into the ASP and ADP environments, respectively.
- a project accounting and time reporting process that captured, recorded and reported critical and timely information to the management team.
- Industry and competitor monitoring and analysis

Prior to joining KNT in 2000, he served as Internal Audit Director for Lucent Technologies in Morristown, New Jersey (January 1995-July 2000), where he specialized in financial and operational audits, established a COSO-based audit approach, and was team leader for the development of facilitated Control Self Assessment across Lucent. As International Controller for AT&T from 1988 to 1994 he ran the accounting operations of 82 subsidiaries across the globe as well as providing AT&T's senior management with accurate and timely financial statements on a global, regional, Country and Business Unit basis. From 1980 to 1983 he served as Vice President of Finance for General Signal/Regina in Rahway, NJ. From 1973 to 1980 he held a variety of cost, marketing and financial accounting positions with Johnson & Johnson.

Mr. Hellauer received his Bachelor of Science and Master of Business Administration degrees from Wharton School, University of Pennsylvania. He is a member of The Institute of Internal Auditors and is active in the North New Jersey chapter. He is a distinguished faculty member of The IIA.

Doug Davis, Chief Technology Officer

Mr. Davis has over twenty two years of technical, business operations and management experience in hyper-growth companies. Mr. Davis's career in the industry began at Radio Shack in the early 80s where he worked in engineering, support, operations and product development roles while pursuing his Electrical Engineering Degree. Lawnet (predecessor of WestLaw) made use of his talents then, where he shaped their image processing, database and data storage systems. This led him to Logic Process Corporation where he worked engineering for several contracts with Western Electric for SvR4 Unix protocol development, including several TCP/IP and SS7 projects. Mr. Davis left Logic Process in 1989 to become the Director of Computer Operations for Southern Methodist University where he oversaw operations, taught, and helped

develop the executive technical education programs while pursuing a PhD in Operations Research.

In 1996 Mr. Davis help to start Internet America (NASDAQ GEEK)--a large regional ISP. Mr. Davis was Chief Technical Officer of Internet America and its Chief Operating Officer until he left Internet America in 1999 to help start Digital Convergence. Digital Convergence is best known for their consumer product, the "Cue Cat" which is based on several patents, which Mr. Davis authored while at SMU. He left Digital Convergence in 2000 when the company closed its US operations and moved solely to Japan. He spent the majority of that year consulting for various telecommunication companies and law enforcement organizations on issues of integrations and security. Mr. Davis came to Allegiance Telecom in January 2001. His initial tasks were integration of the IBI assets (and the other acquired entities of ALGX), including everything from customer support to operations of the Allegiance Tier 1 Internet Backbone. In the process of this effort, the NOCs and Operations groups were integrated across the company. As SVP of operations for Allegiance his duties also included oversight of the Network Operations Center (NOC) Field Operations, Network Security, Network Implementation and the SS7 groups. His accomplishments and skills set include developing (or overseeing the development of) software programs, databases, transactional systems, embedded systems, both on traditional platforms and research systems, planning and maintenance for both systems and networks, infrastructure, as well as technical and business diligence, mergers and acquisitions process, intellectual property, investor relations, private placement and public offerings. Mr. Davis is presently CTO for Hypercube, a spin off of the KMC companies and his primary function is oversight of the engineering, operations and IT functions within that organization.

Mr. Davis served as chairman of the NRIC VI Broadband group 2002-2004, he is a member of the North Texas Task force on Computer Crimes, sits on the IEEE Communications advisory committee for broadband. Mr. Davis was also a co-star of the nationally syndicated Radio and Television show "Net Talk Live" whose run was just over 5 years covering 231 markets in 11 countries.

James Mertz, Vice President – Government Affairs

Mr. Mertz has over twenty-five years experience in the telecommunications industry. Immediately prior to joining Hypercube, Mr. Mertz served as Director of Government Affairs-New Business Development (2004-2005) and was responsible for overseeing development and deployment of tandem services to wireless companies, VOIP providers, cable companies and WiMax providers by leading cross-functional team of Marketing, Sales, Network & Finance. Mr. Mertz was also Director of Government Affairs-Intercarrier Revenue Management (2003-2004), Director of Intercarrier Contracts-Analysis & Performance (2002-2003) and Director of Access Cost Management (2001-2002). In the positions, Mr. Mertz was responsible for (1) identifying and implementing opportunities for the collection of intercarrier compensation for both the National Wholesale and ACS divisions of KMC, management of KMC's tariffs in all 50 states, negotiating intercarrier compensation reform, and advocating before various government entities, (2) for overseeing KMC's intercompany relationships, developing and recommending strategies to ensure profitable relationships with cable companies, wireless companies, IXCs, ILECs, CLECs, ICOs and other companies, and (3) strategies to reduce interconnections costs and collecting outstanding receivables.

Prior to joining KMC, Mr. Mertz held various positions with AT&T: Legislative Director (1999-2001), District Manager – Local Service Introduction (1996-1999), Assistant Vice President, Georgia (1995-1996), Public Policy Manager (1990-1995), Financial Manager (1987-1989), Regulatory Accounting Manager (1985-1987), Accounting Supervisor (1983-1985), and Computer Systems Designer/Computer Programmer (1979-1983). In these positions, Mr. Mertz (1) developed strategies to identify both opportunities and obstacles to business objectives on such issues as taxes, product regulations, marketing restrictions, building access, right-of-way, access charges, universal service funding, internet regulation and broadband & wireless issues, (2) was responsible for the introduction of business and consumer local telecommunication services, including obtaining the necessary state authorizations and interconnection agreements, as part of AT&T's entrance into those markets.

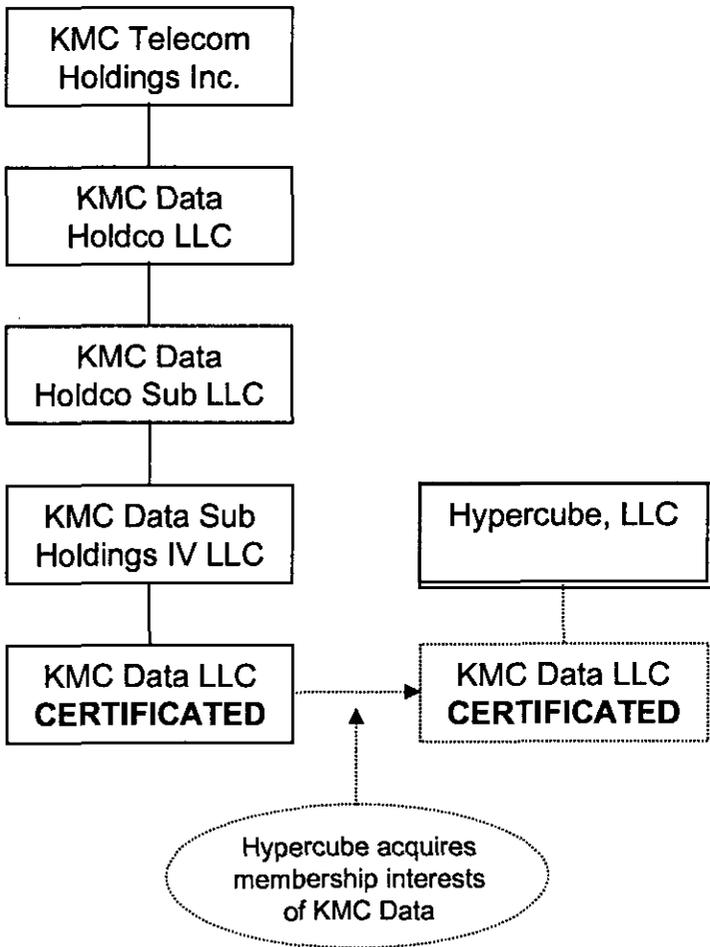
Mr. Mertz received his Bachelors of Science in Mathematics from the University of Georgia and Masters of Business Administration from Georgia State University.

Exhibit C

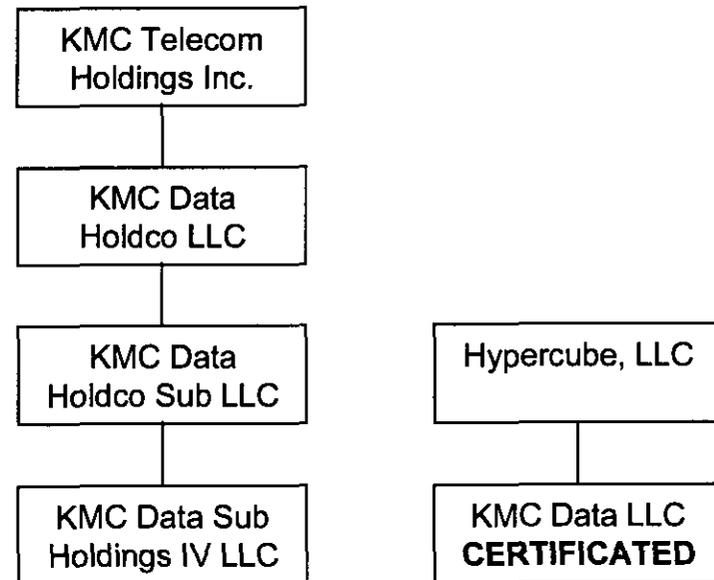
Illustrative Chart

Illustrative Chart

Pre-Transaction



Post-Transaction



Verifications

VERIFICATION

STATE OF [New Jersey])
)
COUNTY OF [Somerset]) ss:

I, James Mertz, being first duly sworn, state that I am Director - Regulatory Affairs of Hypercube, LLC; that I am authorized to make this Verification on behalf of Hypercube, LLC; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

James Mertz
Name: James Mertz
Title: Director - Regulatory Affairs

Sworn and subscribed before me this 28th day of November, 2005.

Barbara Perrette
Notary Public

My commission expires September 11, 2007

BARBARA PERRETTE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/11/2007

VERIFICATION

STATE OF New Jersey)
)
COUNTY OF Somerset) ss:

I, James Mertz, being first duly sworn, state that I am Director - Regulatory Affairs of KMC Data, LLC; that I am authorized to make this Verification on behalf of KMC Data, LLC; that the contents of the foregoing filing are true and correct to the best of my knowledge, information, and belief.

James Mertz
James Mertz
Director - Regulatory Affairs
KMC Data, LLC

Sworn and subscribed before me this 26th day of November, 2005.

Barbara Perrette
Notary Public

My commission expires September 11, 2007

BARBARA PERRETTE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/11/2007