

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

In the Matter of the Joint Application of )  
Integra Telecom Holdings, Inc., and )  
Electric Lightwave, LLC, for Approval of )  
a Transfer of Control of Electric )  
Lightwave, LLC )

Case No. TM-2006-0362

**MOTION TO DISMISS APPLICATION FOR LACK OF JURISDICTION**

COMES NOW the Staff of the Missouri Public Service Commission, by counsel, and for its motion states:

1. On March 17, 2006, Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, filed an application for approval of the transfer of control of Electric Lightwave, LLC, from CU Capital, LLC, to Integra. The application states that the proposed transaction does not involve a transfer of certificates, assets or customers. The application explains why the Commission should dismiss the application for lack of jurisdiction.

2. In Case No. TA-97-246, the Commission granted Electric Lightwave, Inc., a Delaware corporation, a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri. The application in the current case states that Electric Lightwave later converted to a Delaware limited liability company, and that Electric Lightwave will make the appropriate name change filings with the Commission as soon as possible.

3. As noted in the current application, the Commission recently dismissed a similar application due to a lack of jurisdiction in Case No. TM-2006-0289. In that case, Hypercube, LLC, and KMC Data LLC filed an application in which they asked for authority to transfer control of KMC Data from KMC Telecom Holdings, Inc., to Hypercube. KMC Data, a

Delaware limited liability company, is certificated in Missouri as an interexchange, local exchange, and basic local exchange telecommunications company.

Section 392.300.1 RSMo 2000 states that no telecommunications company shall sell or otherwise dispose of its franchise, facilities or system, or merge or consolidate its system or franchise without first having Commission authority to do so. The Commission's Order noted that KMC Data is not disposing of its franchise, facilities or system, nor merging its franchise, facilities or system with Hypercube. The Commission's Order concluded that Section 392.200.1 did not apply to the transaction.

Section 392.300.2 RSMo 2000 states that no stock corporation, other than a telecommunications company, may buy more than ten percent of the stock of a telecommunications company organized or existing under the laws of this state without first obtaining the Commission's consent. The Commission's Order noted that KMC Data, the telecommunications company to be purchased, does not have stock, but instead is a limited liability company that issues membership interests. The Commission's Order also noted that it explicitly waived Section 392.200.2 (sic) for KMC Data in its certificate case. The Commission's Order also referenced its Report and Order in Case No. XM-2005-0219, *In re SBC*, which held that the Commission did not have jurisdiction under Section 392.300.2 to approve or disapprove the transfer of stock of a telecommunications company organized as a Delaware corporation.

4. The Commission did not waive Section 392.300.2 for Electric Lightwave in its certificate case.

5. Because Electric Lightwave is neither disposing nor merging its franchise, facilities or system, Section 392.300.1 is not applicable to the proposed transaction. Because

Electric Lightwave is not organized or existing under the laws of this state, Section 392.300.2 is not applicable to the proposed transaction.

WHEREFORE, the Staff moves the Commission to dismiss the application for lack of jurisdiction.

Respectfully submitted,

/s/ William K. Haas

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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 30<sup>th</sup> day of March 2006.

/s/ William K. Haas

William K. Haas