



PUBLIC NOTICE

Federal Communications Commission
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DA 06-239
Released: January 31, 2006

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE
TRANSFER OF CONTROL OF KMC DATA LLC FROM KMC TELECOM
HOLDINGS, INC. TO HYPERCUBE, LLC**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-20

Comments Due: February 14, 2006

Reply Comments Due: February 21, 2006

On January 12, 2006, Hypercube, LLC (“Hypercube”) and KMC Data LLC (“KMC Data”) (together “Applicants”), filed an application, pursuant to sections 63.03 and 63.04 of the Commission’s rules,¹ requesting authority to transfer control of KMC Data from KMC Telecom Holdings, Inc. to Hypercube.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission’s rules because immediately following the transaction: (1) Applicants and their affiliates will hold less than a ten percent (10%) share of the interstate, interexchange market; and (2) Applicants and their affiliates will provide local exchange service only in areas served by dominant local exchange carriers (none of which are parties to the proposed transactions) and; (3) none of the Applicants or their affiliates are dominant with respect to any service.³

KMC Data is a limited liability company formed under the laws of the state of Delaware. KMC Data provides interstate telecommunications in the United States and also provides intrastate service in California, Colorado, Florida, Georgia, Illinois, Michigan, Missouri, New

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

York, Ohio, Texas, and Washington. KMC Data's operations are focused on the provision of tandem services to wireless carriers, interexchange carriers, competitive local exchange carriers and incumbent local exchange carriers. KMC Data is an indirect wholly owned subsidiary of KMC Telecom Holdings, Inc. ("KMC Holdings"), a U.S. holding company.⁴ KMC Holdings controls a family of companies that provide various regulated communications and other services (collectively the "KMC Companies").⁵ The following entities own 10% or more of KMC Holdings: Mr. Harold Kamine, a U.S. citizen (15%); General Electric Capital Corporation ("GECC"), a U.S. corporation (15%);⁶ and Nassau Capital Partners, LP ("Nassau"), a U.S. limited partnership (15%). Nassau Capital LLC ("Nassau Capital"), a U.S. limited liability company, is the general partner of Nassau.

Hypercube is a limited liability company formed under the laws of the state of Delaware. 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. The following U.S. entities hold a 10% or greater ownership interest in Hypercube: Nassau Capital (33%); Annex Holdings I LP ("Annex") (33%); and Kamine Credit Corporation (33%).⁷ Annex is 89% owned by its limited partner, Collier International Partners IV-D, a Cayman Islands investing company. Annex's general partner is Collier International General Partner IV, L.P., also a Cayman Islands investing company. Kamine Credit Corporation is 100% owned by Mr. Harold Kamine, a U.S. citizen. No other entity holds a 10% or greater direct or indirect voting or equity interest in KMC Data.

On November 15, 2005, the Applicants entered into an Asset Purchase Agreement ("Agreement"). 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. The change in ownership will be structured as a direct acquisition by Hypercube of the KMC Data membership interests. Under the terms of the Agreement, Hypercube will acquire the membership interests of KMC

⁴ KMC Data is wholly owned by KMC Data Sub Holdings IV LLC, who is, in turn, wholly owned by KMC Data Holdco Sub LLC, who is, in turn, wholly owned by KMC Data Holdco LLC. KMC Data Sub Holdings IV LLC, KMC Data Holdco Sub LLC and KMC Data Holdco LLC are all U.S. limited liability companies. KMC Data Holdco LLC, a U.S. holding company, is wholly owned by KMC Holdings.

⁵ 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, including Section 214 authority.

⁶ The voting ownership of GECC in KMC Holdings includes, in addition to GECC, the following affiliates under common control: GE Capital CFE, Inc., Copper Beech Holdings, LLC, LT Holdco 11 LLC, and Repulse Bay Capital, LLC.

⁷ Hypercube's ownership includes former owners of KMC Holdings. Specifically, most of the outstanding shares of Hypercube are owned by Nassau Capital, Annex, 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.

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).

The Applicants state that the proposed transaction serves the public interest. In particular, Applicants submit that: (1) the proposed transactions will increase competition in the international and interstate 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. Moreover, the proposed transactions 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. In sum, the proposed transactions are expected to enhance the ability of KMC Data, to provide high-quality telecommunications services, which should invigorate competition and thereby benefit consumers of telecommunications services.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before February 14, 2006** and **reply comments on or before February 21, 2006**.⁸ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁹ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

⁸ See 47 C.F.R. § 63.03(a).

⁹ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission’s Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;
- (3) Denise Coca, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-, Washington, D.C. 20554; e-mail: denise.coca@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Denise Coca at (202) 418-0574.

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