



0000078285

BEFORE THE ARIZONA CORPORATION COMMISSION

1  
2 MIKE GLEASON  
Chairman  
3 WILLIAM A. MUNDELL  
Commissioner  
4 JEFF HATCH-MILLER  
Commissioner  
5 KRISTIN K. MAYES  
Commissioner  
6 GARY PIERCE  
Commissioner

Arizona Corporation Commission  
**DOCKETED**  
OCT 30 2007  
DOCKETED BY nl

8 STAFF of the Utilities Division,

Complainant,

DOCKET NO. T-04014A-01-0340

DECISION NO. 69967

10 vs.

ORDER

11 KMC Data, LLC

Respondent.

15 Open Meeting  
16 October 23 and 24, 2007  
Phoenix, Arizona

17 BY THE COMMISSION:

18 FINDINGS OF FACT

19 1. Respondent KMC Data, LLC ("KMC" or "Company") is a public service  
20 corporation as defined by Article XV of the Arizona Constitution and A.R.S. § 40-282.

21 3. On April 16, 2001, KMC filed with the Commission an application for a CC&N to  
22 provide competitive facilities-based resold local exchange and resold interexchange  
23 telecommunications services within the State of Arizona.

24 4. On August 23, 2002, in Decision No. 65125, the Commission issued a CC&N to  
25 KMC conditioned upon timely compliance.

26 5. The Company was ordered to file conforming tariffs within 365 days of the  
27 effective date of the decision. The due date to file was August 23, 2003.

28 ...

6. The Company was ordered to file proof of a Performance Bond for \$135,000 within 365 days of the effective date of the decision. The due date to file was August 23, 2003.

7. On September 24, 2003, Staff sent the Company a letter regarding its failure to comply with Commission Decision No. 65125.

8. On September 7, 2006, Staff received information that KMC had been purchased by Hypercube, LLC ("Hypercube"). Hypercube is not listed as an active Company in the Corporation Division database. KMC is active and in good standing with the Corporations Division.

9. In the annual report of KMC for the calendar year ending December 31, 2006, the Company reports no employees, assets or intrastate revenue in the State of Arizona.

10. Staff has been in contact with the Company since September 2006 but has yet to resolve the compliance issues outlined above.

11. Staff's investigation has concluded that KMC is not currently conducting business in the State of Arizona.

CONCLUSIONS OF LAW

1. KMC is an Arizona public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution.

2. The Commission has jurisdiction over KMC and over the subject matter of the complaint.

3. The Commission, having reviewed the complaint concludes that it is in the public interest to rescind Decision No. 65125 and to cancel the Certificate of Convenience and Necessity of KMC Data, LLC.

4. The Commission recommends that if KMC or Hypercube wish to conduct business in Arizona they should file a new application requesting authority with the Commission.

...  
...  
...  
...  
...

ORDER

IT IS THEREFORE ORDERED that Decision No. 65125 is hereby rescinded and the Certificate of Convenience and Necessity granted to KMC Data, LLC. is revoked.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

*Lance Wilson*  
CHAIRMAN

*[Signature]*  
COMMISSIONER

*Jeffrey Hatch-Miller*  
COMMISSIONER

*[Signature]*  
COMMISSIONER

*[Signature]*  
COMMISSIONER

IN WITNESS WHEREOF, I DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 30<sup>th</sup> day of October, 2007.

*Dean S. Miller*  
DEAN S. MILLER  
Interim Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:KDB:lhmvMAS

1 Service List for: KMC Data, LLC.  
2 Docket No. T-04014A-01-0340

3 KMC Data, LLC  
4 c/o Corporation Service Company  
5 2338 West Royal Palm Road, Suite J  
6 Phoenix, AZ 85021

6 KMC Data, LLC  
7 c/o Corporation Service Company  
8 2711 Centerville Road, Suite 400  
9 Wilmington, Delaware 19808

9 Mr. Michael Patten  
10 Roshka DeWulf & Patten, PLC  
11 Two Arizona Center  
12 400 North Fifth Street, Suite 1000  
13 Phoenix, Arizona 85004

12 Mr. Christopher C. Kempley  
13 Chief Counsel, Legal Division  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

16 Mr. Ernest G. Johnson  
17 Director, Utilities Division  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21

22

23

24

25

26

27

28