



ORIGINAL



0000132585

RECEIVED

2011 DEC -2 P 2:27

November 30, 2011
Via Overnight Delivery

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

RE: **Hypercube Telecom, LLC** - Protective Agreement filed in Docket No. T-20805A-11-0221; Application and Petition for Certificate of Convenience and Necessity to Provide Resold Local Exchange and Long Distance, Facilities-Based Local Exchange and Long Distance Telecommunications Services.

Dear Sir/Madam:

Enclosed for filing are the original and thirteen (13) copies of the Protective Agreement filed in Docket No. T-20805A-11-0221; Application and Petition for Certificate of Convenience and Necessity to Provide Resold Local Exchange and Long Distance, Facilities-Based Local Exchange and Long Distance Telecommunications Services filed on behalf of Hypercube Telecom, LLC.

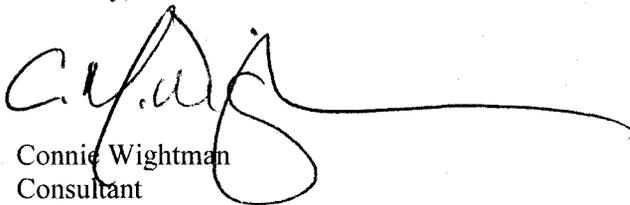
Please acknowledge receipt of this filing by date stamping the extra copy of this cover letter and returning it in the self-addressed, stamped envelope enclosed for this purpose.

Any questions you may have regarding this filing may be directed to me at (407) 740-3002 or via e-mail at cwightman@tminc.com.

Please acknowledge receipt of this filing by date stamping the extra copy of this cover letter and returning it in the self-addressed, stamped envelope enclosed for this purpose.

Thank you for your assistance in this matter.

Sincerely,



Connie Wightman
Consultant

Enclosures
CW/lw

cc: Robert McCausland – Hypercube Telecom, LLC
Karen Turner – Manager-Regulatory Compliance
file: Hypercube– AZ Local
tms: AZx1100
H3: 2010-13

Arizona Corporation Commission
DOCKETED

DEC 2 2011

DOCKETED BY 

1 confidential, or legally protected nature, shall be designated and referred to herein as "Confidential
2 Information." Access to and review of Confidential Information shall be strictly controlled by the
3 terms of this Agreement.

4 All Confidential Information provided to Staff pursuant to this Agreement shall be so marked
5 by Company with a designation indicating its alleged trade secret, proprietary, confidential, or legally
6 protected nature. The Company shall memorialize in writing any Confidential Information that it
7 verbally discloses to Staff within five (5) business days of its verbal disclosure, and the writing shall
8 be marked by the Company with the appropriate designation. Any Confidential Information
9 disclosed verbally by Company shall be specifically identified as confidential at the time of its verbal
10 disclosure and shall be safeguarded by Staff and its contracting consultants only during the five (5)
11 business day period during which memorialization may be provided. Company agrees that it will
12 carefully consider the basis upon which any information is claimed to be trade secret, proprietary,
13 confidential, or otherwise legally protected. Company shall designate as Confidential Information
14 only such information as it may claim in good faith to be legally protected. Where only a part of a
15 document, or only a part of an informational submittal may reasonably be considered to be trade
16 secret, proprietary, confidential, or otherwise legally protected, Company shall designate only that
17 part of such information submittal as Confidential Information under this Agreement. Information
18 that is publicly available from any other source shall not be claimed as Confidential Information
19 under this Agreement. While the Staff will honor the Company's designation of documents or
20 portions thereof as "Confidential", mere designation of a document as "Confidential" does not mean
21 that it is in fact or in law confidential. As set forth in § 7 below, the Staff shall have the right to
22 challenge at any time the Company's designation of any document or portion thereof as
23 "Confidential" in accordance with the procedures described in this Agreement.

24 **§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.**

25 Execution of this Agreement by the parties and performance of their obligations hereunder shall not
26 result in waiver of any claim, issue, or dispute concerning the trade secret, proprietary, confidential,
27 or legally protected nature of the Confidential Information provided. Neither the limited provision of
28

1 Confidential Information by Company pursuant to this Agreement nor the limited provision by Staff
2 of Confidential Information pursuant to §6 of this Agreement constitutes public disclosure.

3 **§4. Access to Confidential Information.** Prior to reviewing any Confidential
4 Information, any Commission Staff members or independent contracting consultants shall first be
5 required to read a copy of this Protective Agreement and to certify by their signatures on Exhibit A of
6 this Agreement that they have reviewed the same and have consented to be bound by its terms.
7 Exhibit A of this Agreement shall contain the signatory's full name, business address, employer, and
8 the signatory's position with or relationship to the Arizona Corporation Commission
9 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel
10 for Company.

11 **§5. Use of Confidential Information.** All persons who are signatories to this Agreement
12 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
13 for any purposes other than those necessary for the disposition of this docket, including the
14 preparation for and conduct of any administrative or legal proceeding. All persons afforded access to
15 Confidential Information shall keep it secure as trade secret, confidential, or legally protected
16 information in accordance with the purposes and intent of this Agreement.

17 **§6. Non-Signatories Entitled to Review.** To the extent that disclosure is necessary to the
18 disposition of this docket, any Commission signatory to this Agreement may provide Confidential
19 Information under seal to the Commissioners and their Staffs, to other members of the Commission
20 Staff who are advising the Commissioners and their Staffs, or to any Commission administrative law
21 judge ("ALJ").

22 **§7. Disclosure of Information to the Public.** The Confidential Information provided
23 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in
24 this docket, or in any other administrative or legal proceeding unless Staff provides Company five (5)
25 business days written notice that information designated by Company as Confidential Information
26 shall be subject to disclosure as a public record. Upon the expiration of five (5) business days from
27 the date written notice is received by Company, any Confidential Information identified in the notice
28

1 as subject to disclosure shall become part of the public record in this docket, unless Company
2 initiates a protective proceeding under the terms of this Agreement.

3 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
4 Company seeks to prevent public disclosure of Confidential Information pursuant to §7 above,
5 Company shall file within five (5) business days of receipt of Staff's written notice a motion
6 presenting the specific grounds upon which it claims that the Confidential Information should not be
7 disclosed or should not be made a part of the public record. Staff shall have an opportunity to
8 respond to the motion. Company's motion may be ruled upon by either the Commission or an
9 assigned Commission ALJ. Company may provide to the Commission or the ALJ the Confidential
10 Information referenced in the motion without waiver that the information should remain confidential
11 under the terms of this Agreement. Any Confidential Information so provided shall be kept under seal
12 for the purpose of permitting inspection by the Commission or the ALJ prior to ruling on the motion.

13 Notwithstanding any determination by the ALJ or the Commission that any Confidential
14 Information provided pursuant to this Agreement should be made a part of the public record or
15 otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that
16 Company may seek judicial relief from the ALJ's or the Commission's decision. Upon expiration of
17 the five (5) day period, the Commission shall release the information to the public unless Company
18 has received a stay or determination from a court of competent jurisdiction that the information is
19 proprietary and is not a public record subject to disclosure under A.R.S. § 39-101 et seq.

20 **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the
21 Commission, ALJ, or Staff determine that disclosure is not appropriate, the Company as the real
22 party in interest shall join as a co-defendant in any judicial action brought against the Commission
23 and/or Commissioners by the party seeking disclosure of the information, unless the Company is
24 already specifically named in the action. Company also agrees to indemnify and hold the
25 Commission harmless from any assessment of expenses, attorneys' fees, or damages resulting from
26 the Commission's denial of access to the information found to be non-confidential.

27 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
28 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of

1 the Confidential Information, the Commission shall provide Company with prompt written notice of
2 such requirement so that Company may seek an appropriate remedy and/or waive compliance.
3 Company agrees that, upon receipt of such notice, Company will either undertake to oppose
4 disclosure of the Confidential Information or waive compliance with this Agreement. In the event
5 that disclosure of the Confidential Information is ordered, the Commission agrees to furnish only that
6 portion of the Confidential Information that is legally required.

7 **§10. No Preclusion of Evidentiary Objections.** In the event that public disclosure of
8 Confidential Information occurs, the provision of such information by Company pursuant to this
9 Agreement shall not limit the right of Company to object to its relevance or admissibility in
10 proceedings before the Commission.

11 **§11. Use of Confidential Information in Other Commission Dockets.** The Staff agrees
12 that it shall not use the confidential information obtained in this docket for purposes of any other
13 Commission dockets or other proceedings without the express consent of the Company.

14 **§12. Return of Confidential Information.** Within ninety (90) days of the final disposition
15 of any administrative or legal proceeding arising in or from this docket, Company shall submit a
16 written request for the return of all Confidential Information, copies thereof, and notes made by
17 signatories to this Agreement. If such a request is not received within the stated 90 days, Staff shall
18 destroy all Confidential Information, copies thereof, and notes made by signatories to this
19 Agreement, or return to Company all Confidential Information, copies thereof, and notes made by
20 signatories to this Agreement, following written notice to Company of Staff's intent to return. If this
21 Protective Agreement is entered into in order to facilitate the provision of Confidential Information in
22 connection with an informational filing made pursuant to a Commission Administrative Rule or
23 Commission Order, this provision providing for the return or destruction of Confidential Information
24 shall not apply. Commission Staff shall retain any Confidential Information provided in connection
25 with such an informational filing for whatever time period it deems appropriate. Should the
26 Commission Staff determine that it no longer needs such Confidential Information to fulfill the
27 purposes of the related Commission Administrative Rule or Commission Order, the Confidential
28 Information shall be returned to the Company or destroyed, at the Commission Staff's discretion.

1 **§13. No Admission of Privileged or Confidential Status.** By participating in this
2 Agreement, Staff and its contracting consultants are neither admitting nor agreeing with Company
3 that any of the information designated as Confidential Information is, either in fact or as a matter of
4 law, a trade secret or of a proprietary, confidential, or legally protected nature. The Company shall
5 have the burden of proof at all times to demonstrate that any information it has designated as
6 Confidential Information is either in fact or as a matter of law, a trade secret or of a proprietary,
7 confidential, or legally protected nature.

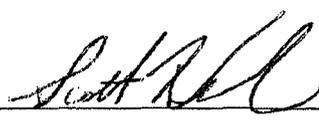
8 **§14. Breach of Agreement.** Company, in any legal action or complaint that it files in any
9 court alleging breach of this Agreement shall, at the written request of the Commission, name the
10 Arizona Corporation Commission as a Defendant therein.

11 **§15. Non-Termination.** The provisions of this Agreement shall not terminate at the
12 conclusion of this proceeding.

13
14 DATED this 30th day of November 2011.

15 ARIZONA CORPORATION COMMISSION

HYPERCUBE TELECOM, LLC

16
17
18 By 

By 

19 Scott M. Hesla
20 Legal Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007
24 (602) 542-3402

Connie Wightman
Hypercube Telecom, LLC
2600 Maitland Center Parkway, Suite 300
Maitland, Florida 32751
(407) 740-3002

25
26
27
28
Attorney for Arizona Corporation
Commission Staff

Consultant to Hypercube Telecom, LLC

EXHIBIT "A"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I have read the foregoing Protective Agreement dated _____, 2011,

IN THE MATTER OF THE APPLICATION OF HYPERCUBE TELECOM, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE AND LONG DISTANCE, FACILITIES-BASED LOCAL EXCHANGE AND LONG DISTANCE TELECOMMUNICATIONS SERVICES - DOCKET NO. T-20805A-11-0221 and agree to be bound by the terms and conditions of such Agreement.

Name

Signature

Employer or Firm

Business Address

Position or relationship with the
Arizona Corporation Commission

Date