

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  KMC DATA, LLC	DOCKET NO. TF-07-37 (TCU-01-8)
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**ORDER REJECTING TARIFF AND  
DENYING REQUEST TO RESCIND PREVIOUS ORDER**

(Issued June 28, 2007)

On April 23, 2001, KMC Data, LLC (KMC), filed with the Utilities Board (Board) an application for a certificate of public convenience and necessity to provide local exchange service in Iowa. The application was identified as Docket No. TCU-01-8. On June 1, 2001, the Board issued an order in that docket approving KMC's application and stating that a certificate would be issued when KMC had on file an approved tariff setting forth the prices, terms, and conditions of local exchange service in Iowa.

In a letter dated September 14, 2006, KMC's parent company, KMC Telecom Holdings, Inc. (KMC Holdings), notified the Board of the dissolution of KMC Holdings. Based on that notification, the Board understood that KMC no longer planned to offer local exchange service in Iowa. On October 5, 2006, the Board issued an order in Docket No. TCU-01-8 withdrawing its approval of KMC's application for a certificate of public convenience and necessity. As part of that order, the Board stated that KMC or any related entity could re-apply for a certificate at anytime if it intended to initiate local exchange service in Iowa.

On February 19, 2007, KMC filed with the Board a proposed local exchange tariff setting forth the prices, terms, and conditions of providing local exchange service in Iowa. Also on February 19, 2007, KMC filed a request that the Board rescind its October 5, 2006, order and reinstate the Board's approval of KMC's application. In support of that request, KMC states that as of May 22, 2006, ownership and control of KMC was transferred to Hypercube, LLC (Hypercube), and that KMC is currently providing interstate and intrastate telecommunications services in several jurisdictions.

The Board will not rescind its October 5, 2006, order. The Board acted reasonably when it withdrew its approval of KMC's application following notification of the dissolution of KMC Holdings. Moreover, KMC had an approved application on file with the Board for more than five years and had not filed a local exchange tariff to complete its certification process. During that five-year time span, ownership and control of KMC was transferred to Hypercube and KMC's parent company, KMC Holdings, dissolved. These changes demonstrate a need for a new application for certificate of public convenience and necessity with updated financial and managerial information before a new certificate can be approved. Therefore, the Board will not rescind its October 5, 2006, order.

Because KMC no longer has an approved application on file with the Board, it is not necessary or appropriate for the Board to approve KMC's proposed tariff filed on February 19, 2007. Nevertheless, Board staff has reviewed KMC's proposed tariff and it appears that the tariff does not substantially comply with the Board's

rules regarding the filing and processing of tariff pages. Board staff has attempted to contact KMC on several occasions to address deficiencies in the tariff and to discuss the submission of a new application for certificate. KMC has not responded to staff's inquiries. Therefore, the Board will reject KMC's proposed tariff, without prejudice to refiling when KMC submits a new application for certificate.

**IT IS THEREFORE ORDERED:**

1. The proposed local exchange tariff filed by KMC Data, LLC, on February 19, 2007, is rejected, without prejudice to refiling, as described in this order.
2. The request to rescind the Board's "Order Withdrawing Approval of Application" issued October 5, 2006, in Docket No. TCU-01-8 is denied as described in this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 28<sup>th</sup> day of June, 2007.