

Decision No. C23-0816

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0531T

IN THE MATTER OF THE JOINT APPLICATION OF AP VIII OLYMPUS VOTECO LLC, HYPERCUBE NETWORKS LLC FKA INTRADO COMMUNICATIONS LLC AND 46 LABS LLC TO EXECUTE A TRANSFER OF CONTROL OF HYPERCUBE NETWORKS TO 46 LABS LLC.

**COMMISSION DECISION APPROVING JOINT
TRANSFER**

Mailed Date: December 11, 2023
Adopted Date: December 6, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Joint Application filed by AP VIII Olympus VoteCo, LLC (Olympus), together with Olympus' indirect subsidiary Hypercube Networks, LLC (Hypercube), and 46 Labs, LLC (46 Labs) on October 31, 2023. The Applicants request Commission authorization for approval of the transfer of Hypercube to 46 Labs.

2. The Transaction will occur at the parent level and only will result in a change in the ultimate ownership of Hypercube. No assignment of licenses, assets, or customers will occur as a consequence of the proposed transfer.

3. According to the application, on October 20, 2023, 46 Labs and West Technology Group, LLC (West), entered into a Membership Interest Purchase Agreement (Agreement). Pursuant to the Agreement, West agreed to sell to 46 Labs, and 46 Labs agreed to acquire all of the

issued and outstanding membership interests of Hypercube Network Holdings, LLC including its wholly-owned subsidiary Hypercube.

4. We will construe this filing as an application for approval of the transfer of control of Hypercube to 46 Labs pursuant to 4 *Code of Colorado Regulations* 723-2-2110 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

5. Hypercube Networks, LLC, formally known as KMC Data, LLC was granted a Certificate of Public Convenience and Necessity (CPCN) and acquired a Letter of Registration (LOR) to provide local exchange telecommunications services and emerging competitive telecommunications services in Proceeding No. 01A-313T in Decision No. C01-0889 on September 29, 2001.

6. 46 Labs is an Oklahoma limited liability company. 46 Labs does not directly provide any telecommunications services. Upon consummation of the Transaction, Hypercube will be the indirect wholly-owned subsidiary of 46 Labs, and 46 Labs will control Hypercube.

7. Applicants, therefore, request Commission authorization to complete the transfer of control of Hypercube which holds Commission-issued authorities. This change of control will not have a significant operational impact on Hypercube. On October 31, 2023, a notice of the Joint Application was provided to all persons, firms, or corporations interested in or affected by the grant or denial of the requested relief. Interventions were due on or before November 30, 2023. No interventions were filed.

8. On November 22, 2023, Applicants filed an amendment to application page 2, correcting a typographical error.

II. DISCUSSION

9. The Commission has jurisdiction over this Joint Application pursuant to §§ 40-5-105, 40-15-04, and 40-15-303, C.R.S.

10. The application contains all of the information required by the applicable Commission Rules and is therefore deemed complete.

11. The application is unopposed and therefore may be considered without a formal hearing, pursuant to § 40-6-109(5), C.R.S.

12. Applicants request Commission approval of the transfer of control of Hypercube to 46 Labs. Commission issued authority granted to Hypercube will not transfer to another entity as a result of the Transaction.

13. The application represents that the Transaction will not affect existing customers, their terms or conditions. The proposed Transaction will occur at the parent level and will only result in a change in the corporate ownership of Hypercube. No assignment of licenses, assets, or customers will occur as a consequence of the proposed Transaction.

14. Hypercube is a competitive provider with Commission issued authority. Except for limited circumstances (such as for providers that are recipients of state high-cost support and for the provision of basic emergency services), certifications to provide basic local exchange services are no longer regulated by the Commission. *See* § 40-15-401(1)(b), C.R.S. Similarly, the provision of any other emerging competitive services such as advanced features, premium services, intraLATA toll, non-optional operator services, and private line services, except switched access services and basic emergency services, are no longer regulated by the Commission. *See* §§ 40-15-401(1)(e), (k), (n), (o), (s), (t), C.R.S. Consequently, the Commission does not have the authority

to approve the transfers of the CPCNs or those parts of the LORs addressing advanced features, premium services, intraLATA toll, non-optional operator services, and private line services.

15. Switched access services and the provision of basic emergency services have not been deregulated. As a result, we have the authority to review and approve/deny the transfers and encumbrances of the part of authorities held by providers that address those services.

16. We remind applicants that public utilities remain subject to Commission oversight that includes but is not limited to, reporting and payment obligations to the Colorado High-Cost Support Mechanism and the Telecommunications Relay Services Program.

17. We find that the proposed transfer of control of the telecommunications authorities held by Hypercube is not contrary to the public interest and therefore grant the Joint Application for transfer of control and encumbrance to that extent. The Joint Application recognizes the Commission's jurisdiction as it now exists. Entities that hold Commission issued authorities remain obligated to comply with any applicable requirements or regulations as stated in Article 15 of Title 40.

III. ORDER

A. The Commission Orders That:

1. The Joint Application to transfer filed by AP VIII Olympus VoteCo, LLC, Hypercube Networks, LLC, and 46 Labs LLC on October 31, 2023, is deemed complete. The request to transfer control of the Commission issued authority held by Hypercube Networks, LLC is granted.

2. AP VIII Olympus VoteCo, LLC, Hypercube Networks, LLC, and 46 Labs LLC or their authorized representatives shall jointly notify the Commission if the transfer has been terminated or is not completed within 60 days of the proposed effective date stated in the

application or if the proposed transfer terms are changed prior to the consummation date. The notice shall include the proceeding and decision numbers which granted the authority to execute the transfer.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 6, 2023.**

(SEAL)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners