

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Notice of)
)
) KMC DATA, LLC and
) KMC DATA HOLDCO LLC
)
) For a *Pro Forma* Internal
) Restructuring.
)
_____)

DOCKET NO. 03-0100

DECISION AND ORDER NO. 20886

RECEIVED
2004 APR -7 P 3:41
DIVISION OF CONSUMER AFFAIRS
DEPT. OF COMMERCE AND
CORPORATION AFFAIRS
STATE OF HAWAII

Filed April 7, 2004
At 10:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.
K. Higashi

Consumer Advocate does not object to the internal restructuring, subject to certain conditions.⁴

II.

KMC Data, LLC

KMC Data, LLC holds a commission-issued certificate of authority ("COA") to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State of Hawaii (the "State").⁵

KMC Data, LLC informed the commission of its intent to engage in a *pro forma* internal restructuring of its ownership interests.⁶ Essentially, as shown on the exhibit attached to the notice, two (2) new holding companies will be added, as follows:⁷

1. KMC Data Holdco Sub LLC: A new indirect holding company.
2. KMC Data Sub Holdings IV LLC: A new direct holding company.

Under this restructuring: (1) KMC Data Sub Holdings IV LLC will become the direct holding company of KMC Data, LLC; and (2) KMC Data Holdco Sub LLC will become the: (A) direct holding company of KMC Data Sub Holdings IV LLC; and (B) indirect holding company of KMC Data, LLC.

⁴Consumer Advocate's position statement, filed on May 7, 2003.

⁵See Decision and Order No. 18902, filed on September 17, 2001, in Docket No. 01-0254.

⁶KMC Data, LLC's written notice, dated April 2, 2003.

⁷In reality, a third new holding company is also created, KMC Data Sub Holdings I LLC, which is not a subject of the written notice or this docket.

KMC Data, LLC, in its written notice: (1) stated its belief that the commission's approval of the *pro forma* restructuring was not required; and (2) requested that the commission notify the parties as soon as possible if its understanding was incorrect.

KMC Data, LLC, in support of its understanding that the commission's approval was not required, noted:

1. This change in ownership is *pro forma* only as the ultimate ownership and control of KMC Data, LLC will remain with KMC Telecom Holdings, Inc.
2. This minor restructuring: (A) will not involve the transfer of operating authority; and (B) will not affect the identity of the utility entity (i.e., KMC Data, LLC) providing service, the terms and conditions under which services are currently being provided in the State, or the technical or managerial qualifications of KMC Data, LLC.
3. As holding companies, KMC Data Sub Holdings IV LLC and KMC Data Holdco Sub LLC "are not expected to be actively engaged in business in the State of Hawaii."
4. The restructuring will permit the ultimate parent, KMC Telecom Holdings, Inc., "to do business under a more efficient, rational structure and give the company greater access to working capital and improved marketing and administrative operations."
5. The restructuring will be completely transparent to KMC Data, LLC's customers and will not impact existing services.

The commission forwarded a copy of the written notice to the Consumer Advocate for review and comment.⁸ In response, the Consumer Advocate stated that KMC Data, LLC "should be required to submit a petition for application for Commission approval of the present transaction pursuant to Hawaii Revised

⁸Commission's letter, dated April 9, 2003.

Statutes Chapter 269."⁹ By Order No. 20142, the commission opened this docket to review the internal restructuring at issue.

III.

Discussion

The Consumer Advocate, as a condition to its non-objection, recommends that KMC Data, LLC file copies of its restructuring agreement with the commission and Consumer Advocate, respectively.¹⁰

Hawaii Revised Statutes ("HRS") § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature

⁹Consumer Advocate's letter, dated April 16, 2003.

¹⁰In Docket No. 01-0254, the commission instructed KMC Data, LLC to make certain revisions to its two (2) proposed tariffs, governing local exchange and interexchange services, respectively. See Decision and Order No. 18902, filed on September 17, 2001. KMC Data, LLC submitted its initial, dual tariffs, incorporating all but one of the commission's revisions -- specifically, the revision to page 24, section 2.5.4(A), governing customer deposits. See KMC Data, LLC's transmittal, dated January 28, 2002.

The commission instructed KMC Data, LLC to file its revision to page 24, section 2.5.4(A). See Commission's letter, dated March 8, 2002. KMC Data, LLC submitted its commission-ordered revision to page 24, section 2.5.4(A). See KMC Data, LLC's letter, dated March 22, 2002. However, KMC Data, LLC did not serve a copy of its revision upon the Consumer Advocate. For this reason, the Consumer Advocate's non-objection to the internal restructuring is also subject to the condition that KMC Data, LLC file its commission-ordered revision to section 2.5.4(A).

The commission finds that the Consumer Advocate's condition regarding section 2.5.4(A) is moot. At the same time, KMC Data, LLC is reminded of the requirement to serve copies of any subsequent revisions to one (1) or both of its tariffs upon the Consumer Advocate.

affecting the relations and transactions between it and the public or persons or corporations."

HRS § 269-16.9(e) authorizes the commission to waive certain regulatory requirements applicable to telecommunications providers if the commission determines that competition will serve the same purpose as public interest regulation. Similarly, Hawaii Administrative Rules ("HAR") § 6-80-135(a) authorizes the commission to exempt or waive a telecommunications carrier or service from the provisions of HRS chapter 269 or any other telecommunications rule, upon a determination that the exemption or waiver is in the public interest.

The internal restructuring will not involve the sale or transfer of KMC Data, LLC's public utility operations or assets. Instead, its operations will remain intact, and KMC Data, LLC will continue to provide telecommunications services under the same rates, terms, and conditions. The restructuring will also be transparent to KMC Data, LLC's customers.

Essentially, the internal restructuring will add two (2) new holding companies above KMC Data, LLC -- KMC Data Holdco Sub LLC and KMC Data Sub Holdings IV LLC. At the same time, KMC Data, LLC's ultimate parent will remain the same -- KMC Telecom Holdings, Inc.

The commission finds that the internal restructuring is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public utility regulation. The commission, thus, on its own motion, waives the requirements of HRS § 269-7(a), to the extent applicable,

pursuant to HRS § 269-16.9(e) and HAR § 6-80-135(a).¹¹ The commission also amends Order No. 20142, ordering paragraph number 1, by removing KMC Data, LLC's requirement that it file certain financial statements. KMC Data, LLC shall promptly file copies of its restructuring agreement, as recommended by the Consumer Advocate.

IV.

Orders

THE COMMISSION ORDERS:

1. HRS § 269-7(a), to the extent applicable, is waived with respect to the internal restructuring involving KMC Data, LLC.

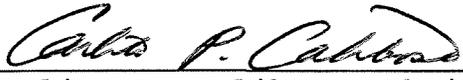
2. Ordering paragraph number 1 is removed from Order No. 20142, filed on April 22, 2003. In all other respects, Order No. 20142 remains unchanged.

3. Within thirty (30) days from the date of this decision and order, KMC Data, LLC shall promptly submit copies of its restructuring agreement with the commission, with two (2) copies served upon the Consumer Advocate. The failure to timely comply with this filing requirement will void this decision and order, and may result in further regulatory action, as authorized by law.

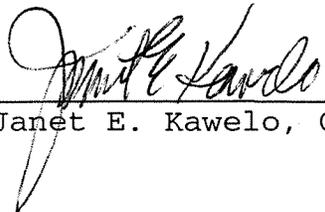
¹¹At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a), or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

DONE at Honolulu, Hawaii this 7th day of April, 2004.

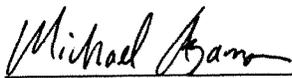
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

03-0100.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20886 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: April 7, 2004