

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

ORDER NO. 20142

Filed April 22, 2003
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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

K. Higashi

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Docket No. 03-0100
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ORDER

I.

The commission, on its own motion, opens this docket in response to the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy's (Consumer Advocate) written reply, dated April 16, 2003.

II.

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 (State).¹

By written notice, dated April 2, 2003 and filed on April 3, 2003, KMC Data, LLC informed the commission of its intent to engage in a *pro forma* internal restructuring of its ownership interests. Essentially, as shown on the exhibit

¹See Decision and Order No. 18902, filed on September 17, 2001, in Docket No. 01-0254. KMC Data, LLC was issued COA 01-0254 by the commission.

attached to the notice, two new holding companies will be added, as follows:²

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.

KMC Data, LLC: (1) states its belief that the commission's approval of the *pro forma* restructuring is not required; (2) requests that the commission notify the parties as soon as possible if this understanding is incorrect; and (3) absent written notification to the contrary within 10 days, "the Parties will presume that their understanding is correct and proceed with their plans as contemplated."

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

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 does not involve the transfer of operating authority, will not affect the identity of the utility entity (i.e., KMC Data, LLC) providing service, the terms and conditions under which services

²In 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.

A copy of KMC Data, LLC's exhibit is attached as Exhibit 1 to the instant order. It consists of the pre- and post-organizational charts of KMC Data, LLC's upstream entities.

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.

By letter dated April 9, 2003, the commission forwarded a copy of the written notice to the Consumer Advocate, for review and comment, if any. By written response, dated April 16, 2003, the Consumer Advocate states its position that KMC Data, LLC "should be required to submit a petition for application for Commission approval of the present transaction pursuant to Hawaii Revised Statutes Chapter 269."

III.

A.

It appears that 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 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.

B.

Upon review, the commission will proceed as follows: (1) KMC Data, LLC shall file the latest balance sheet and income statement of KMC Data Holdco Sub LLC and KMC Data Sub Holdings IV LLC, respectively; and (2) the Consumer Advocate shall file its position statement on the internal restructuring. Further commission action will then follow.³

IV.

THE COMMISSION ORDERS:


1. KMC Data, LLC shall file with the commission the latest balance sheet and income statement of KMC Data Holdco Sub LLC and KMC Data Sub Holdings IV LLC, respectively, with two copies served upon the Consumer Advocate.

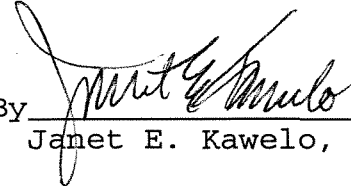
2. The Consumer Advocate shall file its position statement on the internal restructuring, as soon as practical. Further action from the commission will then follow.

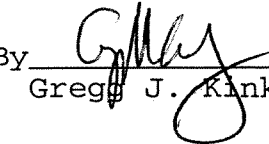
³If the proposed internal restructuring is already completed, the commission will review the restructuring *nunc pro tunc*.

DONE at Honolulu, Hawaii this 22nd day of April, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

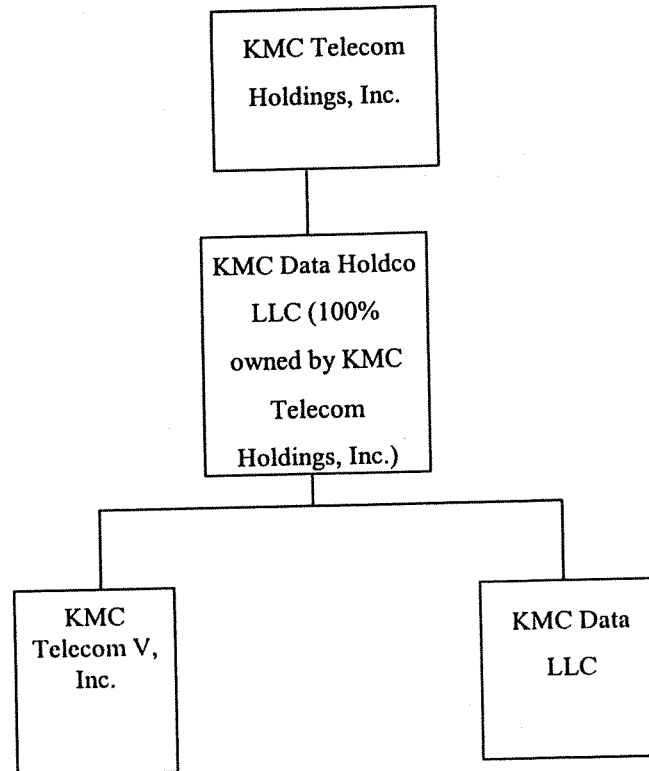
By 
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

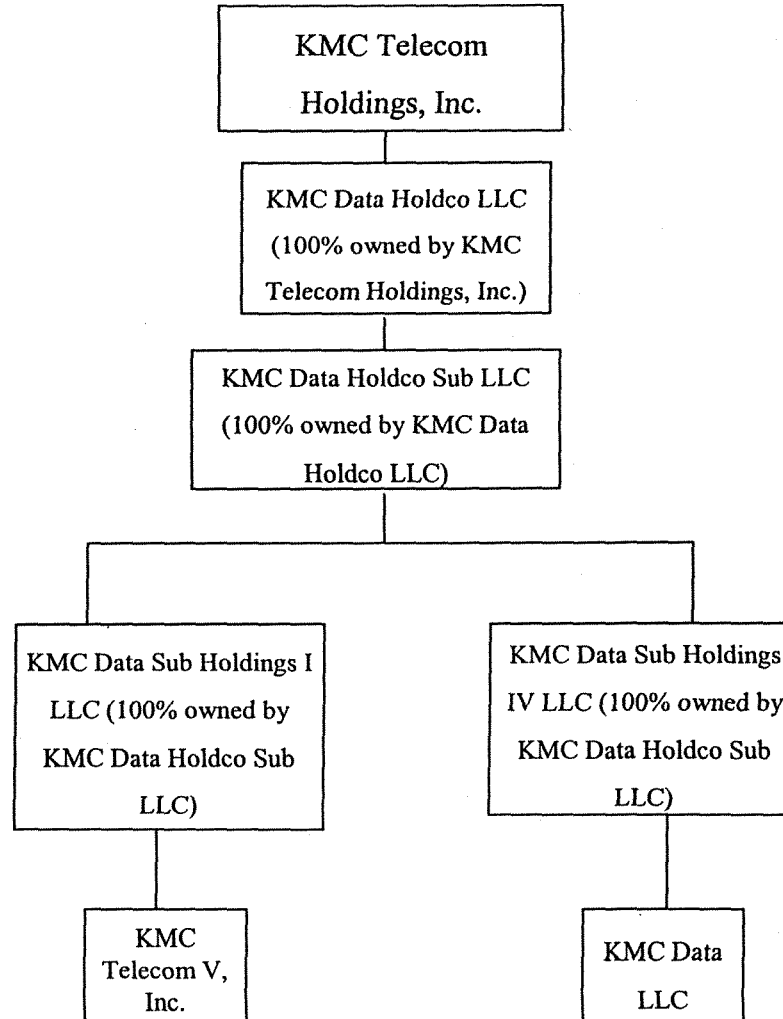
KMCDDataLLC.sl

KMC's Corporate Structure



KMC's Corporate Structure

Proposed New
Structure



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20142 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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DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

DATED: April 22, 2003