

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application  
Pursuant to Public Utilities Code  
Section 854 for Authorization of the  
Acquisition of Control of Hypercube  
Networks, LLC (U6592C) by 46 Labs  
LLC.

Application 23-08-003

**DECISION APPROVING THE TRANSFER OF CONTROL OF HYPERCUBE  
NETWORKS, LLC (U6592C) TO 46 LABS, LLC**

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### Appendix A – Organizational Structure

## Summary

Pursuant to Public Utilities (Pub. Util.) Code Section 854(a), this decision approves the unopposed joint application for transfer of control of Hypercube Networks, LLC (Hypercube) (U6592C)<sup>1</sup> to 46 Labs, LLC (46 Labs) on a prospective basis, subject to the terms and conditions set forth in the Ordering Paragraphs. Hypercube and 46 Labs must pay \$9,000 for their prior unauthorized transfer of control of Hypercube to 46 Labs in violation of Pub. Util. Code Section 854(a) and in accordance with Pub. Util. Code Sections 2107 and 2108.

Application 23-08-003 is closed.

### 1. Factual Background

We first describe the parties to the transaction and their current business operations, along with the affiliated companies in Section 1.1. We then describe the terms of the transaction in Section 1.2.

#### 1.1. Parties to Transaction

Licensee Hypercube Networks, LLC (U6592C) (Hypercube) is a Delaware corporation with a principal place of business at 3200 W. Pleasant Run Road, Suite 300, Lancaster, Texas, 75146. It is authorized, effective November 30, 2001, to operate as a provider of limited facilities-based and resold competitive local exchange and interexchange services in California pursuant to Decision (D.) 01-11-049. Hypercube is a company wholly owned

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<sup>1</sup> On December 1, 2023, assigned Administrative Law Judge, Margery L. Melvin, issued a ruling granting the Joint Applicants' motion to change the name of Intrado Communications, LLC to Hypercube Networks, LLC. On March 18, 2024, ALJ Docket Office changed the name of Intrado Communications, LLC to Hypercube Networks, LLC on the caption in A.23-08-003.

by Hypercube Holdings, Inc.<sup>2</sup>

46 Labs, LLC (46 Labs) is an Oklahoma limited liability company with a principal place of business at 1503 E. 19<sup>th</sup> St., Edmond, Oklahoma, 73013. Trevor G. Francis (Francis) is the Chief Executive Officer (CEO) of 46 Labs and has a 40 percent interest in 46 Labs while VersaPartners Holdings, LLC (VersaPartners) has the remaining 60 percent interest in 46 Labs. Francis owns 45 percent interest in VersaPartners and Daniel Howard, the Chief Legal Officer of 46 Labs, owns 55 percent interest in VersaPartners. As a result of Francis' 45 percent interest in VersaPartners, he indirectly owns an additional 27 percent of 46 Labs. 46 Labs provides voice, data, and messaging services to industry-leading organizations in the healthcare, finance, retail, transportation, manufacturing, government, and education sectors. 46 Labs does not provide telecommunications services or hold any Commission licenses.

As the CEO and Founder of 46 Labs, Francis has over 20 years of experience in the telecommunications industry. Francis has run 46 Labs, a software and infrastructure company that specializes in modernizing traditional phone and data infrastructures globally, since 2012.<sup>3</sup> Howard has held the position of Chief Legal Officer at 46 Labs for over 10 years. In this role, Howard provides regulatory and legal oversight to 46 Labs and its regulated subsidiary, Versatel, LLC. Prior to joining 46 Labs, Howard practiced corporate law in various areas since 2003.<sup>4</sup> Francis and Howard are the current owners of 46 Labs.

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<sup>2</sup> Hypercube Holdings, Inc. is a holding company and does not provide telecommunications services or hold any California Public Utilities Commission (Commission) authorizations. Application at 6-7.

<sup>3</sup> Application at 3 and Exhibit B (Resumes).

<sup>4</sup> Exhibit B (Resumes).

Hypercube is directly controlled by AP VIII Olympus VoteCo, LLC (Olympus), which, in turn, is collectively controlled by Matthew Nord and Robert Kalsow-Ramos, who are officers and managers of Olympus.<sup>5</sup> On June 19, 2023, 46 Labs and West Technology Group, LLC (West), which is directly controlled by Olympus, entered into a *Membership Interest Purchase Agreement* (Purchase Agreement) for West to sell to 46 Labs and for 46 Labs to acquire all of the issued and outstanding membership interests of Hypercube Holdings and Hypercube.

## **1.2. The Transaction**

At the time of the application, the proposed transaction consisted of the direct transfer of Hypercube to 46 Labs, as detailed in the Purchase Agreement.<sup>6</sup> Once all steps of the transaction requested in the Purchase Agreement were consummated fully,<sup>7</sup> 46 Labs would acquire: (1) direct control of Hypercube Holdings, Inc. and (2) direct control of Hypercube, as shown in Appendix A.

On May 1, 2024, Hypercube and 46 Labs (collectively the “Joint Applicants”) completed the transfer of control transaction. Thereby, 46 Labs acquired all the membership interests of Hypercube and Hypercube Holdings, Inc. Joint Applicants indicated that they completed the sale and effectuated the transfer before obtaining approval from the Commission because Hypercube was operating in a “significantly compromised financial position” and “immediate corporate restructuring and new managerial leadership were

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<sup>5</sup> Application at 4 and Exhibit A (Pre- and Post- Transaction Organizational Charts).

<sup>6</sup> At the time of the filing of A.23-08-003 on August 10, 2023, Joint Applicants had executed but not consummated the Membership Interest Purchase Agreement (Agreement). *See* Application at Exhibit H. As of the May 1, 2024, the Joint Applicants consummated the Agreement. *See* Transfer Motion (July 19, 2024).

<sup>7</sup> Application at Exhibit A.

required to ensure continued and profitable operations.”<sup>8</sup> Joint Applications now request that the Commission approve the transfer under Section 854 on a prospective basis.

No assignment of licenses, certificates of public convenience and necessity (CPCN), assets, or customers occurred because of the prior transaction. The prior transaction also did not trigger a change in the rates, terms, and conditions under which Hypercube provides service to its existing customers. The Joint Applicants indicate that the transaction was transparent to Licensees’ customers.

## **2. Procedural Background**

Application (A.) 23-08-003 was filed on August 10, 2023, by Hypercube Networks, LLC (U6592C) (Hypercube) and 46 Labs, LLC (46 Labs) (collectively “Joint Applicants”), for California Public Utilities Commission (Commission) authority for 46 Labs to acquire direct control of Hypercube (Application).

Commissioner Karen Douglas and Administrative Law Judge (ALJ) Margery L. Melvin were assigned to A.23-08-003 on August 10, 2023. No party filed a protest or response to the Application. A prehearing conference (PHC) was held on September 14, 2023. On November 20, 2023, the Joint Applicants filed a *Motion to Change Name of Joint Applicant* (Motion). On December 1, 2023, the ALJ issued a ruling granting Joint Applicants’ Motion, changing the name of the proceeding caption from Intrado Communications, LLC to Hypercube Networks, LLC. On April 23, 2024, the assigned Commissioner issued the *Assigned Commissioner’s Scoping Memo and Ruling*. On July 19, 2024, Joint Applications filed the *Notice of Substitution of Counsel*.

On July 19, 2024, Joint Applicants filed a *Motion to Approve Transfer of*

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<sup>8</sup> Transfer Motion at 3 (July 19, 2024).

*Control* (Transfer Motion). In their Transfer Motion, Joint Applicants informed the Commission that on May 1, 2024, Joint Applicants completed the transfer of control transaction prior to obtaining authorization from the Commission as required by Pub. Util. Code Section 854(a).

### **3. Submission Date**

This matter was submitted on July 19, 2024, upon the filing of the Joint Applicants' Transfer Motion.<sup>9</sup>

### **4. Jurisdiction**

Hypercube is a telephone corporation which holds a certificate of public convenience and necessity (CPCN) authorizing it to provide limited facilities-based and resold competitive local exchange and interexchange services in California (U6592C). Pursuant to Pub. Util. Code Section 854, Commission authorization is required for the proposed transfer of direct ownership of Hypercube to 46 Labs.

Even though the transfer of Hypercube to 46 Labs was completed prior to the submission of the Application, only upon Commission authorization will control of the CPCN effectively transfer to 46 Labs. 46 Labs agrees to be subject to the Commission's authority for directly controlling Hypercube.

### **5. Issues Before the Commission**

The sole issue in this proceeding is whether the Joint Applications' request for a direct transfer of control of Hypercube to 46 Labs is in compliance with all Commission requirements, including but not limited to compliance with Pub. Util. Code Section 854.

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<sup>9</sup> *Ibid.*

## **6. Standard of Review under Pub. Util. Code Section 854**

Joint Applicants seek approval of the transaction pursuant to Pub. Util. Code Section 854(a) which requires Commission authorization before a public utility company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state.” The purpose of this and related code sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the proposal and to take such action, as a condition of the transfer, as the public interest may require.<sup>10</sup>

The Commission has broad discretion under Pub Util. Section 854 to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest.<sup>11</sup> The primary question in a transfer of control proceeding under Pub Util. Section 854(a) is whether a transaction will be adverse to the public interest.

### **6.1. CPCN Criteria**

When a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking the type of CPCN held by the company being acquired. An applicant who desires to operate as a provider of limited facilities-based and resold competitive local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent for operations of the company, plus the costs of deposits to be paid to other carriers. In addition, the

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<sup>10</sup> See *San Jose Water Co.* (1916) 10 CRC 56.

<sup>11</sup> *Ibid.*



applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

#### **6.1.1. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold competitive local exchange and interexchange services must demonstrate that it has minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses. An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service. Acceptable forms of financial documentation include an audited balance sheet and income statements demonstrating sufficient cash flow or, in the alternative, one of several other cash equivalent financial instruments.<sup>12</sup> 46 Labs satisfies this requirement with proposed confidential exhibits, Exhibit E (*46 Labs Financial Statements*) and Exhibit H (*Membership Interest Purchase Agreement*) to A.23-08-003.

#### **6.1.2. Technical Qualifications**

An acquiring entity must also make a reasonable showing of technical expertise in telecommunications or a related business. The direct transfer of control of Hypercube to 46 Labs will result in a change in the ultimate ownership of Hypercube.

Applicants must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. 46 Labs supplied

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<sup>12</sup> The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.13-05-035 and D.95 12 056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.14-11-004.

biographical information on its management and officers -- Trevor Francis, Max Adams, Daniel Howard, Ali Mumtaz, and Jim Albee in support of these requirements.<sup>13</sup>

Francis, current CEO, Founder and an owner of 46 Labs, has over twenty years' experience in the telecommunications field, and is a leading voice in telecom voice infrastructure.<sup>14</sup> Howard, current Chief Legal Officer and owner of 46 Labs, has provided regulatory and legal oversight to 46 Labs for over 10 years and has worked in various areas of corporate law for over 20 years. Joint Applicants supplied biographical information on Francis and Howard that demonstrates extensive experience as telecommunications professionals.<sup>15</sup> Joint Applicants supplied biographical information on its management and officers in its application and in Exhibit B to its application which demonstrates the requisite technical expertise and training to operate as a telecommunications provider.

As required, 46 Labs attested that no affiliate, officer, director, partner, agent or owner (directly or indirectly) of more than 10 percent of acquiring company, or any person acting in management capacity for that company, has:

- a. held one of these positions with a company that filed for bankruptcy;
- b. been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others;
- c. been convicted of a felony;

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<sup>13</sup> See Application at 7. See also Commission D. 21-01-006 at Exhibit B (Resumes).

<sup>14</sup> Exhibit B (Resumes).

<sup>15</sup> *Id.*

- d. been (to his/her knowledge) the subject of a criminal referral by judge or public agency;
- e. had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction;
- f. personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of [Sections] 17000 *et seq.*, [Sections] 17200 *et seq.*, or [Sections] 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or
- g. been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.<sup>16</sup>

Also, to the best of 46 Labs' knowledge, neither 46 Labs nor any affiliate, officer, director, partner, or owner of more than 10 percent of 46 Labs, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the FCC, or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.<sup>17</sup>

46 Labs has satisfied the Commission's technical expertise requirement.

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<sup>16</sup> These certifications are required by D.13-05-035, OP 14.

<sup>17</sup> Application at 9.

### **6.1.3. California Environmental Quality Act (CEQA)**

In circumstances where telecommunications providers seek to construct or install facilities, CEQA requires the Commission to act as the designated lead agency to assess and address the potential environmental impacts of the project. Under CEQA, a project is defined as any “activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>18</sup>

The direct transfer of control that is the subject of this application proposes no new construction and requests no authority for future construction; it is merely a “paper transaction,” with no potential to have a direct or indirect physical change on the environment.<sup>19</sup> Accordingly, the application is exempt from review under CEQA. Hypercube must submit a new application should it propose construction of facilities other than those within the limited facilities-based- authority granted to Hypercube as a CLEC under its utility identification number U6592C.

### **6.1.4. Discussion**

As discussed above, 46 Labs meets the requirements for the Commission to grant CPCN authority to provide limited facilities-based and resold competitive local exchange and interexchange services in California.<sup>20</sup> In addition, we find that the transfer of direct control of Hypercube to 46 Labs will not be adverse to the public interest as Hypercube will continue to operate and contribute to

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<sup>18</sup> See California Public Resources Code Section 21065.

<sup>19</sup> See Application at 7. See also Cal. Code Regs., Title 14 § 15061(b)(3) CEQA exemption provisions.

<sup>20</sup> UFR and D.21-09-025.

California's competitive telecommunications marketplace. The transaction will not affect Hypercube's ability to meet its public utility obligations.<sup>21</sup>

Furthermore, the direct transfer of control of Hypercube to 46 Labs will not have an adverse effect on competition in the markets for intrastate or interstate telecommunications services. The transfer of control that has already occurred allowed for the immediate corporate restructuring and new managerial leadership to ensure Hypercube's continued and profitable operations. Following the transfer of control, Hypercube's operations remained the same without interruption of services. We therefore grant the Application pursuant to Pub. Util. Code Section 854(a).

## **6.2. Transfer of Control Prior to Commission Approval**

Absent prior Commission-approval, Pub Util. Section 854(a) provides that the transaction is "void and of no effect." Joint Applicants stipulated that they "closed the transfer of control transaction prior to obtaining authorization of this Commission as required by Section 854(a) . . . and 46 Labs acquired all of the membership interests of Hypercube Networks Holdings, LLC."<sup>22</sup> Joint Applicants request that the Commission approve the transfer of control on a prospective basis.

Joint Applicants' stipulation that they closed the transfer of control transaction that is the subject of this proceeding amounts to an admission that that it violated Section 854(a) and are subject to monetary penalties under Pub. Util. Code Section 2107 and 2108.<sup>23</sup>

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<sup>21</sup> Application at 4.

<sup>22</sup> Transfer Motion at 3.

<sup>23</sup> Transfer Motion at 4.

According to Pub. Util. Code Section 2107:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

Pub. Util. Code Section 2108 provides that:

Every violation of the provisions of this part or of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

The Commission views this prior transfer of control with Commission authority as a distinct offense, subject to a penalty ranging from \$500 to \$100,000. In their Transfer Motion, Joint Applicants acknowledge that they are subject to monetary penalties and reference a penalty range between \$5,000 and \$10,000 for cases involving similar facts to the instant violation for an appropriate penalty for violating Pub. Util. Code Section 854(a).<sup>24</sup>

In assessing the reasonableness of the penalty range, we apply the criteria set forth in D.98-12-075 for guidance and evaluate: (1) the severity of the economic or physical harm resulting from the violation; (2) the utility's conduct to prevent, detect, disclose, and rectify the violation; (3) the utility's financial

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<sup>24</sup> Transfer Motion at 4-5.

resources; (4) the public interest involved; (5) the totality of the circumstances; and (6) Commission precedent.

With regard to the severity of economic or physical harm resulting from the violation, Joint Applicants indicate that “the early closing did not cause any physical harm to people or property, nor was there any economic harm to others.”<sup>25</sup> Joint Applicants contend that the unauthorized transfer occurred due to circumstances that would have compromised Hypercube’s financial position and interrupted service to its customers, indicating a public interest involved in the unauthorized transfer.<sup>26</sup> We agree that no economic or physical harm resulted from the unauthorized transfer of control.

With regard to the utility’s conduct to prevent, detect, disclose, and rectify the violation, Joint Applicants informed the Commission through their July 2024 Transfer Motion of the May 1, 2024, unauthorized transfer of control. Joint Applicants assert “that it has never closed early on a transaction that required a regulatory agency approval, nor does it have any history of noncompliance with regulatory requirements”<sup>27</sup> all of which tends to mitigate Joint Applicants’ conduct. The Commission looks favorably on the Joint Applicants’ admission of the unauthorized transfer of control, which occurred within two months of its finalization.

With respect to its financial resources, 46 Labs has a letter of credit to meet the financial requirements for a CPCN in this proceeding and, thus, 46 Labs has the financial means to pay the \$9,000 penalty. Joint Applicants proposed paying

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<sup>25</sup> Transfer Motion at 4.

<sup>26</sup> *Ibid.*

<sup>27</sup> Transfer Motion at 3.

a penalty between the range of \$5,000 and \$10,000 making the Commission-imposed penalty of \$9,000 consistent with the Transfer Motion.

Based upon Joint Applicants' conduct post unauthorized transfer (e.g. disclosed unauthorized in a timely manner, attempted to resolve unauthorized transfer, admitted to violating Commission regulations, and proposal of a penalty within a \$5,000 to \$10,000 range), sufficient mitigating factors exist to impose a penalty of \$9,000 against Joint Applicants rather than the maximum allowable amount of \$100,000 pursuant to Pub. Util. Code Section 854(a). The Commission recognizes that the \$9,000 penalty is significantly less than the maximum penalty amount of \$100,000 but the Commission believes that a \$9,000 penalty in this instance and based upon Joint Applicants' conduct sufficiently deters Joint Applicants and other similarly situated utilities from future violations.

We find that the resolution of the proceeding by imposing a penalty furthers the public interest by encouraging compliance with our regulations through the imposition of a reasonable penalty against Joint Applicants for the violation of 854(a). The penalty also supports compliance with regulatory obligations by requiring Joint Applicants to obtain Commission authority for the transfer of control and meets all relevant Commission requirements. The imposition of a penalty to resolve the proceeding is also consistent with the Commission's policy favoring settlement of disputes to avoid costly and protracted litigation. Therefore, we find the penalty to be in the public interest.

We also consider the totality of the circumstances and find Joint Applicant's disclosure of their unauthorized transfer of control in the context of financial hardship for Hypercube weighs in favor of a smaller penalty.



With respect to the role of precedent, the Commission has considered the range of fines assessed in several other settlements, including the fine assessed in D.24-06-002 issued on June 26, 2024. In D.24-06-002, the Commission imposed a penalty of \$9,000 against Kloud Communications, Inc. for its unauthorized transfer of control of Vertex to Kloud in violation of Pub. Util. Code Section 854(a). The facts in D.24-06-002 are similar to that in the instant proceeding, and the Commission considers its decision in Kloud persuasive. As such, the Commission concludes that the penalty assessment in the instant proceeding is reasonable in this light.<sup>28</sup>

For the above reasons, we find the \$9,000 penalty to be reasonable in light of the factors set forth in D.98-12-075. Payment shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, California, 94102. Joint Applicants must include a written identification stating the decision number and the application number, such as the following: "Per Decision [enter decision number here] of A.23-08-003."

## **7. Motions for Confidential Treatment and Other Procedural Matters**

On August 10, 2023, the Joint Applicants filed a motion to file under seal and request for confidential treatment Exhibit E (*46 Labs Financial Statements*), Exhibit H (*Membership Interest Purchase Agreement*) and I (*Hypercube Financial Statements*) to its Application.

The motion to seal is filed pursuant to General Order (GO) 66-C, Pub. Util. Code Section 583, and Rule 11.4 of the Commission's Rules of Practice and

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<sup>28</sup> See Joint Motion at 8; See Decision 24-06-002 issued on June 20, 2024, in Application 22-11-011 (Kloud Communications, Inc. for Registration as an Interexchange Carrier Telephone Corporation Pursuant to Provisions of Pub. Util. Code Section 1013).

Procedure (Rules). Joint Applicants represent that the information contained in Exhibits E, H, and I consist of confidential financial statements belonging to Joint Applicants or their respective affiliates, if revealed, would place them and their affiliates at an unfair business disadvantage in negotiations with respect to competitive transactions with third parties and cause unfair competition and harm the public interest.<sup>29</sup> We have granted similar requests in the past and do so here, pursuant to the Ordering Paragraphs herein.

All assigned Commissioner and ALJ rulings are affirmed herein. All motions not otherwise ruled on are denied.

## **8. Safety Considerations**

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We have considered the potential safety implications here. The Commission is satisfied that the Joint Applicants will meet the Commission's minimum safety goals and expectations of limited facilities-based and resold competitive local exchange and interexchange providers because: (1) Joint Applicants have taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Hypercube is a public utility that is required pursuant to Pub. Util. Code Section 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

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<sup>29</sup> Motion to Seal at 1.

**9. Waiver of Comments**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

**10. Assignment of Proceeding**

Karen Douglas is the assigned Commissioner and Margery L. Melvin is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Hypercube is a Delaware corporation with a principal place of business at 3200 W. Pleasant Run Road, Suite 300, Lancaster, Texas 75146.
2. Hypercube was issued a CPCN in D.01-11-049 (U6592C) in November 30, 2001, to provide limited facilities-based and resold competitive local exchange and resold interexchange services in California pursuant to Decision (D.) 01-11-049.
3. Hypercube is a company wholly owned by Hypercube Holdings, Inc.
4. Hypercube Holdings is a holding company that does not provide telecommunications services on its own.
5. Hypercube is directly controlled by Olympus which, in turn, is collectively controlled by Matthew Nord and Robert Kaslow-Ramos, who are officers and managers of Olympus.
6. 46 Labs is an Oklahoma limited liability company with a principal place of business at 1503 E. 19th Street, Edmond, Oklahoma, 73013.
7. 46 Labs does not provide telecommunications services or hold any Commission licenses.

8. Trevor Francis is the Chief Executive Officer of 46 Labs and has a 40 percent interest in 46 Labs while VersaPartners has the remaining 60 percent interest in 46 Labs.

9. Trevor Francis has a 45 percent interest in VersaPartners while Daniel Howard has 55 percent interest in VersaPartners.

10. As a result of Francis' 45 percent interest in VersaPartners, he indirectly owns an additional 27 percent of 46 Labs.

11. 46 Labs provides voice, data, and messaging services to industry-leading organizations in the healthcare, finance, retail, transportation, manufacturing, government, and education sectors.

12. 46 Labs does not provide telecommunications services or hold any Commission licenses.

13. As the CEO and Founder of 46 Labs, Francis has over 20 years experience in the telecommunications industry.

14. Francis has run 46 Labs, a software and infrastructure company that specializes in modernizing traditional phone and data infrastructures globally, since 2012.

15. Howard has held the position of Chief Legal Officer at 46 Labs for over 10 years.

16. In this role, Howard provides regulatory and legal oversight to 46 Labs and its regulated subsidiary, Versatel.

17. Prior to joining 46 Labs, Howard practiced corporate law in various areas since 2003.

18. Francis and Howard are owners of 46 Labs.

19. Hypercube is directly controlled by Olympus, which, in turn, is collectively controlled by Matthew Nord and Robert Kaslow-Ramos, who are the officers and managers at Olympus.

20. On June 19, 2023, 46 Labs and West, which is directly controlled by Olympus, entered into a Purchase Agreement for West to sell to 46 Labs and for 46 Labs to acquire all of the issued and outstanding membership interests of Hypercube Holdings and Hypercube.

21. Application 23-08-003 was filed on August 10, 2023, and at the time of the application, sought Commission authorization for 46 Labs to acquire direct control of Hypercube by transfer of 100 percent of West's issued and outstanding membership interests in Hypercube Holdings, including its wholly owned subsidiary Hypercube, to 46 Labs.

22. Once all steps of the transaction requested in the Purchase Agreement were consummated fully, 46 Labs would acquire direct control of Hypercube Holdings and Hypercube.

23. On May 1, 2024, Hypercube and 46 Labs completed the transfer of control transaction.

24. As a result of the completed transfer of control transaction, 46 Labs acquired all the membership interests of Hypercube and Hypercube Holdings.

25. Joint Applicants closed the transfer of control transaction, that is West sold to 46 Labs and 46 Labs acquired all of West's membership interests in Hypercube Holdings and Hypercube, prior to first obtaining Commission approval.

26. Joint Applicants transferred Hypercube to 46 Labs prior to obtaining Commission approval in violation of Pub. Util. Code Section 854(a).

27. Joint Applicants reported the violation to the Commission and requested that the Commission authorize the transfer of Hypercube to 46 Labs on a

prosecutive basis through their *Motion to Approve Transfer of Control* (Transfer Motion) filed on July 19, 2024.

28. Joint Applicants acknowledge through their Transfer Motion that it is subject to monetary penalties by the Commission to deter further violations.

29. The Commission evaluates the Joint Applicants' Transfer Motion, and the criteria set forth in D.98-12-075, as well as the fact that the unauthorized transfer of Hypercube to 46 Labs was the Joint Applicants first time conducting an unauthorized transfer and assesses a penalty amount of \$9,000 as a result of Joint Applicants' conduct.

30. Hypercube continues to operate as public utility providing telecommunications services pursuant to its CPCN.

31. No party to the proposed transaction has gross annual California revenues in excess of \$500 million.

32. The prospective transfer of control is a parent-level transaction, therefore: (1) customers will experience no changes in day-to-day operations of Hypercube and (2) the transaction will be transparent to customers of Hypercube.

33. The prospective transaction will not result in any changes to the services provided by Hypercube and/or to rates, terms, or conditions of service.

34. The direct transfer of control of Hypercube to 46 Labs did not have an adverse impact on competition in the marketplace.

35. The direct transfer of control of Hypercube to 46 Labs is in the public Interest.

36. The direct transfer of control of Hypercube to 46 Labs is a paper only transaction with no direct or indirect physical change on the environment.

37. The direct transfer of control of Hypercube to 46 Labs did not have an adverse impact on safety.

38. Joint Applicants have filed financial documents under seal showing they meet the Commission's financial requirements for a CPCN.

39. Pursuant to Rule 11.4, Joint Applicants filed a motion for leave to file confidential material contained in Exhibits E, H and I to their August 10, 2023, Application.

40. Joint Applicants have met the requirements for a transfer of control of Hypercube's CPCN (U6592C) pursuant to Pub. Util. Code Section 854(a).

### **Conclusions of Law**

1. Joint Applicants violated Pub. Util. Code Section 854 for transferring control of Hypercube to 46 Labs without prior Commission Approval on May 1, 2024.

2. Joint Applicants admitted to violating Pub. Util. Code Section 854.

3. The Commission should assess a penalty of \$9,000 for the unauthorized transfer of control of Hypercube to 46 Labs.

4. Pub. Util. Code Section 854(b) and (c) do not apply to this transaction.

5. 46 Labs meets the Commission's financial and technical requirements for a CPCN.

6. 46 Labs (U6592C) should be bound by the terms and conditions imposed on limited facilities-based competitive local exchange carriers (CLEC) regulated by the Commission.

7. Hypercube (U6592C) should continue to be bound by the terms and conditions imposed on limited facilities-based CLECs regulated by the Commission.

8. This transfer does not require CEQA review because the proposed transaction is not a project as defined by CEQA, because it will not result in a physical change in the environment.

9. Joint Applicants' motion to file Exhibits E, H, and I to its August 10, 2023, Application under seal should be granted for three years.

10. All assigned Commissioner and ALJ Rulings should be affirmed herein.

11. All motions not otherwise ruled upon should be deemed denied.

12. This proceeding should be closed.

13. This decision should be effective immediately.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The transfer of direct control of Hypercube Networks, LLC (U6592C) to 46 Labs, LLC upon the terms and conditions set forth in this decision is approved on a prospective basis.

2. Hypercube Networks, LLC (U6592C) shall continue to be bound by the terms and conditions imposed on competitive local exchange carriers regulated by the Commission.

3. Hypercube Networks, LLC (Hypercube) and 46 Labs, LLC (46 Labs) must pay a penalty of \$9,000 to the California Public Utilities Commission by check or money order mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, California, 94102 as follows:

Hypercube Networks, LLC and 46 Labs, LLC shall pay \$9,000 within 30 days of the issuance date of this decision. Hypercube and 46 Labs will include a written identification stating the decision number and the application number, such as the following: "per Decision [enter Decision number] OP 5 of A.23-08-003."

Hypercube and 46 Labs will e-mail the Commission's Communications Division of payment made at [telcosurcharge@cpuc.ca.gov](mailto:telcosurcharge@cpuc.ca.gov).



4. Hypercube Networks, LLC and 46 Labs, LLC's August 10, 2023, Motion to File Exhibits E, H and I to Application 23-08-003 under seal is granted for a period of three years after the date of this decision. During this three-year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling.

5. If Hypercube Networks, LLC and 46 Labs, LLC believe that it is necessary for the sealed information to remain under seal for longer than three years, Applicants may file a new motion showing good cause for extending the sealing order no less than 30 days before the expiration of this order.

6. All assigned Commissioner and Administrative Law Judge rulings in this proceeding are affirmed.

7. All motions not otherwise ruled upon are denied.

8. Application 23-08-003 is closed.

This decision is effective today.

Dated \_\_\_\_\_, at Bakersfield, California

**APPENDIX A**

**Pre- and Post- Transaction Organizational Charts**