

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
**HyperCube Telecom, LLC** )  
 *Licensee* )  
 )  
**HyperCube, LLC** )  
 *Transferor* ) **WC Docket No. \_\_\_\_\_**  
 )  
**and** ) **IB File No. \_\_\_\_\_**  
 )  
**Rubik Acquisition Company, LLC** )  
 *Transferee* )  
 )  
**Application for Consent to Transfer Control** )  
**of a Company Holding International Section** )  
**214 Authority and Blanket Domestic Section** )  
**214 Authority Pursuant to Section 214 of the** )  
**Communications Act of 1934, as Amended** )

**JOINT DOMESTIC AND INTERNATIONAL APPLICATION**

HyperCube Telecom, LLC (“HyperCube”), HyperCube, LLC (“Parent”), and Rubik Acquisition Company, LLC (“Rubik” and collectively with HyperCube and Parent, “Applicants”) hereby respectfully request authority pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. §214, and Sections 63.04 and 63.24(e) of the Commission’s Rules, 47 CFR §§ 63.04, 63.24(e), to transfer control of HyperCube to Rubik. HyperCube, a wholly-owned subsidiary of Parent, provides wholesale local and national tandem switching and transport services to telecommunications and information service providers throughout the U.S. HyperCube holds international and blanket domestic Section 214 authority and provides all of its services on a competitive basis. Rubik is a wholly-owned subsidiary of West

Corporation (“West”). Through its subsidiaries, West is a leading provider of technology-driven voice and data solutions. West’s subsidiaries hold international and blanket domestic Section 214 authority, and collectively provide primarily non-regulated service in the U.S. as well as in Europe, Asia, and other regions of North America. Through the Quadrangle Group (“Quadrangle”), which holds a minority interest in West, West and its subsidiaries are affiliated with four rural incumbent local exchange carriers (“ILECs”) operating in South Carolina and Virginia, as well as several competitive local exchange carriers (“CLECs”) and interexchange carriers (“IXCs”). HyperCube, West, and the West subsidiaries are not foreign carriers and are not affiliated with foreign carriers in any market. West has no foreign ownership.

As discussed in more detail below, West, Rubik, Parent, and certain individuals and entities holding directly or indirectly the membership interests in Parent have entered into an agreement pursuant to which Rubik will acquire all of the membership interests in Parent and, indirectly, in HyperCube. The transaction will not result in any loss or impairment of service for any customers.

Pursuant to Section 63.04(b) of the Commission’s Rules, 47 C.F.R. § 63.04(b), the Applicants are filing a combined application for the proposed transfer of control of HyperCube. The Applicants provide below the information required by Section 63.24(e)(2) of the Commission’s Rules, 47 C.F.R. § 63.24(e)(2). **Exhibit A** provides the additional information requested by Section 63.04(a)(6) through (a)(12) of the Commission’s Rules, 47 C.F.R. § 63.04(a)(6)-(12).

The Applicants request streamlined treatment for the international portion of this Application pursuant to Section 63.12 of the Commission’s Rules, 47 C.F.R. § 63.12.

This Application qualifies for streamlined treatment under Section 63.12(c) of the Commission's Rules because (i) Rubik is not affiliated with a foreign carrier and will not become affiliated with any foreign carrier as a result of the proposed transaction; (ii) Rubik is not affiliated with any dominant U.S. carrier whose international switched or private line services Rubik or HyperCube seeks authority to resell, nor will Rubik or HyperCube be so affiliated post-close; and (iii) none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply.

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Applicants (and their Affiliates, as that term is defined in Section 3(1) of the Act, 47 U.S.C. § 153(1) ("Affiliates")) will have a market share in the interstate, interexchange market of less than 10 percent; Applicants (and their Affiliates) will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and HyperCube does not provide telephone exchange services or exchange access services in the geographic area where Rubik's Affiliates are classified as dominant with respect to those services.

## **I. DESCRIPTION OF THE APPLICANTS**

### **A. HyperCube Telecom, LLC (“HyperCube”) and HyperCube, LLC (“Parent”)**

HyperCube is a limited liability company organized under the laws of Delaware. Its principal place of business is 3200 W. Pleasant Run Road, Suite 300, Lancaster, TX 75146.

*Customers and services.* HyperCube provides wholesale local and national tandem switching and transport services, termination services, toll-free origination services, and Direct Inbound Dial (“DID”) services. While HyperCube provides exchange access service, it does not provide telephone exchange service as defined in Section 3(47) of the Act, 47 U.S.C. § 153(47). HyperCube’s customers are telecommunications and information service providers, including wireless carriers, wireline CLECs and IXC, cable telephony providers, and Voice over Internet Protocol (“VoIP”) providers.

*Network and geographic service areas.* HyperCube provides service to its customers using its nationwide optical backbone network that is both IP- and TDM-based. While HyperCube owns and operates its own network equipment, it does not own fiber, IRUs, or other transmission facilities. Rather, HyperCube leases transmission lines (including access circuits) from other carriers. HyperCube’s services are currently available in 43 states – Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee,

Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming -- and the District of Columbia.

*Regulatory authority.* HyperCube holds blanket domestic Section 214 authority as well as international Section 214 authority, granted in FCC File No. ITC-214-20050203-00058, to operate as a global or limited global facilities-based and resale carrier. In addition, HyperCube holds certificates to provide local and intrastate toll services in 43 states and the District of Columbia. Also, HyperCube has applied for a certificate to provide local and intrastate toll services in Arizona. HyperCube has no affiliates that offer domestic or international telecommunications services. HyperCube is not a foreign carrier and is not affiliated with any foreign carriers in any market.

*Ownership.* At present, HyperCube is a wholly-owned subsidiary of Parent, a Delaware limited liability company and a holding company. The following individuals or entities currently hold a direct 10 percent or greater ownership interest in Parent.

- *Annex.* Annex Holdings HC Corporation (“Annex”), an investment management company, currently holds 26.06 percent of Parent. Annex is indirectly owned by Alexander P. Coleman and funds of Collier International Partners.
- *Kamine.* Kamine Credit Corporation (“Kamine”), a holding company, currently holds 26.06 percent of Parent. Kamine is owned by Harold N. Kamine.
- *Chambers.* Chambers Street Investors, LLC (“Chambers”), an investment company, currently holds 26.06 percent of Parent. Chambers is owned by Kewco LLC and The Trustees of Princeton University.
- *Ronald Beaumont.* Ronald Beaumont, the Chief Executive Officer of Parent, currently holds 14.84 percent of Parent.

Diagrams showing the current corporate structure of HyperCube, including all entities and individuals that hold a 10 percent or greater equity or voting interest in HyperCube at present, are provided in **Exhibit B**.

**B. Rubik Acquisition Company, LLC (“Rubik”)**

Rubik is a limited liability company that is organized under the laws of Delaware and was created specifically to acquire HyperCube. Rubik is a wholly-owned subsidiary of West, a corporation organized under the laws of Delaware. The principal place of business of Rubik and West is located at 11808 Miracle Hills Drive, Omaha, NE 68154.

*Customers and services.* Through its subsidiaries, West provides a broad range of communications and network infrastructure solutions to business customers throughout the United States and globally. These services include conferencing and other meeting replacement services, alerts and notification services, emergency communications services, automated call processing, interconnected VoIP services, and agent-based services such as inbound customer care, customer acquisition and retention, and collection of receivables. The voice and data solutions of West’s subsidiaries are deployed in a variety of industries, including telecommunications, banking, retail, financial services, technology and healthcare. The vast majority of these services are information services or services other than communications services. West operates through the following groups of subsidiaries, as relevant to this Application.

- *Intrado.* Intrado Inc. (“Intrado”) is a U.S. entity that provides 911-related services and support in the United States. Its wholly-owned subsidiary, Intrado Communications Inc. (“Intrado Communications”), currently provides telecommunications services in Florida, Nevada, North Carolina, Pennsylvania, Vermont, and Virginia.
- *InterCall.* InterCall, Inc. (“InterCall”) is a U.S. entity and a private services provider that delivers advanced audio, event, web and video conferencing solutions throughout the U.S. and in 14 countries as well as in Latin America. InterCall does not provide telecommunications services at this time.
- *Smoothstone.* West Communications, Inc. d/b/a Smoothstone (“Smoothstone”) is a U.S. entity that primarily provides interconnected VoIP services to business customers in 42 states plus the District of

Columbia.<sup>1</sup> In these locations, Smoothstone provides a *de minimis* amount of ancillary telecommunications services used for fax line or alarm monitoring purposes.

*Network and geographic service areas.* West and the West subsidiaries do not own fiber, IRUs, or other transmission facilities. Rather, they lease transmission lines (including access circuits) from other carriers. Smoothstone and the Intrado companies own and operate their own network equipment.

As noted previously, Intrado Communications currently provides telecommunications services in Florida, Nevada, North Carolina, Pennsylvania, Vermont, and Virginia, while Smoothstone provides a *de minimis* amount of ancillary telecommunications services in 42 states and the District of Columbia. West's subsidiaries provide information services and services other than communications services on a nationwide basis. InterCall and Intrado provide service outside of the U.S. as well.

*Regulatory authority.* Rubik does not hold any telecommunications regulatory authority, nor does West. However, Smoothstone holds international Section 214 authority, granted in FCC File No. ITC-214-20110309-00066, to operate as a global or limited global facilities-based and resale carrier. In addition, Intrado or one of its subsidiaries holds or has applied for certificates or registrations to provide local,

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<sup>1</sup> Smoothstone provides interconnected VoIP services in the following states: Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

intrastate toll, or niche emergency services in 45 states and the District of Columbia.<sup>2</sup> No other West subsidiaries hold regulatory authority to provide telecommunications services in the United States. Furthermore, West is not a foreign carrier and is not affiliated with any foreign carriers. None of West's subsidiaries are foreign carriers or are affiliated with foreign carriers.

*Ownership.* As noted previously, Rubik is a wholly-owned subsidiary of West. The following individuals or entities hold a direct 10 percent or greater ownership interest in West at present.

*THL.* Funds of Thomas H. Lee ("THL") hold an aggregate interest of approximately 60 percent in West. THL is a private equity firm, with principal offices at 100 Federal St., 35<sup>th</sup> Floor, Boston, MA 02110. THL's investment strategy is to acquire substantial ownership positions in large growth-oriented companies where THL can contribute managerial and strategic expertise to create value. Established in 1974, THL has raised in the neighborhood of \$22 billion of equity capital and has invested in over 100 businesses with an aggregate purchase price of more than \$125 billion. All THL entities are U.S. entities.

THL's interest in West is primarily held through six subsidiary funds (the "THL Funds"). The six funds are (1) Thomas H. Lee Equity Fund VI, L.P. (24.9

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<sup>2</sup> Intrado or one of its subsidiaries holds or has applied for certificates or registrations to provide local, intrastate toll, or niche emergency services in the following states: Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.



percent); (2) Thomas H. Lee Parallel Fund VI, L.P. (16.9 percent); (3) Thomas H. Lee Parallel (DT) Fund VI, L.P. (2.9 percent); (4) THL Equity Fund VI Investors (West), L.P. (13.1 percent); (5) THL Equity Fund VI Investors (West) HL, L.P. and (6) THL Coinvestment Partners, L.P. (0.0 percent). THL Equity Advisors VI, LLC is general partner of THL Funds (1) through (5). Thomas H. Lee Partners, L.P. is the general partner of THL Fund (6).

Thomas H. Lee Partners, L.P. is the sole member of THL Equity Advisors VI, LLC. Thomas H. Lee Advisors, LLC (“Advisors”) is the general partner of Thomas H. Lee Partners, L.P. Shares held by the THL Funds may be deemed to be beneficially owned by Advisors. Advisors disclaims any beneficial ownership of any shares held by the THL Funds.

Voting or investment control over securities that the THL Funds own are acted upon by majority vote of the members of a ten-member committee, whose current members (all U.S. citizens) are Todd M. Abbrecht, Charles A. Brizius, Anthony J. DiNovi, Thomas M. Hagerty, Scott L. Jaeckel, Seth W. Lawry, Soren L. Oberg, Scott A. Schoen, Scott M. Sperling and Kent R. Weldon. Only Thomas H. Lee Equity Fund VI, L.P., Thomas H. Lee Parallel Fund VI, L.P. and THL Equity Fund VI Investors (West), L.P. individually hold more than 10 percent of West LLC.

THL does not hold a 10 percent or greater interest in any foreign or other domestic telecommunications provider. As such, THL’s interest does not raise any foreign or domestic affiliation issues.

*The Wests.* Gary L. West and Mary E. West (the “West Family”) each hold 12.5 percent of West. Mr. West and Ms. West are U.S. citizens; the principal

business of the West Family is communications. The address of the West Family is 9746 Ascot Drive, Omaha, NE 68114.

*Quadrangle.* The Quadrangle Group (“Quadrangle”) collectively holds an interest of 12.5 percent in West. Quadrangle is a private investment firm with more than \$3 billion in assets under management. All Quadrangle entities are U.S. entities. The address of Quadrangle is 375 Park Avenue, New York, NY 10152.

Quadrangle invests in media and communications companies through separate private and public investment strategies. Since its inception in 2000, Quadrangle’s private equity funds have completed over 20 investments in the communications sector. Quadrangle’s current investments include the following companies that provide domestic telecommunications services:

- *Hargray.* Hargray Communications Group (“Hargray”) is an integrated telecommunications provider serving southeastern South Carolina and northeastern Georgia both directly and through its subsidiaries. All Hargray entities are U.S. entities. Hargray subsidiaries include:
  - Hargray Telephone Company, Inc., a rural ILEC operating in Hilton Head, Hardeeville, and Jasper, South Carolina;
  - Bluffton Tel. Co. Inc., a rural ILEC operating in Bluffton, South Carolina;
  - Hargray of Georgia, Inc., a CLEC in Georgia;
  - Hargray, Inc., a CLEC in South Carolina; and
  - Low Country Carriers, Inc. (d/b/a Hargray Long Distance), a toll reseller operating in Georgia and South Carolina.
- *Cequel.* Cequel Communications, LLC (“Cequel”), under the name Suddenlink Communications, offers a variety of services that include high-speed Internet access and telephone. All Cequel entities are U.S. entities. Cequel’s subsidiaries and affiliates include:
  - Mercury Voice and Data, LLC, a CLEC operating in Arizona and Missouri;

- Cebridge Telecom CA, LLC, a CLEC in California;
  - Cebridge Telecom LA, LLC, a CLEC in Louisiana;
  - Cebridge Telecom MO, LLC, a CLEC in Missouri;
  - Cebridge Telecom NC, LLC, a CLEC in North Carolina;
  - Cebridge Telecom OK, LLC, a CLEC in Oklahoma;
  - Cebridge Telecom TX, LLC, a CLEC in Texas;
  - Cebridge Telecom WV, LLC, a CLEC in West Virginia; and
  - TCA Communications, LLC, an IXC in various states.
- *Lumos Networks*. Lumos Networks Operating Company (“Lumos Networks”) provides wireline and information services through its subsidiaries to consumers and businesses in West Virginia, Virginia, Maryland, Ohio, Kentucky, and Pennsylvania. On October 31, 2011, the wireline and wireless businesses of NTELOS Inc. (“NTELOS”) were separated into two publicly-traded wireless and wireline businesses; Lumos Networks is the new name for the legacy NTELOS wireline operations. All Lumos Networks entities are U.S. entities. Lumos Networks subsidiaries include:
    - NTELOS Telephone Inc., a rural ILEC that provides local and long distance services in Virginia, specifically in the cities of Waynesboro and Covington, and portions of Augusta and Alleghany Counties;
    - Roanoke and Botetourt Telephone Company, a rural ILEC that provides local and long distance services in Botetourt County, Virginia, including in the towns of Troutville, Daleville, and Fincastle, Virginia;
    - NTELOS Network Inc, a CLEC in Virginia;
    - NTELOS of West Virginia, a CLEC in West Virginia;
    - FiberNet, L.L.C., a CLEC in West Virginia, Kentucky and Maryland;
    - FiberNet of Ohio, LLC, a CLEC in Ohio;
    - FiberNet Telecommunications of Pennsylvania, LLC, a CLEC in Pennsylvania; and

- FiberNet of Virginia, Inc., a CLEC in Virginia.
- *NTELOS*. NTELOS provides wireless communications services through its subsidiaries to consumers and businesses in Virginia and West Virginia. All NTELOS entities are U.S. entities.

Quadrangle's interest in West is held through three entities: Quadrangle Capital Partners II LP, Quadrangle Select Partners II LP, and Quadrangle Capital Partners II-A LP (collectively, the "Quadrangle Funds"). Voting or investment control over securities that the Quadrangle Funds own are acted upon by the investment committee of QCP GP Investors II LLC as general partner of Quadrangle GP Investors II LP, the common general partner of the Quadrangle Funds. The current members of the investment committee of QCP GP Investors II LLC are Michael A. Huber, Peter R. Ezersky, Steven Felsher, and Puneet Gulati, all of whom are U.S. citizens. Of the three Quadrangle Funds, only Quadrangle Capital Partners II LP holds more than 10 percent of West LLC.

No other entity or individual holds a 10 percent or greater ownership interest in West and thus in Rubik. Diagrams showing the current corporate structure of Rubik are provided in Exhibit C.

## **II. DESCRIPTION OF THE TRANSACTION**

Pursuant to the terms of a Securities Purchase Agreement ("Agreement") dated November 23, 2011, by and among West; Rubik; Parent; and certain individuals and entities holding directly or indirectly the membership interests in Parent, Rubik will acquire all of the membership interests in Parent. Rubik will acquire all of the membership interests in Parent directly from the individuals or entities currently holding those interests, with the exception of Annex. With respect to Annex, which holds 26.06 percent of Parent, Rubik will acquire Annex's interests by acquiring all of the equity in

Annex. As a result of these equity acquisitions, HyperCube will become a wholly-owned indirect subsidiary of Rubik. Once the proposed transaction is closed, none of the individuals and entities that held directly or indirectly the membership interests in Parent at time of filing will hold an equity or other interest in Parent, Rubik, HyperCube, or West, except for Annex, which as a wholly-owned subsidiary of Rubik will hold indirectly a 26.06 percent interest in HyperCube.

The transaction will be transparent to HyperCube's customers. All existing customers of HyperCube will continue to be served by HyperCube pursuant to its existing international and domestic Section 214 authorizations. The operations of West's other subsidiaries will not be affected by the transaction described herein.

Diagrams of the corporate structure of Rubik and HyperCube post-close is provided in **Exhibit D**.

### **III. PUBLIC INTEREST STATEMENT**

Pursuant to Section 214 of the Act, control of HyperCube may not be transferred to Rubik unless the Commission finds that "the public interest, convenience and necessity will be served thereby." 47 U.S.C. § 214. As discussed below, the transaction will serve the public interest, as it will yield tangible benefits for the public without harming customers or competition in any market.

#### **A. Public Interest Benefits of the Transaction**

The acquisition of HyperCube by Rubik will serve the best interests of the public. HyperCube is a leader in the market for competitive tandem service, enabling telecommunications and information service providers to route their traffic over an alternative network that offers more efficiency and reliability at a lower cost than traditional networks. However, the current owners of Parent have determined that their

continued ownership and control of HyperCube is no longer consistent with their investment objectives. Accordingly, the current owners of Parent have elected to transfer their ownership to Rubik.

Through its current subsidiaries, West is an established provider of high-quality voice and data solutions to enterprise customers in critical industries. The financial, technical, and managerial resources that West will bring to HyperCube will further enhance HyperCube's ability to compete in the telecommunications and information services marketplace. The history of West's subsidiaries providing quality service to customers demonstrates that Rubik is legally, technically and financially qualified to own and operate HyperCube as proposed in the Agreement.

**B. The Transaction Will Have No Adverse Impact on Customers**

At the same time, the proposed transaction will have no adverse impact on HyperCube's current customers. These customers will continue to receive their existing services at the same rates, terms and conditions as at present. Any future changes to the rates, terms and conditions of service will be made consistent with any applicable Commission requirements. The only significant change following the closing of the transaction from the customers' perspective will be that Rubik will be the new owner of HyperCube.

**C. The Transaction Poses No Competitive Risks for Domestic Telecommunications Markets**

*Domestic interstate interexchange telecommunications market.* Rubik's acquisition of HyperCube will pose no threat to competition in the domestic interstate interexchange telecommunications market. HyperCube and West (including West's subsidiaries, and domestic affiliates through Quadrangle) each have a miniscule share of

this market, and provide interstate service only on a resale basis to different market segments. Furthermore, all of the West subsidiaries and affiliates that provide domestic interstate telecommunications service – including the Lumos and Hargray ILEC subsidiaries -- are regulated as nondominant,<sup>3</sup> as is HyperCube. The Commission has previously determined that combinations between nondominant carriers where the resulting entity holds less than a 10 percent share of the domestic interstate interexchange telecommunications market are “extremely unlikely [to] result in a public interest harm” and “unlikely to raise public interest concerns.”<sup>4</sup> The combined market share of HyperCube and West, including West’s subsidiaries and affiliates, will fall well below that threshold.

*Local exchange markets.* More importantly, Rubik’s acquisition of HyperCube will not harm competition in local exchange markets. In merger cases involving ILECs, the Commission has found that where mergers between non-BOC ILECs result in (i) *de minimis* overlaps and (ii) no or only minimal adjacencies between ILEC markets where the adjacent exchanges are very small, “no harm to competition is likely to occur.”<sup>5</sup> Here, while Rubik is affiliated with the Lumos Networks and Hargray ILEC subsidiaries

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<sup>3</sup> *See Regulatory Treatment Of ILEC Provision Of Interexchange Services Originating In The ILEC’s Local Exchange Area and Policy And Rules Concerning The Interstate, Interexchange Marketplace*, 12 FCC Rcd. 15756, ¶ 163 (1997) (establishing criteria for independent ILECs to be eligible for nondominant regulatory treatment).

<sup>4</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd. 5517, ¶ 30 (2002) (citing to U.S. Dept. of Justice and Federal Trade Commission Horizontal Merger Guidelines, § 1.51 n.18).

<sup>5</sup> *Joint Applications of Global Crossing Ltd. and Citizens Communications Co.*, 16 FCC Rcd. 8507, ¶ 9 (2001).

through Quadrangle, HyperCube is not an ILEC in any market, so there are *no* ILEC-ILEC overlaps or ILEC-ILEC adjacencies. Furthermore, any overlap between HyperCube's competitive operations and the operations of the Lumos Networks and Hargray ILEC subsidiaries is minimal at most. As noted previously, the Lumos Networks ILEC subsidiaries provide service in Virginia, specifically in the cities of Waynesboro and Covington as well as in portions of Alleghany, Augusta and Botetourt counties, while the Hargray ILEC subsidiaries provide service in Hilton Head, Hardeeville, Jasper, and Bluffton, South Carolina. HyperCube provides no telephone exchange service or exchange access service at this time in any of these locations in Virginia or South Carolina. While HyperCube will be affiliated with the Lumos Networks and Hargray ILECs post-close, HyperCube will continue to be separately managed and operated from these ILECs. Since THL holds a controlling interest in West and Quadrangle is only a minority shareholder, there is no reason to believe that Quadrangle could successfully force one affiliate to favor another or engage in other anticompetitive behavior.

At present, HyperCube provides exchange access service on a competitive basis in 43 states and the District of Columbia. West's subsidiaries and affiliates provide or are authorized to provide competitive services in most all of these locations as well. However, in each of these locations, HyperCube as well as West's subsidiaries and affiliates compete with the resident ILEC and numerous other competitive service providers. The continuing presence of these service providers post-close means that the acquisition of HyperCube by Rubik is unlikely to have a negative impact on competition or otherwise harm the public interest in these locations. Indeed, the Commission has



previously recognized that combining the operations of two overlapping LECs will not result in competitive harm because of the presence of other competitors in the region.<sup>6</sup>

**D. The Transaction Poses No Competitive Risks for the International Market**

Finally, the transaction poses no risk of anticompetitive impact on the U.S. international telecommunications marketplace. HyperCube and West (through its subsidiaries) each have a very small share of the international telecommunications market, and both provide international services only on a resale basis. Neither HyperCube nor West is a foreign carrier or affiliated with a foreign carrier in any market. As such, the acquisition of HyperCube by Rubik would have no ability to adversely affect competition in the international telecommunications market.

**IV. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE COMMISSION'S RULES**

The Applicants submit the following information pursuant to Section 63.24(e) of the Commission's Rules, including the information requested in Section 63.18:

- (a) Name, address and telephone number of the Applicants:

HyperCube Telecom, LLC ("HyperCube") -- Licensee  
3200 W. Pleasant Run Rd, #300  
Lancaster, TX 75146-1086  
Tel: (469) 727-1510  
FRN: 0014485163

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<sup>6</sup> See *XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, 17 FCC Rcd 19212, 19225 (2002); accord, *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd.*, 16 FCC Rcd 15293, ¶ 9 (2001) (where an ILEC and a CLEC merge, the loss of a competitor is not likely to result in a public interest harm where a significant number of actual and potential competitors remain post-merger, and the carrier being eliminated serves primarily business customers).

HyperCube, LLC ("Parent") -- Transferor  
3200 W. Pleasant Run Rd, #300  
Lancaster, TX 75146-1086  
Tel: (469) 727-1510  
FRN: 0014484760

Rubik Acquisition Company, LLC ("Rubik") -- Transferee  
11808 Miracle Hills Dr.  
Omaha, NE 68154  
Tel: (402) 963-1200  
FRN: 0021291554

- (b) HyperCube is a Delaware limited liability company. Parent is a Delaware limited liability company. Rubik is a Delaware limited liability company.
- (c) Correspondence concerning this Application should be sent to:

For HyperCube and Parent:

Robert W. McCausland  
Sr. VP, Regulatory & Government Affairs  
HyperCube LLC  
3200 W. Pleasant Run Rd, #300  
Lancaster, TX 75146-1086  
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with copy to:

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For Rubik:

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Executive Vice President – General Counsel  
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with copy to:

Joan M. Griffin  
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3050 K Street, NW  
Washington, DC 20007  
Tel: (202) 342-8573  
Jgriffin@kelleydrye.com

- (d) HyperCube holds international Section 214 authority, granted in FCC File No. ITC-214-20050203-00058, to operate as a global or limited global facilities-based and resale carrier. Rubik does not hold any telecommunications regulatory authority. However, West’s wholly-owned subsidiary Smoothstone holds international Section 214 authority, granted in FCC File No. ITC-214-20110309-00066, to operate as a global or limited global facilities-based and resale carrier.
- (h) Post-close, HyperCube will be a wholly-owned subsidiary of Rubik, which is a wholly-owned subsidiary of West. The following individuals or entities hold a 10 percent or greater interest in West and thus will hold a 10 percent or greater interest in HyperCube post-close:

*THL*. Funds of Thomas H. Lee (“THL”) hold an aggregate interest of approximately 60 percent in West. THL is a private equity firm, with principal offices at 100 Federal St., 35th Floor, Boston, MA 02110. All THL entities are U.S. entities.

THL’s interest in West is primarily held through six subsidiary funds (the “THL Funds”). The six funds are (1) Thomas H. Lee Equity Fund VI, L.P. (24.9 percent); (2) Thomas H. Lee Parallel Fund VI, L.P. (16.9 percent); (3) Thomas H. Lee Parallel (DT) Fund VI, L.P. (2.9 percent); (4) THL Equity Fund VI Investors (West), L.P. (13.1 percent); (5) THL Equity Fund VI Investors (West) HL, L.P. and (6) THL Coinvestment Partners, L.P. (0.0 percent) [confirm]. THL Equity Advisors VI, LLC is general partner of THL Funds (1) through (5). Thomas H. Lee Partners, L.P. is the general partner of THL Fund (6).

Thomas H. Lee Partners, L.P. is the sole member of THL Equity Advisors VI, LLC. Thomas H. Lee Advisors, LLC (“Advisors”) is the general partner of Thomas H. Lee Partners, L.P. Shares held by the THL Funds may be deemed to be beneficially owned by Advisors. Advisors disclaims any beneficial ownership of any shares held by the THL Funds.

Voting or investment control over securities that the THL Funds own are acted upon by majority vote of the members of a ten-member committee, whose current members (all U.S. citizens) are Todd M. Abbrecht, Charles A. Brizius, Anthony J. DiNovi, Thomas M. Hagerty, Scott L. Jaeckel, Seth W. Lawry, Soren L. Oberg, Scott A. Schoen, Scott M. Sperling and Kent R. Weldon. Only Thomas H. Lee Equity Fund VI, L.P., Thomas H. Lee Parallel Fund VI, L.P. and THL Equity Fund VI Investors (West), L.P. individually hold more than 10 percent of West LLC.

*The Wests.* Gary L. West and Mary E. West (the “West Family”) each hold a 12.5 percent interest in West. Mr. West and Ms. West are U.S. citizens; the principal business of the West Family is communications. The address of the West Family is 9746 Ascot Drive, Omaha, NE 68114.

*Quadrangle.* The Quadrangle Group (“Quadrangle”) collectively holds a 12.5 percent interest in West. Quadrangle is a private investment firm with more than \$3 billion in assets under management. All Quadrangle entities are U.S. entities. The address of Quadrangle is 375 Park Avenue, New York, NY 10152.

Quadrangle’s interest in West is held through three entities: Quadrangle Capital Partners II LP, Quadrangle Select Partners II LP, and Quadrangle Capital Partners II-A LP (collectively, the “Quadrangle Funds”). Voting or investment control over securities that the Quadrangle Funds own are acted upon by the investment committee of QCP GP Investors II LLC as general partner of Quadrangle GP Investors II LP, the common general partner of the Quadrangle Funds. The current members of the investment committee of QCP GP Investors II LLC are Michael A. Huber and Peter R. Ezersky, both of whom are U.S. citizens. Of the three Quadrangle Funds, only Quadrangle Capital Partners II LP holds more than 10 percent of West LLC.

No other persons or entities will hold a 10 percent or greater ownership interest in HyperCube post-close pursuant to the Commission’s attribution rules. There will be no interlocking directorates with any foreign carrier following consummation of the proposed transaction.

- (i) As evidenced by the signature of Rubik’s representative to this Application, Rubik certifies that (a) Rubik is not a foreign carrier and is not affiliated with a foreign carrier, and (b) Rubik will not become a foreign carrier or become affiliated with a foreign carrier post-close.

- (j) As evidenced by the signature of Rubik's representative to this Application, Rubik certifies that it does not seek to provide international telecommunications services to any destination country where (i) Rubik or HyperCube is a foreign carrier; (ii) Rubik or HyperCube controls a foreign carrier; (iii) any entity that owns more than 25 percent of Rubik or HyperCube, or that controls Rubik or HyperCube, controls a foreign carrier; or (iv) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of Rubik or HyperCube and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) As evidenced by the signatures of Applicants' representatives to this Application, Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and they will not enter into such agreements in the future.
- (o) As evidenced by signatures of Applicants' representatives to this Application, Applicants certify that, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules, they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) Applicants request streamlined processing of this Application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12. This Application qualifies for streamlined treatment under Section 63.12(c) of the Commission's Rules because (i) Applicants are not affiliated with a foreign carrier and will not become affiliated with any foreign carrier as a result of the proposed transaction; (ii) Applicants are not affiliated with any dominant U.S. carrier whose international switched or private line services Applicants seek authority to resell, nor will Applicants be so affiliated post-close; and (iii) none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply.

**V. INFORMATION REQUIRED BY SECTION 63.04(b) OF THE COMMISSION'S RULES**

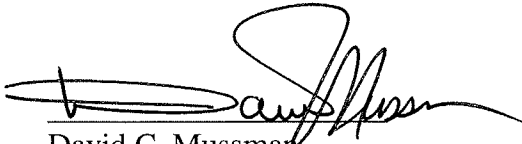
In accordance with the requirements of Section 63.04(b) of the Commission's Rules, the additional information required for the domestic Section 214 transfer of control application is provided in Exhibit A.

**VI. CONCLUSION**

Based on the foregoing, the Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,

**RUBIK ACQUISITION COMPANY, LLC**



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Its Attorney

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Its Attorneys

Date: Nov. 30<sup>th</sup> 2011

**VI. CONCLUSION**

Based on the foregoing, the Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,

**RUBIK ACQUISITION COMPANY, LLC**

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Its Attorney

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Date: 11/30/11

## **LIST OF EXHIBITS**

EXHIBIT A – Information Required by 47 C.F.R. §63.04
EXHIBIT B -- Current Corporate Structure of HyperCube
EXHIBIT C -- Current Corporate Structure of Rubik
EXHIBIT D -- Corporate Structure of Rubik and HyperCube Post-Close



## EXHIBIT A

### INFORMATION REQUIRED BY 47 C.F.R. §63.04

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04, the Applicants provide the following information in support of their request.

**63.04(b)(6): Description of the Transactions**

The proposed transaction is described in Section II of the Application.

**63.04(b)(7): Description of Geographic Service Area and Services in Each Area**

A description of the geographic service areas and services provided in each area is included in Section I of the Application.

**63.04(b)(8): Presumption of Non-Dominance and Qualification for Streamlining**

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Applicants (and their Affiliates) will have a market share in the interstate, interexchange market of less than 10 percent; Applicants (and their Affiliates) will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and HyperCube does not provide telephone exchange services or exchange access services in the geographic area where Rubik's Affiliates are classified as dominant with respect to those services.

**63.04(b)(9): Other Pending Commission Applications Concerning the Proposed Transaction**

None.

**63.04(b)(10): Special Considerations**

None.

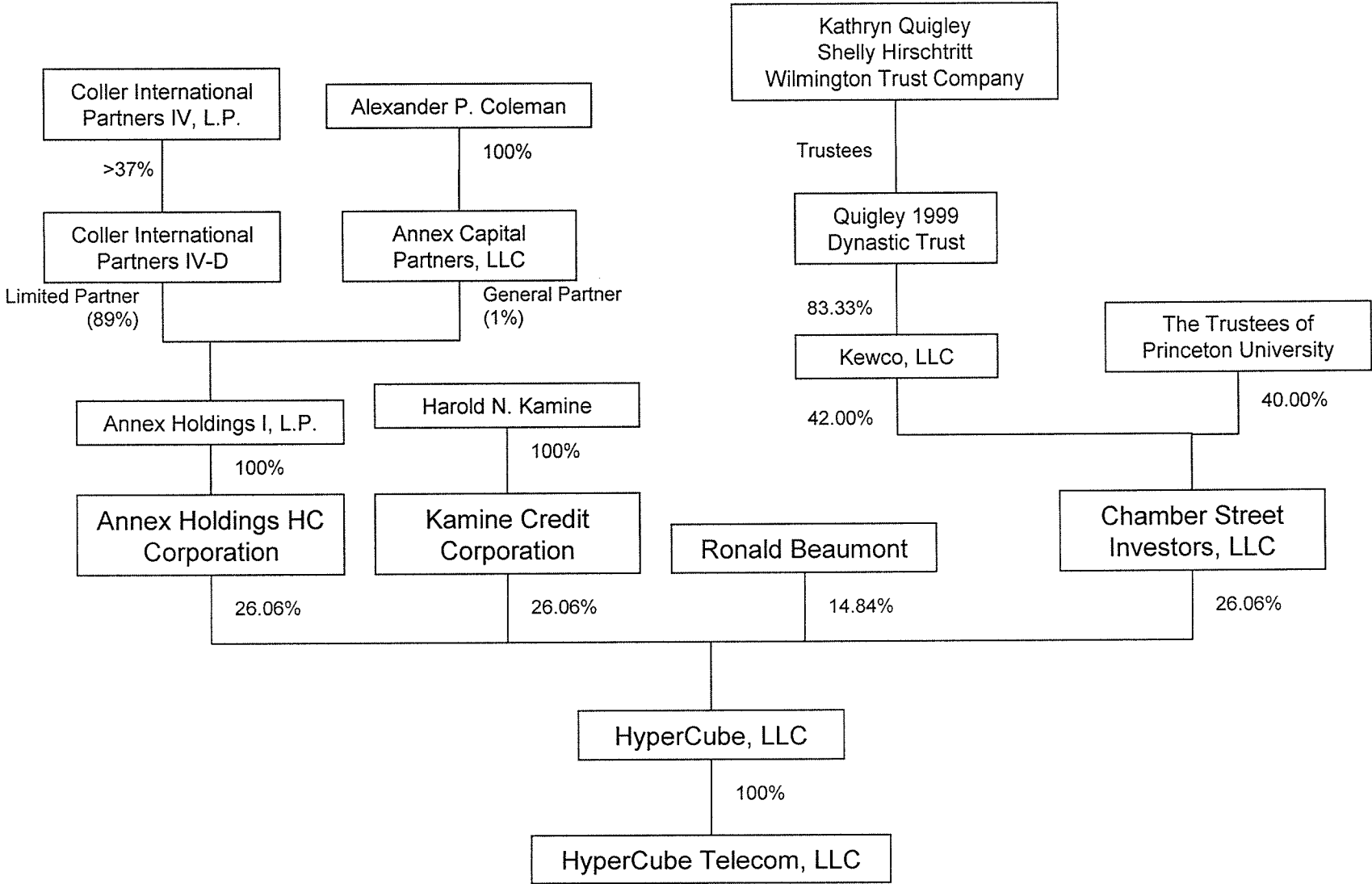
**63.04(b)(11): Waiver Requests (If Any)**

None.

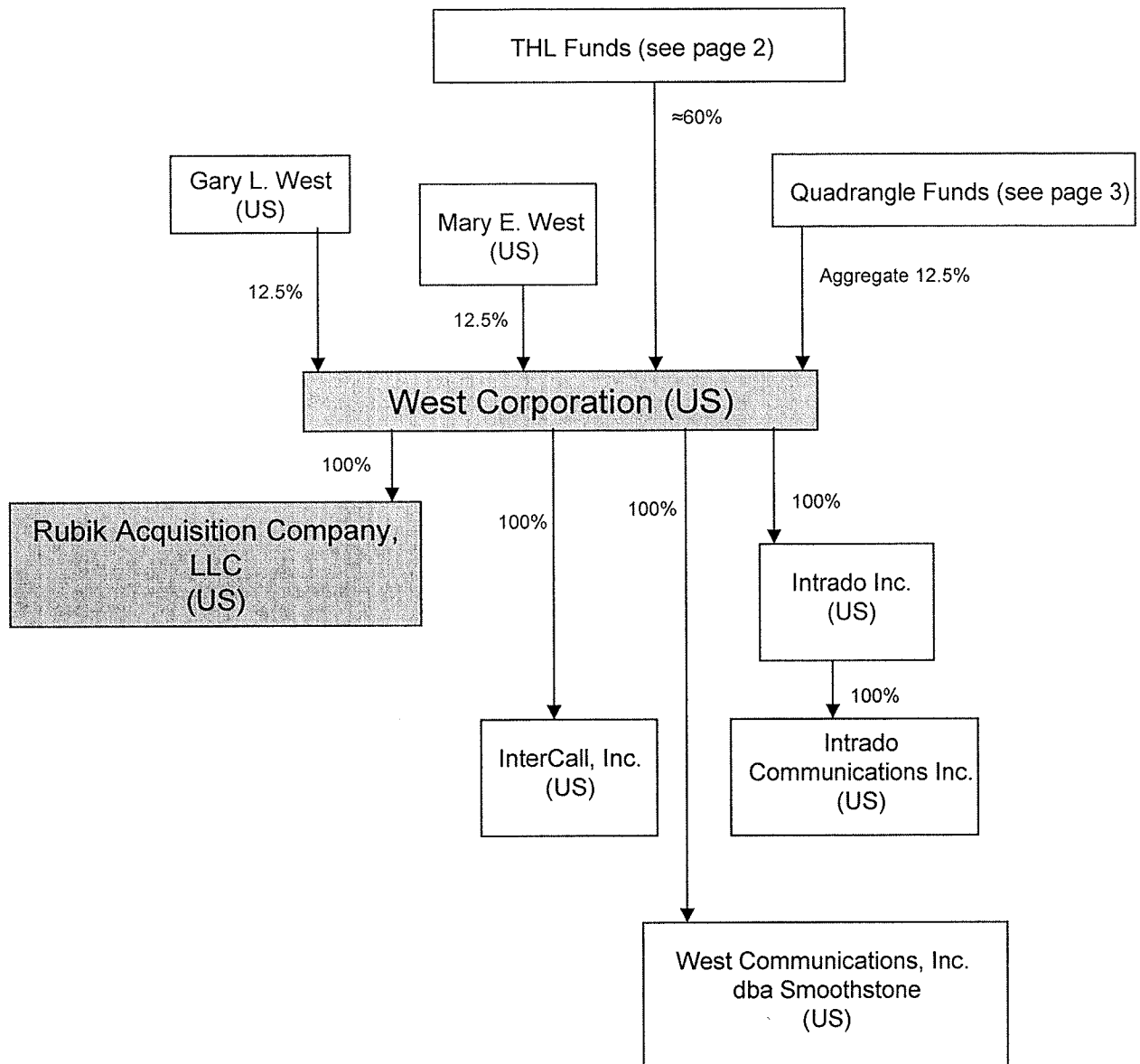
**63.04(b)(12): Public Interest Statement**

Consummation of the proposed transaction will serve the public interest for the reasons detailed in Section III of the Application.

Pre-Transaction Ownership of HyperCube

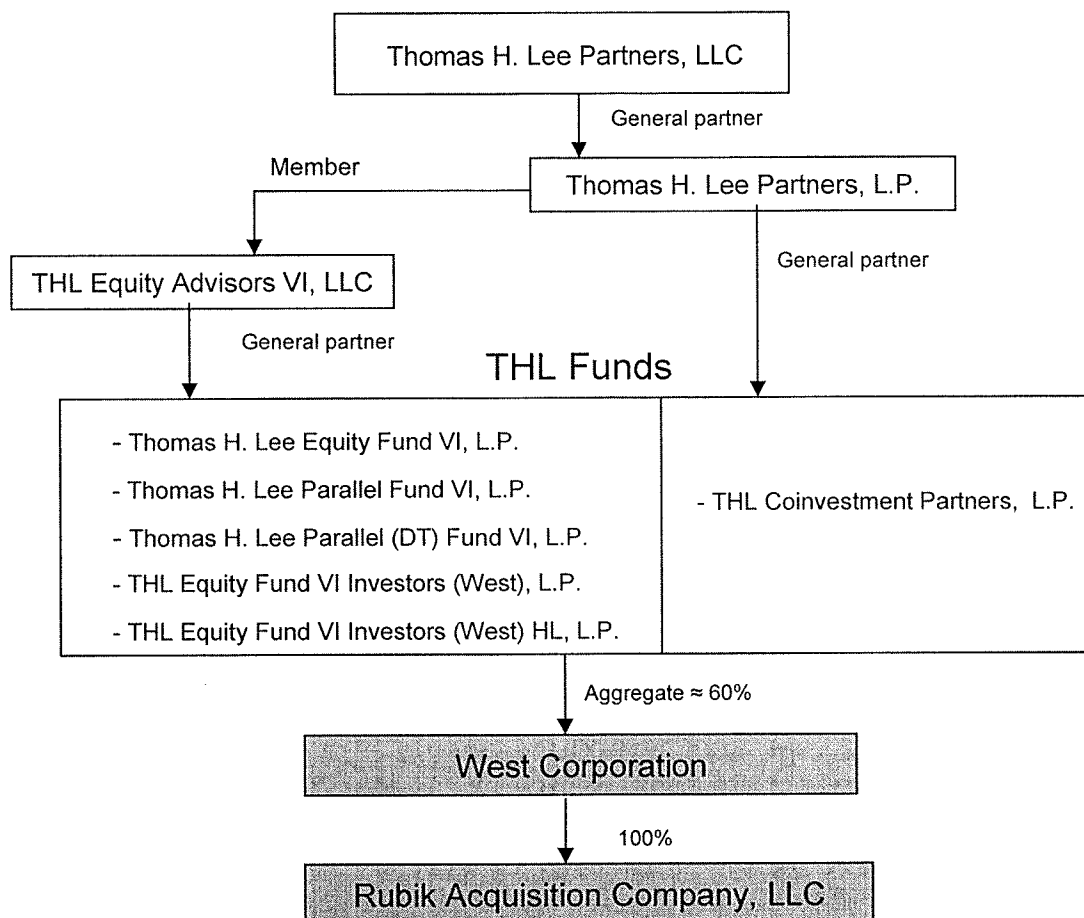


## West Corporation Corporate Structure Before Transaction



**This chart includes the West entities discussed in  
or relevant to the application.**

## Thomas H. Lee Interest in West Corporation



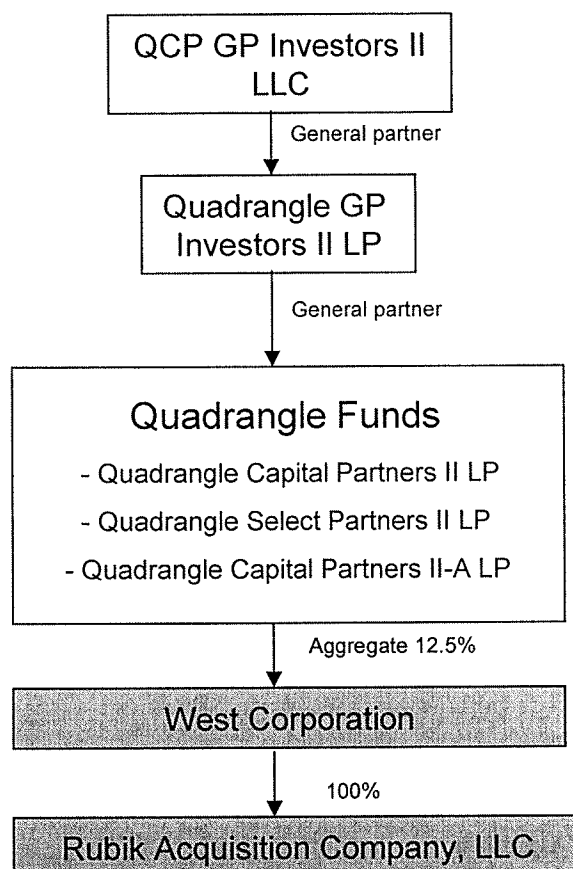
**NOTES:**

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An insignificant percentage of the complete THL interest in West is held through two entities formed as a coinvestment vehicle with Putnam Investment Holdings. These funds hold approximately 0.2% interest in West and are noted here solely to provide a complete statement of the THL interest.

Putnam Investments Holdings, LLC disclaims any beneficial ownership of any shares held by Putnam Investments Employees’ Securities Company III LLC and Putnam Investments LLC disclaims any beneficial ownership of any shares held by the Putnam Funds.

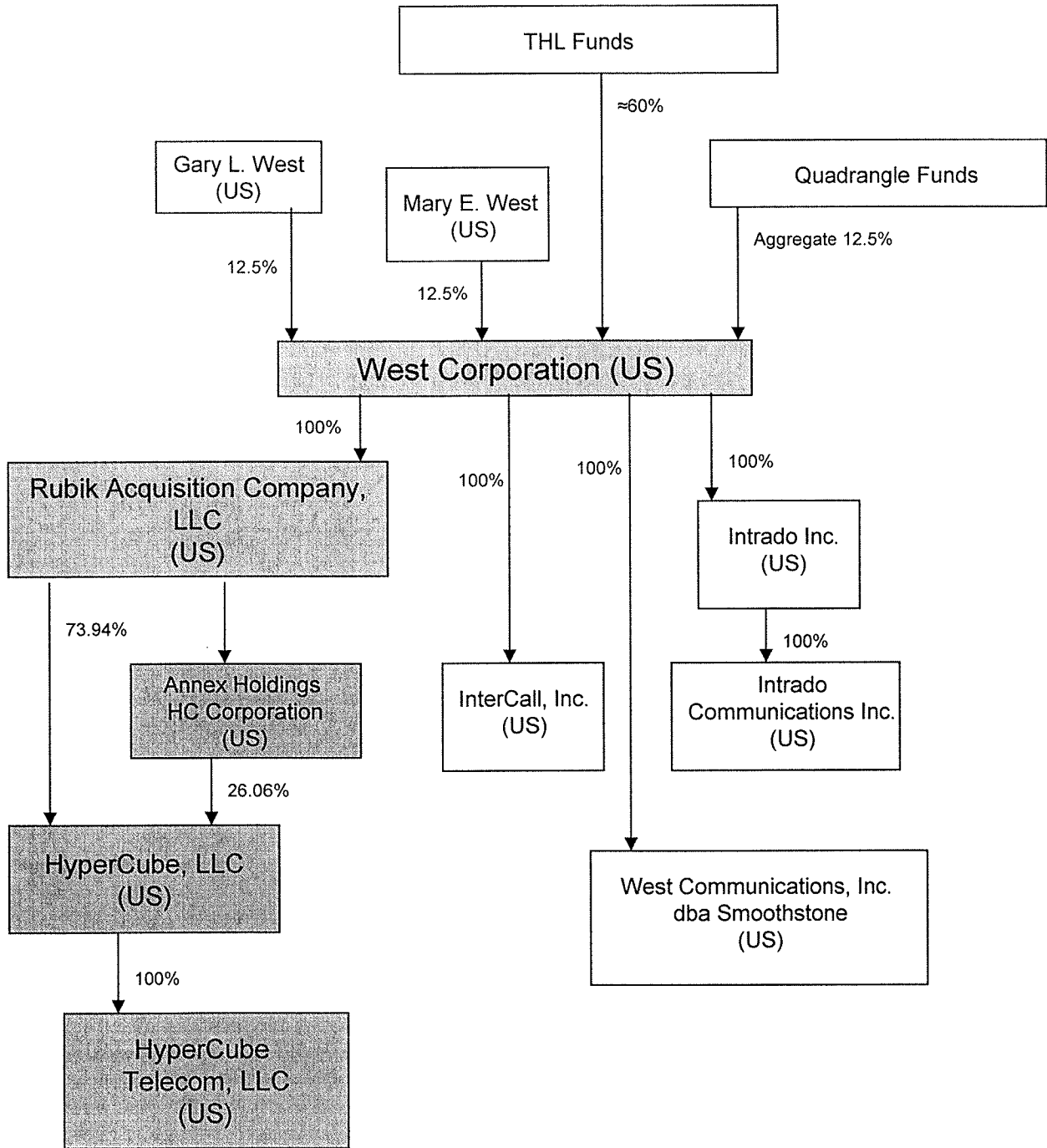
**Quadrangle Group**  
**Interest in West Corporation**



NOTES:

The Quadrangle Group ("Quadrangle") collectively holds an interest of 12.5 percent in West. Quadrangle's interest in West is held through three entities: Quadrangle Capital Partners II LP, Quadrangle Select Partners II LP, and Quadrangle Capital Partners II-A LP (collectively, the "Quadrangle Funds"). Voting or investment control over securities that the Quadrangle Funds own are acted upon by the investment committee of QCP GP Investors II LLC as general partner of Quadrangle GP Investors II LP, the common general partner of the Quadrangle Funds. The current members of the investment committee of QCP GP Investors II LLC are Michael A. Huber and Peter R. Ezersky, both of whom are U.S. citizens. Of the three Quadrangle Funds, only Quadrangle Capital Partners II LP holds more than 10 percent of West LLC. All Quadrangle entities are U.S. entities.

**West Corporation**  
**Corporate Structure After Transaction**



This chart includes the West entities discussed in or relevant to the application.