

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of DeltaCom, Inc. for order determining DeltaCom, Inc. not liable for access charges of KMC Data LLC, Hypercube, LLC and Hypercube Telecom, LLC.	DOCKET NO. 090327-TP ORDER NO. PSC-09-0472-PCO-TP ISSUED: July 2, 2009
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ORDER GRANTING DELTACOM'S STIPULATED MOTION FOR TEMPORARY STAY OF PROCEEDINGS

I. Background

On June 5, 2009, pursuant to Florida Administrative Code Rules 28-106.201 and 25-22.036, DeltaCom, Inc. ("DeltaCom") filed its Petition seeking entry of a Commission order against Respondents KMC Data LLC ("KMC"), Hypercube, LLC, and Hypercube Telecom, LLC (collectively, "Hypercube"). By its Petition, DeltaCom requested that the Florida Public Service Commission (the "Commission"), pursuant to its authority under, section 364.01(4)(g), Florida Statutes and, where applicable, sections 364.03 and 364.04, Florida Statutes, issue an order finding that Hypercube's attempt to impose charges for intrastate access services unlawful.

On June 26, 2009, DeltaCom filed its Stipulated Motion for Temporary Stay of Proceedings in this matter.

II. Deltacom's Stipulated Motion for Temporary Stay of Proceedings

In support of its Motion, DeltaCom states that DeltaCom and Hypercube can undertake additional good faith efforts to resolve the issues presented in DeltaCom's Petition without the need for litigation. Hypercube supports and stipulates to the filing of this motion, as exhibited by the declaration of James Mertz, Hypercube's Vice President of Government Affairs, attached to Deltacom's Motion. Deltacom asserts that should the negotiations reach an impasse, that either Deltacom or Hypercube may move this Commission to dissolve the stay and resume the litigation. The parties have also committed to reporting to this Commission in writing no later than sixty (60) days (August 25, 2009) from the date the Motion was filed, the status of the negotiations and the need, if any, to continue or to cease the stay.

III. Conclusion

It does not appear that any party will be prejudiced if this matter is held in abeyance, while the parties attempt to resolve this dispute. Therefore, I find it appropriate and reasonable to grant DeltaCom's Stipulated Motion for Stay of Proceedings.


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Therefore, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that DeltaCom, Inc.'s Stipulated Motion for Temporary Stay of Proceedings is granted. It is further

ORDERED that DeltaCom, Inc., KMC Data LLC ("KMC"), Hypercube, LLC, and Hypercube Telecom, LLC shall report to this Commission in writing no later than August 25, 2009, the status of the negotiations and the need, if any, to continue or to cease this Temporary Stay of Proceedings.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 2nd day of July, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

TJB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.