

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-09-0633-PCO-TP  
ISSUED: September 17, 2009

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE

On June 5, 2009, Deltacom, Inc. ("DeltaCom") filed a Petition with the Florida Public Service Commission ("Commission") against KMC Data, LLC, Hypercube, LLC and Hypercube Telecom, LLC. At the request of the parties, by Order No PSC-09-0472-PCO-TP, issued on July 2, 2009, I granted a temporary stay of the proceedings to provide the parties with time to attempt to resolve this case. On August 25, 2009, the parties filed a Joint Report and Schedule Request in which they asked the Commission to move forward with this matter, and that any responsive pleadings to the DeltaCom Petition be filed by August 31, 2009. On that date, Hypercube, LLC and Hypercube Telecom, LLC (f/k/a KMC Data, LLC) ("collectively Hypercube") filed a Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss") and separately filed its Answer, Defenses and Counterclaims to the DeltaCom Petition. On September 8, 2009, DeltaCom filed its timely Response to the Hypercube Motion to Dismiss.

In its Motion to Dismiss, Hypercube asserts that Hypercube, LLC:

- 1) is Hypercube Telecom, LLC's parent company;
- 2) is not a licensee of this Commission;
- 3) does not hold itself out to the public as a provider of telecommunications services;
- 4) does not make tariffs or price lists available to the public via the Internet or any other means;
- 5) has not in any manner participated in the transactions that are the subject of the DeltaCom Petition;
- 6) is improperly joined as a party to this proceeding; and
- 7) is not subject to the jurisdiction of the Commission.

Additionally, Hypercube notes that DeltaCom:

- 1) admits that Hypercube, LLC is not certificated to provide telecommunications services in Florida; and
- 2) makes no claim that Hypercube, LLC is a telecommunications provider subject to the jurisdiction of this Commission.

In its Response, DeltaCom states that it "does not object to the motion to dismiss Hypercube, LLC without prejudice as a party to the instant proceeding." DeltaCom does ask that it be permitted to re-join Hypercube, LLC as a party if, during the course of this proceeding,

DOCUMENT NUMBER-DATE

09660 SEP 17 8

FPSC-COMMISSION CLERK

information comes to light that Hypercube, LLC "participated in, directed, caused or was otherwise involved in" the matters involved in the DeltaCom Petition.

Having reviewed the Motion and Response, I find it appropriate to grant the unopposed Hypercube Motion to Dismiss Hypercube, LLC from this proceeding. I also concur with DeltaCom that the dismissal should be without prejudice.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Hypercube, LLC and Hypercube Telecom, LLC Motion to Dismiss Hypercube, LLC from this proceeding is hereby granted without prejudice.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 17th day of September, 2009.



NATHAN A. SKOP  
Commissioner and Prehearing Officer

(SEAL)

CWM

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.