

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-09-0644-PCO-TP  
ISSUED: September 23, 2009

ORDER GRANTING UNOPPOSED MOTION TO SET DATE

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. By Order No. PSC-09-0633-PCO-TP, issued on September 17, 2009, I granted the Hypercube Motion to Dismiss Hypercube, LLC from this proceeding without prejudice. On September 21, 2009, DeltaCom filed its unopposed Motion to Set Date for DeltaCom to File Responsive Pleadings to Hypercube Telecom, LLC's Counterclaims ("Motion to Set Date").

In its Motion to Set Date, DeltaCom asks that its pleadings in response to Hypercube Telecom, LLC's counterclaims be due on September 30, 2009. In support of its Motion to Set Date, DeltaCom asserts 1) that the DeltaCom responsive pleadings are important to refine the issues in this proceeding, 2) that the September 30, 2009, response date is agreeable to Hypercube Telecom, LLC, and 3) that Hypercube Telecom, LLC does not oppose the Motion to Set Date.

Having reviewed DeltaCom's unopposed Motion to Set Date, I find it appropriate that it be granted.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the unopposed DeltaCom, Inc. Motion to Set Date for DeltaCom to File Responsive Pleadings to Hypercube Telecom, LLC's Counterclaims is hereby granted.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 23rd day of September, 2009.



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NATHAN A. SKOP  
Commissioner and Prehearing Officer

( S E A L )

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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.