

**Ruth Nettles**

090327-TP

**From:** nicki.garcia@akerman.com  
**Sent:** Tuesday, September 08, 2009 4:30 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** tony.mastando@deltacom.com; Fself@lawfla.com; Charles Murphy; matthew.feil@akerman.com; james.mertz@hypercube-llc.com; jean.houck@deltacom.com; Timisha Brooks; hazzard.michael@arentfox.com; kosiofsky.jason@arentfox.com  
**Subject:** Electronic Filing - Docket No. 090327-TP  
**Attachments:** 20090908162854999.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

**Person Responsible for Filing:**

Matthew Feil  
**AKERMAN SENTERFITT**  
 106 East College Avenue, Suite 1200  
 Tallahassee, FL 32301  
 (850) 425-1614 (direct)  
 (850) 222-0103 (main)  
 matt.feil@akerman.com

**Docket No. and Name:** Docket No. 090327-TP - Petition of DeltaCom, Inc. for Order Determining DeltaCom, Inc. not Liable for Access Charges of KMC Data LLC, Hypercube, LLC and Hypercube Telecom, LLC.

**Filed on behalf of:** DeltaCom, Inc.

**Total Number of Pages:** 4

**Description of Documents:** Response of DeltaCom to Respondents' Motion for Dismissal.

**Nicki Garcia**

Office of:  
 Lila A. Jaber  
 Matthew Feil

Akerman Senterfitt  
 106 East College Avenue, Suite 1200  
 Tallahassee, FL 32301  
 (850) 425-1677  
 Nicki.Garcia@Akerman.com



www.akerman.com

**CONFIDENTIALITY NOTE:** The information contained in this transmission may be privileged and confidential information, and is intended only for the use of the individual entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

**CIRCULAR 230 NOTICE:** To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

9/8/2009

DOCUMENT NUMBER - DATE

0931 | SEP-08

FPSC - COMMISSION CLERK



Dallas  
Denver  
Fort Lauderdale  
Jacksonville  
Los Angeles  
Madison  
Miami  
New York  
Orlando  
Tallahassee  
Tampa  
Tysons Corner  
Washington, DC  
West Palm Beach

Suite 1200  
106 East College Avenue  
Tallahassee, FL 32301  
www.akerman.com  
850 224 9634 tel 850 222 0103 fax

September 8, 2009

**VIA ELECTRONIC FILING**

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 090327-TP – Petition of DeltaCom, Inc. for Order Determining DeltaCom, Inc. not Liable for Access Charges of KMC Data LLC, Hypercube, LLC and Hypercube Telecom, LLC**

Dear Ms. Cole:

Enclosed for filing is a Response of DeltaCom to Respondents' Motion for Dismissal.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Matthew Feil

{TL203244;1}

DOCUMENT NUMBER-DATE  
09311 SEP-8 8  
FPSC-COMMISSION CLERK

**STATE OF 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

**RESPONSE OF DELTACOM TO**  
**RESPONDENTS' MOTION FOR DISMISSAL**

DeltaCom, Inc. ("DeltaCom"), pursuant to Florida Administrative Code Rule 25-106.204, Florida Administrative Code, and through its undersigned counsel, hereby files this response to the motion of Respondents KMC Data LLC ("KMC"), Hypercube, LLC, and Hypercube Telecom, LLC (collectively, "Hypercube"), requesting that the Commission enter an order dismissing Hypercube, LLC from this docket for lack of jurisdiction. In response, DeltaCom states as follows:

1. On June 5, 2009, DeltaCom filed a Petition asserting various claims and seeking relief against Hypercube, initiating the instant docket. By Order No. PSC-09-0472, issued July 7, 2009, the Commission granted a temporary stay of the proceedings to provide the parties additional time to seek a resolution of this matter. On August 25, 2009, the parties filed their Joint Report and Schedule Request and requesting that the Commission move forward with the docket and that any response pleadings to the Petition be filed on or before August 31, 2009.

2. On August 31, 2009, Respondents filed an answer, defenses, and counterclaims to the Petition. Simultaneously therewith, Respondents filed the motion to dismiss Hypercube, LLC for lack of jurisdiction.

3. In support of the motion, Respondents asserted, among other things, that Hypercube, LLC is not a licensee of this Commission; is simply the parent company of a regulated telecommunications company, Hypercube Telecom, LLC; does not have on file with the Commission any tariffs or price list; does not hold itself out to the public as a provider of telecommunications services; does not make available to the public, via the Internet or any other means, tariffs or price lists. *Motion at 1-2.*

4. Based on the foregoing unverified assertions of the Respondents, DeltaCom does not object to the motion to dismiss Hypercube, LLC without prejudice as a party to the instant proceeding. At the time of DeltaCom's complaint, the information DeltaCom possessed did not indicate the distinction between the Hypercube Telecom, LLC and Hypercube, LLC entities which respondents claim in their motion. If during the course of the proceeding, information comes to light that Hypercube, LLC participated in, directed, caused or was otherwise involved in the provision of the services that the Respondents alleged to have provided to DeltaCom, including but not limited to billing for said services, then the Commission should allow DeltaCom to re-join Hypercube, LLC as a party.

WHEREFORE, in the event that the Prehearing Officer enters an order granting Respondents' motion to dismiss Hypercube LLC, then DeltaCom, Inc. requests that such ordered be entered without prejudice.

Respectfully submitted this 8th day of September, 2009.

By: 

Matthew Feil

AKERMAN SENTERFITT

106 East College Avenue, Suite 1200

Tallahassee, FL 32301

(850) 425-1614

(850) 222-0103

matt.feil@akerman.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 8<sup>th</sup> day of September, 2009.

Charles Murphy, Esq. Timisha Brooks, Esq. Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 cmurphy@psc.state.fl.us tbrooks@psc.state.fl.us	Michael B. Hazzard, Esq. Jason Koslofsky, Esq. Arent Fox LLP 1050 Connecticut Avenue, NW Washington, D.C. 20036-5339 (202) 857-6029 hazzard.michael@arentfox.com koslofsky.jason@arentfox.com
D. Anthony Mastando, Esq. Regulatory Vice President Jean Houck DeltaCom, Inc 7037 Old Madison Pike, Suite 400 Huntsville, AL 35806 (256) 382-5900 tony.mastando@deltacom.com jean.houck@deltacom.com	Mr. James Mertz Hypercube Telecom LLC Building 300 5300 Oakbrook Parkway Suite 330 Norcross, GA 30093-6210 james.mertz@hypercube-llc.com
Floyd R. Self, Esq. Messer, Caparello & Self, P.A. P.O. Box 15579 Tallahassee, FL 32317 (850) 425-5213 fself@lawfla.com	

By:   
Matthew Feil