

**Ruth Nettles**

090327-TP

**From:** nicki.garcia@akerman.com  
**Sent:** Monday, September 21, 2009 2:51 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** Electronic Filing - Docket No. 090327-TP  
**Attachments:** 20090921142713372.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  
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**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:** 5

**Description of Documents:** Unopposed Motion to Set Due Date for DeltaCom to File Responsive Pleadings to Hyercube Telecom's Counterclaims.

**Nicki Garcia**

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DOCUMENT NUMBER DATE  
 09743 SEP 21 8

9/21/2009

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September 21, 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 an Unopposed Motion to Set Due Date for DeltaCom to File Responsive Pleadings to Hypercube Telecom's Counterclaims.

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

Sincerely,

  
Matthew Feil

DOCUMENT NUMBER-DATE  
09743 SEP 21 09  
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**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

**UNOPPOSED MOTION TO SET DUE DATE FOR DELTACOM TO**  
**FILE RESPONSIVE PLEADINGS TO HYPERCUBE TELECOM'S**  
**COUNTERCLAIMS**

Pursuant to Rule 28-106.204, Florida Administrative Code, DeltaCom, Inc. ("DeltaCom") hereby moves the Florida Public Service Commission ("Commission") to set the due date for DeltaCom to file responsive pleadings to the counterclaims of Hypercube Telecom, LLC ("Hypercube Telecom") as set forth below. By agreement between the parties, Hypercube Telecom, LLC<sup>1</sup> (f/k/a KMC Data, LLC) ("Hypercube Telecom") does not oppose this motion. In support of this motion, DeltaCom states as follows:

1. On June 5, 2009, DeltaCom filed a Petition with the Commission, naming Hypercube, LLC; Hypercube Telecom, LLC; and KMC Data, LLC, as Defendants in an intrastate access charge dispute and seeking an order from the Commission. Thereafter, the Parties entered into discussions to resolve the dispute.

<sup>1</sup> Hypercube, LLC filed a Motion to Dismiss asking the Commission dismiss it from these proceedings. As stated in its response to that Motion to Dismiss, DeltaCom did not oppose dismissal, provided that it is without prejudice. By Order issued September 17, 2009, the Commission granted Hypercube, LLC's Motion to Dismiss, without prejudice. Only Hypercube Telecom is named as counterclaimant.

DOCUMENT NUMBER-DATE

09743 SEP 21 8

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Unopposed Motion to Set Due Date  
September 21, 2009

2. On June 26, 2009, DeltaCom, with support from Hypercube, filed a Motion for Limited Stay of this proceeding so that DeltaCom and Hypercube could undertake negotiations in an effort to resolve the issues. DeltaCom and Hypercube conducted additional negotiations, but such negotiations did not result in a resolution of the dispute between the Parties. The Parties conferred and agreed that Hypercube should file a response to DeltaCom's Petition on or before August 31, 2009. A Joint Report and Motion reflecting the foregoing was filed with the Commission on August 25, 2009.

3. On August 31, 2009, Hypercube, LLC, filed a Motion to Dismiss it from this proceeding and Hypercube Telecom filed an Answer to DeltaCom's Petition and Counterclaims against DeltaCom.

4. Rule 28-106.203, Florida Administrative Code, provides that respondents may file an answer to a petition, but does not require an answer be filed, nor does it establish a due date for answers. Rule 28-106.204(2), Florida Administrative Code, provides that a motion to dismiss a petition must be filed no later than 20 days after service of the petition. If a counterclaim is deemed a "petition" under the Uniform Rules, twenty days after service of the Hypercube Telecom counterclaims would be Sunday, September 20; therefore, any motion to dismiss would be due Monday, September 21.

5. DeltaCom has proposed, and Hypercube has agreed, that DeltaCom shall file any responsive pleadings to Hypercube Telecom's counterclaims by September 30, 2009.

6. DeltaCom maintains that responsive pleadings to the Hypercube Telecom counterclaims are important and will help the Commission and parties refine the issues in this proceeding.

Unopposed Motion to Set Duc Date  
September 21, 2009

7. The undersigned DeltaCom counsel have consulted Hypercube Telecom's counsel regarding this motion and also provided counsel a copy of same. The undersigned represents that Hypercube Telecom's counsel does not oppose the motion and agrees with the relief sought herein. Hypercube Telecom's counsel was not available to sign the motion.

WHEREFORE, DeltaCom respectfully request that this Motion be granted.

Respectfully submitted this 21<sup>st</sup> day of September, 2009.

  
Matthew Feil, Esq.  
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(850) 425-1614

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*Attorneys for DeltaCom, Inc.*

**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 21<sup>st</sup> day of September, 2009.

Charles Murphy, Esq. Timisha Brooks, Esq. Adam Teitzman, 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
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By:   
Matthew Feil, Esq.