

Ruth Nettles

090327-TP

From: nicki.garcia@akerman.com
Sent: Monday, December 14, 2009 3:25 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; koslofsky.jason@arentfox.com
Subject: Electronic Filing - Docket No. 090327-TP
Attachments: 20091214162302772.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 Hypercube Telecom's Amended Counterclaims.

Nicki Garcia

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DOCUMENT NUMBER - DATE
 11930 DEC 14 09
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December 14, 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:

Please find attached for filing DeltaCom, Inc.'s Unopposed Motion to Set Due Date for DeltaCom to File Responsive Pleadings to Hypercube Telecom's Amended Counterclaims.

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

Sincerely,

Matthew Feil

Attachment

DOCUMENT NUMBER-DATI
11930 DEC 14 8
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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 and Hypercube Telecom, LLC.)
_____)

Docket No. 090327-TP

UNOPPOSED MOTION TO SET DUE DATE FOR DELTACOM TO
FILE RESPONSIVE PLEADINGS TO HYPERCUBE TELECOM'S AMENDED
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 first amended counterclaims of Hypercube Telecom, LLC ("Hypercube Telecom"), filed November 23, 2009, as set forth below. By agreement between the parties, Hypercube Telecom, LLC (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;¹ Hypercube Telecom, LLC; and KMC Data, LLC, as Defendants in an intrastate access charge dispute and seeking an order from the Commission. After a stay period during which the parties negotiated unsuccessfully, Hypercube Telecom filed its Answer and Counterclaims on August 31, 2009.

¹ By Order issued September 17, 2009, the Commission granted Hypercube, LLC's Motion to Dismiss, without prejudice. Only Hypercube Telecom is named as counterclaimant. Hypercube LLC has been removed as a named party from the docket title.

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2. On September 21, DeltaCom filed an unopposed motion to file its Answer to Hypercube Telecom's counterclaims by September 30. DeltaCom filed its Answer on September 30 and an amended Answer on October 5.

3. On October 23, DeltaCom filed a motion to amend its Petition, along with a First Amended Petition. Hypercube Telecom did not timely respond to that motion, and on November 23, Hypercube Telecom filed Amended Counterclaims and an Answer to DeltaCom's First Amended Complaint.

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 Hypercube Telecom's amended counterclaims would be Sunday, December 13; therefore, a motion to dismiss as a responsive pleading would be due Monday, December 14.

5. DeltaCom has proposed, and Hypercube has agreed, that DeltaCom shall file any responsive pleadings to Hypercube Telecom's amended counterclaims by December 23, 2009.

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

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 to the relief sought herein.

WHEREFORE, DeltaCom respectfully request that this Motion be granted.

Respectfully submitted this 14th day of December, 2009.

A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is written in a cursive style and is positioned above the printed name and contact information.

Matthew Feil, Esq.
Akerman Senterfitt
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Tallahassee, FL 32301
(850) 425-1614

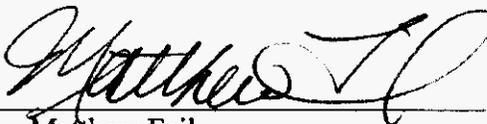
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Regulatory Vice President
DeltaCom, Inc.
7037 Old Madison Pike, Suite 400
Huntsville, AL 35806
(256) 382-5900

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 14th day of December, 2009.

<p>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</p>	<p>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</p>
<p>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</p>	<p>Mr. James Mertz Hypercube Telecom LLC Building 300 5300 Oakbrook Parkway Suite 330 Norcross, GA 30093-6210 james.mertz@hypercube-llc.com</p>
<p>Floyd R. Self, Esq. Messer, Caparello & Self, P.A. P.O. Box 15579 Tallahassee, FL 32317 (850) 425-5213 fself@lawfla.com</p>	

By: 
Matthew Feil