

Diamond Williams

090327-TP

From: matthew.feil@akerman.com
Sent: Thursday, July 01, 2010 9:07 AM
To: Filings@psc.state.fl.us
Cc: tony.mastando@deltacom.com; Fself@lawfla.com; Charles Murphy; james.mertz@hypercube-llc.com; jean.houck@deltacom.com; Timisha Brooks; hazzard.michael@arentfox.com; koslofsky.jason@arentfox.com; Kevin Bloom
Subject: RE: Electronic Filing - Docket No. 090327-TP
Attachments: Amended Motion to Extend Rebuttal Due Date (tL241492).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: 6

Description of Documents: DeltaCom's **Amended** Joint Motion to Extend Due Date for Parties' Rebuttal Testimony and Exhibits

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



www.akerman.com | Bio | V Card

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

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July 1, 2010

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 and Hypercube Telecom, LLC

Dear Ms. Cole:

Please find attached for filing in the above-referenced docket DeltaCom, Inc.'s *Amended* Joint Motion to Extend Due Date for Parties' Rebuttal Testimony and Exhibits.

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

Sincerely,

Matthew Feil

(T1.241489;1)
Attachment

DOCUMENT NUMBER-DATE
05416 JUL-10
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STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In re: Petition of DeltaCom, Inc. for)
order determining DeltaCom, Inc.) Docket No. 090327-TP
not liable for access charges of KMC)
Data LLC and Hypercube Telecom, LLC.) Filed: July 1, 2010
_____)

AMENDED JOINT MOTION TO EXTEND DUE DATE FOR PARTIES'
REBUTTAL TESTIMONY AND EXHIBITS

Pursuant to Rule 28-106.204, Florida Administrative Code, DeltaCom, Inc. ("DeltaCom") and Hypercube Telecom, LLC and KMC Data, LLC ("Hypercube") hereby files this amended motion for the Florida Public Service Commission ("Commission") to permit the parties to file their prefiled rebuttal testimony and exhibits **on July 23,**¹ with the conditions stated herein below, rather than on July 9, 2010, as required by the Order Establishing Procedure.² This is an extension of fourteen days. In support of this motion, the Joint Movants state as follows:

1. The Order Establishing Procedure established July 9, 2010, as the due date for the parties' prefiled rebuttal testimony and exhibits.
2. In a Joint Motion filed June 29, 2010, the parties requested extending the due date for rebuttal to July 28. Since that time, staff counsel has advised DeltaCom's counsel that staff would not support this extension. Staff counsel expressed concerns with a July 28 rebuttal due date and the time needed to address any discovery focused on

¹ In the parties' original Joint Motion, filed June 29, 2010, the parties requested an extension until July 28. The instant motion is an amendment to and takes the place of that June 29 pleading.

² Order No. PSC-10-0245-PCO-TP, issued April 20, 2010, as modified.

Amended Joint Motion to Extend Due Date
July 1, 2010

that rebuttal (sending discovery, responding to discovery, and any related motions) in relation to the August 25 discovery cut-off date established by the Prehearing Order in the case. As discussed below, the parties are willing to accommodate staff's concerns in a number of ways if necessary to keep the same hearing dates should the due date for rebuttal be extended to July 23.

3. DeltaCom represents that a scheduling conflict on the part of DeltaCom's key witness, Mr. Don Wood, makes it extremely difficult, if not impossible, for DeltaCom to meet the July 9 rebuttal due date. Mr. Wood will be preparing for and traveling to a hearing in Puerto Rico during the week of July 9 and will be attending that hearing the entire week of July 12.

4. After its discussion with staff counsel, DeltaCom consulted further with Mr. Wood and represents that the earliest Mr. Wood could have rebuttal prepared and filed because of his scheduling conflicts is July 23.

5. Joint Movants maintain that the direct cases of the parties will require extra time and attention for rebuttal testimony.

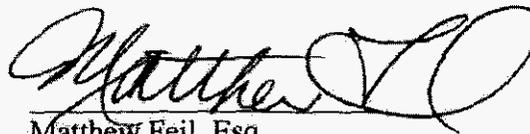
6. Joint Movants note that they have been cooperatively working together to coordinate scheduling and activities in this matter before the Florida Commission and a parallel case before the Alabama PSC, Docket No. 31176. Approving the requested extension of prefiled rebuttal will assist and encourage the parties in their coordination effort and positively impact the ability to efficiently administer the case.

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7. Joint Movants are willing to work with the Commission and its staff to alleviate any scheduling concerns.³ For instance, if July 23 is approved as the rebuttal due date, Joint Movants can agree to a 14-day discovery turn-around (shortened from the normal 30 days) for discovery served after July 23. Further, if there is any need to clarify or to resolve any objections to such discovery, the parties agree to work cooperatively and in good faith with staff by identifying any problem areas and discussing same via conference call with staff. Discovery issues, if any, which cannot be resolved via such a conference, can be addressed via a brief telephonic hearing before the August 25 discovery cut-off. Joint Movants believe that this proposal alleviates staff's concerns, but are also open to considering other reasonable proposals.

WHEREFORE, Joint Movants respectfully request that this Amended Motion be granted.

Respectfully submitted this 1st day of July, 2010.



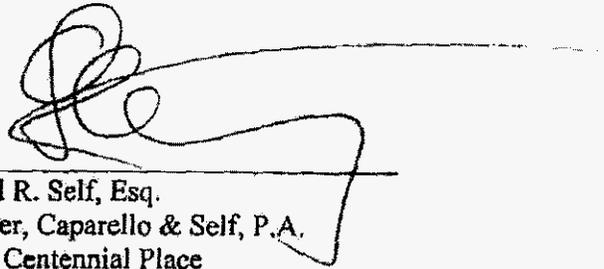
Matthew Feil, Esq.
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 425-1614

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

Attorneys for DeltaCom, Inc.

³ The Commission may hold a scheduling hearing via phone, if necessary, to address those concerns. Joint Movants will make themselves available to participate in such a conference, even if on short notice.

Amended Joint Motion to Extend Due Date
July 1, 2010



Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, FL 32308
(850) 425-5213

Michael B. Hazzard, Esq.
Jason Koslofsky, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5339
(202) 857-6029

Attorneys for Hypercube Telecom, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following by Electronic Mail and U.S. Mail this 1st day of July, 2010.

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	Kevin Bloom Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 kbloom@psc.state.fl.us
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	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

By: 
Matthew Feil