

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, and Hypercube Telecom, LLC.

DOCKET NO. 090327-TP  
ORDER NO. PSC-10-0424-PCO-TP  
ISSUED: July 1, 2010

ORDER DENYING JOINT MOTION

On June 29, 2010, DeltaCom, Inc. ("DeltaCom") and Hypercube Telecom, LLC and KMC Data, LLC ("Hypercube") filed a Joint Motion to Extend Due Date for Parties' Rebuttal Testimony and Exhibits until July 28, 2010 ("Joint Motion"). In support of the Joint Motion the parties assert the following:

- There is a scheduling conflict for DeltaCom's key witness related to a proceeding in Puerto Rico, which "makes it extremely difficult, if not impossible, for DeltaCom to meet the July 9 rebuttal due date."
- The direct cases that have been filed will require extra time and attention for rebuttal testimony.
- The requested extension should not interfere with other dates on the schedule.
- The parties "have been cooperatively working together to coordinate scheduling and activities in this matter . . . and a parallel case before the Alabama PSC."
- Approving the requested extension of time will help coordination efforts and aid the efficient administration of the two cases by aligning rebuttal testimony dates in the two cases.

Having reviewed the Joint Motion, I observe that the parties have known the due date for filing rebuttal testimony since mid April and have, nonetheless, waited until this late date in the proceeding to request a delay of almost three weeks. Moreover, on June 1, 2010, when the parties requested an extension of time to file their direct cases, they asserted that, "[s]ince rebuttal testimony and exhibits are due July 9, nearly four weeks after the requested July 15 date for direct, and all other filing dates in the case are after July 9, [the parties] believe that no other filing dates need to be changed at this time."

In considering the Joint Motion, I also observe that 1) ample notice has been provided that rebuttal testimony is due in this case on July 9, 2010, 2) the parties and their expert witnesses should have planned to meet the longstanding due date, 3) the parties themselves requested that the direct testimony due date be extended until June 15, 2010, thereby leaving them with less time to prepare and file rebuttal testimony, 4) in so requesting, just four weeks ago, the parties asserted that they had adequate time to file rebuttal testimony, 5) there is still significant time

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remaining before the July 9, 2010, due date for filing rebuttal testimony, and 6) the requested July 28, 2010, due date unreasonably compresses the remainder of the proceeding with respect to discovery. Thus, I find it appropriate to deny the Joint Motion.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the July 29, 2010, Joint Motion to Extend Due Date for Parties' Rebuttal Testimony and Exhibits until July 28, 2010, filed by DeltaCom, Inc. and Hypercube Telecom, LLC and KMC Data, LLC, is hereby denied.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 1st day of July, 2010.



NATHAN A. SKOP  
Commissioner and Prehearing Officer

( S E A L )

CWM

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.