

Diamond Williams

090327-TP

From: matthew.feil@akerman.com
Sent: Monday, July 26, 2010 4:47 PM
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; hazzard.michael@arentfox.com; koslofsky.jason@arentfox.com; Kevin Bloom
Subject: RE: Electronic Filing - Docket No. 090327-TP
Attachments: Notice of Deposition of Respondent Corporate Representatives (TL248032).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
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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: 8

Description of Documents: DeltaCom's Notice of Deposition of Respondent Corporate Representatives

Nicki Garcia

Office of:
 Matthew Feil
 850-425-1614

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DOCUMENT NUMBER-DATE

06096 JUL 26 2010

FPSC-COMMISSION CLERK

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July 26, 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:

Enclosed for electronic filing in the above-referenced docket on behalf of DeltaCom, Inc., please find DeltaCom's Notice of Deposition of Respondents KMC Data, LLC and Hypercube Telecom, LLC's corporate representatives.

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

Sincerely,

Matthew Feil
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877
Phone: (850) 224-9634

{TL248021;1}

DOCUMENT NUMBER-DATE

06096 JUL 26 09

FPSC-COMMISSION CLERK

BEFORE THE 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) Filed: July 26, 2010
Data LLC and Hypercube Telecom, LLC.)
_____)**

NOTICE OF DEPOSITION

Please take notice that pursuant to Florida Rule of Civil Procedure 1.310 and Rule 28-106.206, Florida Administrative Code, Petitioner DeltaCom Inc. ("Petitioner" or "DeltaCom"), will take the deposition upon oral examination of Respondents KMC Data, LLC, and Hypercube Telecom, LLC ("Hypercube") on August 2, 2010 beginning at 10:00 a.m. at the offices of McGuire, Craddock & Strother, P.C., 2501 N. Harwood St., Suite 1800, Dallas, TX 75201 before a notary public or some other person authorized by law to administer oaths, for the purpose of discovery or for use as evidence in the trial of this action, or for both purposes.

Under Florida Rule of Civil Procedure 1.310(b)(6), Hypercube is required to designate and produce for examination one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters specified in Attachment A hereto that are known or reasonably available to Hypercube.

There will be a telephone conference bridge active during this deposition so that the Staff of the Florida Public Service Commission and counsel of record for the parties may attend the deposition telephonically. The telephonic conference bridge will be 1-888-886-7772 with a passcode of 9991014.

The witness(es) is (are) directed to bring copies of all documents and other materials relied upon or utilized in preparation for their testimony at deposition.

Please govern yourself accordingly.

Filed and served this 26th day of July, 2010.



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

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

Attorneys for DeltaCom, Inc.

ATTACHMENT A

DEFINITIONS

1. As used herein, "Hypercube" means all of the Respondents in the above-captioned action, and, where applicable, its officers, directors, employees, and partners. This definition does not impose a discovery obligation on any person who is not a party to the case.

2. As used herein, "DeltaCom" means DeltaCom, Inc, the Petitioner/Plaintiff in Docket No. 090327-TP, and, where applicable, its officers, directors, employees, and partners. This definition does not impose a discovery obligation on any person who is not a party to the case.

3. As used herein, "KMC Data LLC" means KMC Data, LLC, one of the Respondents/Counterclaimants in Docket No. 090327-TP, and its officers, directors, employees, and partners. This definition does not impose a discovery obligation on any person who is not a party to the case.

4. As used herein, "Hypercube Telecom, LLC" means Hypercube Telecom, LLC, LLC, one of the Respondents/Counterclaimants in Docket No. 090327-TP , and its officers, directors, employees, and partners. This definition does not impose a discovery obligation on any person who is not a party to the case.

5. As used herein, "Tariffs" means the tariffs on file with the Alabama Public Service Commission, the Tennessee Regulatory Authority and/or the Georgia Public Service Commission pursuant to which Hypercube has imposed the charges which form in part the basis of the dispute between the parties.

6. As used herein, "Price List" means the price list(s) on file with the Florida Public Service Commission pursuant to which Hypercube has imposed the charges which form in part the basis of the dispute between the parties

7. As used herein, "8YY" means a non-geographic three digit area code associated with calls for which the calling party is not assessed additional charges other than those that would ordinarily apply for the services used.

8. Unless otherwise specified, the time period, if applicable, to which each Topic is from December 1, 2004 to the present (continuing) or, if different, the time period during which Hypercube handled calls for which it has sought and currently seeks to collect intrastate access charges from DeltaCom.

9. Topics utilizing terms from the Tariffs or Price List should be construed to include such terms or similar terms and the related definitions contained in the Tariffs or Price List.

TOPICS

1. The specifics and complete bases for Hypercube's assertion that, for the traffic for which Hypercube has billed DeltaCom intrastate access since December 2004, the calls originate and terminate within the same relevant state (Alabama, Florida, Georgia and/or Tennessee).
2. Hypercube's ability to determine whether the traffic for which Hypercube has billed DeltaCom intrastate access since December 2004 originates and terminates in the same relevant state (Alabama, Florida, Tennessee and/or Georgia) or within a single MTA (Major Trading Area).
3. The specifics and complete bases for Hypercube's rejection of or otherwise declaring invalid DeltaCom's reported PIU (Percent Interstate Usage).
4. The routing of wireless-originated and other provider-originated 8YY calls handled by Hypercube, including the points at which such calls entered and exited Hypercube's network, for which Hypercube has billed DeltaCom access charges since December 2004 pursuant to its Tariffs and/or Price List.
5. The specifics and complete bases for Hypercube's position that DeltaCom is responsible for paying access charges to Hypercube as a result of Hypercube's place in the call flow or on the basis of some functionality provided with respect to wireless-originated 8YY calls delivered to DeltaCom.
6. The specifics relating to call flow for wireless-originated and other provider-originated 8YY traffic which is the subject of the claims and counterclaims in this case, including the role/place of Hypercube, DeltaCom, the relevant Incumbent Local Exchange Carrier and relevant non-party carriers in such call flow.
7. The specifics and complete bases for Hypercube's contention that it is entitled to charge DeltaCom for intrastate access service and data base queries.
8. The number, substance, and terms and conditions of the contracts that Hypercube has with wireless providers for access to their networks in the States of Alabama, Florida, Georgia and/or Tennessee or intrastate traffic in those states, including but not limited to services provided and pricing and revenue sharing arrangements.
9. The specifics of every function and element of the service or services Hypercube alleges to have provided to DeltaCom, including Hypercube's classification as a local exchange, exchange access or interexchange service, and the basis for the charges billed to DeltaCom by Hypercube under its Tariffs and/or Price List for such functions and service elements.
10. The specifics of any agreements to, arrangements for or other situations in which Hypercube is charging less than the tariffed rate to an interexchange carrier for delivery of wireless originated 8YY traffic originating and terminating in the same relevant state

(Alabama, Florida, Georgia and/or Tennessee) (or otherwise deemed to be intrastate Alabama, Florida, Georgia and/or Tennessee traffic) and related database queries.

11. The specifics and complete bases for Hypercube's contention that "customers placing 8YY calls and carriers alike know that DeltaCom is responsible for all costs associated with delivering the 8YY call to DeltaCom's customer."

12. Hypercube's Tariffs and Price List; the specific provisions in the Tariffs or Price List under which DeltaCom was billed for access services and database queries and the justification therefore; the specifics of the rates and charges applied to DeltaCom in connection with wireless-originated 8YY calls under the Tariffs and Price List, the source for those rates, and the reason for applying those rates; the calculation of the rates billed to DeltaCom from the Tariffs and Price List; and the fairness, justness, reasonableness, lawfulness and competitive effect of the rates billed to DeltaCom.

13. The basis for Hypercube Telecom, LLC's authority to provide intrastate local exchange services in the States of Alabama, Florida, Georgia and Tennessee during the relevant time period and whether, when and on what basis Hypercube Telecom, LLC imposed charges under KMC Data, LLC's filed tariffs in the States of Alabama, Georgia and Tennessee and filed price list in the State of Florida.

14. The basis for Hypercube's claim that charges imposed by DeltaCom for Intermediate Provider Access Service is discriminatory, unjust and unreasonable and otherwise unlawful and its related invoice disputes and refusal to pay tariffed charges for such services.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following by Electronic Mail and/or U.S. Mail this 26th day of July, 2010.

Charles Murphy, Esq. Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 cmurphy@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