

**Diamond Williams**

090327-TP

**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Monday, July 26, 2010 1:28 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 090327-TP  
**Attachments:** 2010-07-22, 090327, Hypercube's Notice of Depositions of DeltaCom Witnesses.pdf

The person responsible for this filing is:

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The Docket No. is 090327-TP - Petition of DeltaCom, Inc. for order Determining DeltaCom, Inc. not liable for access charges of KMC Data LLC and Hypercube Telecom, LLC

This is being filed on behalf of Hypercube Telecom, LLC

Total Number of Pages is 10

Hypercube Telecom, LLC's Notice of Deposition

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7/26/2010

DOCUMENT NUMBER-DATE  
06080 JUL 26 2010  
FPSC-COMMISSION OF REG.

**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  
Dated: July 22, 2010

**NOTICE OF DEPOSITION UPON ORAL EXAMINATION**

TO:

Matt Feil, Esq.  
Akerman Senterfitt  
106 E. College Avenue, Suite 1200  
Tallahassee, FL 32301

D. Anthony Mastando, Esq.  
Regulatory Vice President  
DeltaCom, Inc.  
7037 Old Madison Pike, Suite 400  
Huntsville, AL 35806

NOTICE is hereby given that Hypercube Telecom, LLC will take the telephonic deposition of the following named individuals and corporate representative indicated below:

NAME	DATE and TIME	LOCATION
Jerry Watts	Thursday, July 29, 2010 at 9:30 a.m. Central, 10:30 a.m. Eastern	Balch & Bingham Law Firm 105 Tallapoosa St., Suite 200 Montgomery, AL 36104
Rule 1.310(6) DeltaCom corporate representative (see Attachment A)	Thursday, July 29, 2010, immediately upon the conclusion of the Jerry Watts deposition or at such time following the conclusion of the Watts deposition as the parties may otherwise agree.	Balch & Bingham Law Firm 105 Tallapoosa St., Suite 200 Montgomery, AL 36104
Don Wood	Friday, July 30, 2010 at 9:30 a.m. Eastern	Sutherland Asbill & Brennan Law Firm 999 Peachtree Street, NE Atlanta, GA 30309-3996

The telephone call-in number is 877-434-2299, participant code 2028576029.

DOCUMENT NUMBER DATE


06080 JUL 26 2010

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Each witness should bring copies of all work papers or other materials used by the witness in the preparation of any testimony filed in this docket or used by the witness in the preparation of any responses to any discovery requests in this docket. In addition, the Rule 1.310(6) DeltaCom corporate representative should bring any documents identified in Attachment A or necessary for the Rule 1.310(6) DeltaCom corporate representative to respond to those matters within the scope of Attachment A.

These depositions are being taken for the purposes of discovery, for use at trial, or for any other purpose allowed under the Florida Rules of Civil Procedure, the Florida Uniform Rules of Procedure, and the Rules of the Florida Public Service Commission.

Please govern yourselves accordingly.



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*Attorneys for Hypercube Telecom, LLC*

## ATTACHMENT A

### Definitions

1. As used herein, "you", "your", "DeltaCom", "Petitioner", or "Complainant", means the Petitioner in Docket No. 090327-TP, and, where applicable, its officers, directors, employees, and partners.

2. As used herein, "Hypercube" means Hypercube Telecom, LLC f/k/a KMC Data, LLC, the Respondent/Defendant in Docket No. 090327-TP, and, where applicable, its officers, directors, employees, and partners.

3. As used herein, "Petition" refers to Petition of DeltaCom filed in the Docket No. 090327-TP on June 5, 2009.

4. Unless otherwise specified, the time period, if applicable, to which each Matter for Deposition pertains 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.

5. "Local exchange service" means the provision of telephone exchange and exchange access service.

6. The term "Local Exchange Carrier" or "LEC" means a local exchange carrier that provides telephone exchange and exchange access service, whether designated as an Incumbent Local Exchange Carrier ("ILEC") or a Competitive Local Exchange Carrier (or "CLEC").

7. "Interexchange service" means the provision of telephone service between telephone exchanges.

8. The term "Interexchange Carrier" or "IXC" means an interexchange carrier providing telephone service between telephone exchanges.

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9. The term “access charge” means a charge or charges imposed by a LEC on an IXC in connection with the LEC’s originating, terminating, switching, transiting, and, in the case of toll-free calls, providing database query services in connection with, long distance telephone call to or from an IXC’s end user customer.

10. The term “8YY call” refers to a toll-free call paid for by the called party, rather than the calling.

11. The term “8YY service” refers to a telecommunications service provider’s (including an IXC’s) sale and provision of telecommunications services to 8YY subscribers.

#### **Matters for Deposition**

1. DeltaCom’s provision of 8YY services relating to the calls for which Hypercube has billed DeltaCom access charges at issue in this action, including DeltaCom’s role in the 8YY call flow, its representations to its 8YY subscribers concerning what services DeltaCom performs in the call flow and what services DeltaCom knew or anticipated other telecommunications carriers, including LECs, would perform in the call flow and seek compensation from DeltaCom in connection therewith.

2. The call paths of the 8YY calls at issue in this action, and who DeltaCom has paid and not paid for providing telecommunications services at the various stages in such call paths.

3. The various call paths that, in DeltaCom’s experience, wireless-originated calls made to DeltaCom’s 8YY subscribers generally have taken or could have taken, and what DeltaCom has done, if anything, to affect the call paths of its 8YY subscribers’ calls before they reach DeltaCom’s network. (For the sake of clarity, absent circumstances that would make such line of inquiry appropriate, the specific paths of specific 8YY calls will not be explored; rather,

the designated witness will be expected to testify about DeltaCom's experience and understanding of the various ways in which DeltaCom receives or could receive its wireless-originated 8YY calls, e.g., directly from the wireless carrier, through a single intermediate LEC, or through two or more intermediate LECs.)

4. DeltaCom's revenue received from its 8YY service subscribers for the calls for which Hypercube has billed DeltaCom access charges at issue in this action.

5. The value that DeltaCom receives in having other carriers provide the various inputs — including call origination, switching, 8YY-database-querying, and transport — to DeltaCom's 8YY services.

6. Hypercube's access-charge invoices to DeltaCom.

7. DeltaCom's receipt, analysis of and reasons for not paying Hypercube's access-charge invoices to DeltaCom, including the identification of all DeltaCom personnel involved in such activities and decision-making and when such events occurred.

8. DeltaCom's knowledge of the relationships between KMC Data, LLC, Hypercube Telecom, LLC and Hypercube, LLC.

9. DeltaCom's investigation and analysis of Hypercube's role in the 8YY calls at issue in this action, including any communications DeltaCom had with third parties relating to its investigation and analysis of Hypercube's role in 8YY calls generally.

10. DeltaCom's customary practices in reviewing, analyzing, and disputing and/or paying access-charge invoices from LECs.

11. DeltaCom's customary practices in reviewing, analyzing, and disputing and/or paying access-charge invoices relating to DeltaCom's 8YY services.

12. DeltaCom's customary practices in reviewing, analyzing, and disputing and/or paying access-charge invoices relating to wireless-originated calls.

13. DeltaCom's training, whether in written manuals or like guidelines and/or oral presentations, of its employees whose job duties include reviewing, analyzing, disputing and/or paying LECs' access-charge invoices vis-a-vis access charges allowable under federal or Florida or other relevant states law.

14. The negotiation, entry, terms and performance of any settlement agreements DeltaCom claims or believes that it entered into with KMC Data, LLC and/or Hypercube Telecom, LLC and/or Hypercube, LLC at any time from January 1, 2005 to present.

15. The identity of all entities, including LECs, VoIP providers, or CMRS (Commercial Mobile Radio Service) providers, with which DeltaCom shares revenues or pays sales commissions or provides any other consideration for such entity's exchange of traffic with DeltaCom, and the terms and substance of the agreements memorializing such agreements.

16. Whether and, if so, the manner in which DeltaCom pays Florida or other relevant states access charges, transit fees, or any other form of compensation to any LEC, or any other company, due to or arising from the provision of wireless-originated 8YY calls in Florida or other relevant states made to DeltaCom's 8YY subscribers.

17. DeltaCom's knowledge concerning and specific examples supporting any contention that wireless carriers either must or actually do perform 8YY-database-query services in connection with 8YY calls originated by such wireless carriers' subscribers.

18. DeltaCom's knowledge concerning and payment history and practices relating to LECs performing 8YY-database-query services in connection with 8YY calls dialed by wireless carriers' end users to DeltaCom's 8YY subscribers.

19. DeltaCom's submission of any PIU factors to Hypercube, including, without limitation, when such submissions were made, how they were calculated, and how such submissions compare to other PIU factors that DeltaCom submitted to other LECs that provide access services in Florida or other relevant states in connection with DeltaCom's 8YY services.

20. For each call for which Hypercube has billed DeltaCom intrastate access since December 2004 which DeltaCom denies having originated and terminated in the State of Florida or other relevant states, the complete and specific basis for each such assertion that the given call(s) does(do) not originate and terminate within the State of Florida or other relevant states, and the documents supporting such contention.

21. Hypercube's Florida or other relevant states Tariff for access services and DeltaCom's specific and complete reasons for claiming that that Tariff does not apply to the services Hypercube has been providing to DeltaCom at issue in this action.

22. The date on which DeltaCom first reviewed Hypercube's Florida or other relevant states Tariff for access services to assess its relevance to the 8YY traffic for which Hypercube was billing DeltaCom access charges, and the date on which DeltaCom first determined not to pay Hypercube's access-charge invoices.

23. DeltaCom's ability to identify Hypercube's role in the call flows of 8YY calls made to DeltaCom's 8YY subscribers.

24. Similarly, DeltaCom's ability to identify any intermediate carrier's role in the call flows of 8YY calls made to DeltaCom's 8YY subscribers.



25. Whether DeltaCom has sought direct interconnection with any wireless carriers in Florida (or other relevant states) or sought direct interconnection with any wireless carriers in any other state that relates to traffic carried by DeltaCom or the wireless carrier(s) in Florida (or other relevant states). If so, the identity of such wireless carrier(s), when interconnection was sought, and the outcome of such efforts at interconnection; if not, why not.

26. All efforts by DeltaCom to avoid Hypercube's services or otherwise mitigate its alleged damages that it claims Hypercube has caused it.

27. DeltaCom's invoices to Hypercube for which it seeks payment in this action.

28. DeltaCom's "Intermediate Provider Access Service" ("IPAS") service, including, without limitation, a full description of the service; whether and, if so, how DeltaCom acts as an IXC (providing 8YY service to its 8YY subscriber) and a CLEC (allegedly providing "IPAS" service to an "IPAS") simultaneously; how DeltaCom identifies when it is actually providing "IPAS" service"; the elements of DeltaCom's network used to provide IPAS service; the relationship between DeltaCom's IPAS service and the IPAS's access service and the corresponding rates for both such services; whether and, if so, why DeltaCom has only ever billed Hypercube and no other IPAS for such "service"; why the IPAS service turns on whether DeltaCom has chosen or declined to directly interconnect with a particular LEC; and how DeltaCom jurisdictionalizes its IPAS service.

29. DeltaCom's own tariff, the services described therein, the rates for those services, any challenges to DeltaCom's rates, and any exceptions DeltaCom has made or makes to its tariffed rates.

30. DeltaCom's alleged damages in this action, how such damages were calculated, and by whom.

31. DeltaCom's Petition, claims and defenses in this action.

32. DeltaCom's responses to Hypercube's discovery in this action, and its efforts to collect and produce documents and information to Hypercube, and the nature and extent of any document-retention policies in place from January 1, 2005 to present.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 23<sup>rd</sup> day of July, 2010.

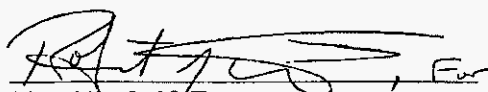
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