

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:	)	
	)	
DeltaCom, Inc.	)	
	)	
Complainant,	)	
	)	
- v. -	)	Docket No. 09-00077
	)	
KMC Data, LLC, Hypercube, LLC,	)	
And Hypercube Telecom, LLC,	)	
	)	
Respondents.	)	

**ANSWER TO COMPLAINT OF DELTACOM, INC. AND
COUNTERCLAIM OF HYPERCUBE TELECOM, LLC f/k/a KMC DATA, LLC**

Hypercube, LLC and Hypercube Telecom, LLC (f/k/a KMC Data, LLC) file as follows in support of their Answer to the Complaint filed on or around June 5, 2009 with the Tennessee Regulatory Authority ("Authority") by DeltaCom, Inc. ("DeltaCom"). In addition, Hypercube Telecom, LLC f/k/a KMC Data, LLC ("Hypercube") files counterclaims against DeltaCom.¹

INTRODUCTION

Despite the allegations of DeltaCom's Complaint, this case actually involves DeltaCom's unreasonable, unjust, and unlawful refusal to pay for services provided by Hypercube. Hypercube, a competitive local exchange carrier ("CLEC"), has lawfully charged DeltaCom for telecommunications services performed by Hypercube in connection with DeltaCom's for-profit provision of toll-free (*i.e.*, "800" or "8YY")² calls that originate and terminate within the State of

¹ Hypercube, LLC is not a licensee of the Authority and is not subject to the jurisdiction of the Authority. Hypercube, LLC is simply the parent company of Hypercube Telecom, LLC f/k/a KMC Data, LLC and should be dismissed from this proceeding.

² The industry term "8YY" recognizes that toll free dialing codes in addition to "800" exist, such as "888" or "866."

Tennessee. DeltaCom offers on a for-profit basis to certain of its customers toll-free calling services, which are commonly referred to as “800 services” or “8YY services.” As the for-profit provider of 8YY services, DeltaCom is responsible for paying for the services provided by CLECs like Hypercube and other telecommunications providers to complete the call. However, DeltaCom has refused to pay Hypercube for the services it has provided and continues to provide to DeltaCom. Hypercube simply seeks payment for the services it provided and for which Hypercube is authorized to collect.

RESPONSE TO SPECIFIC ALLEGATIONS

The opening paragraph contains DeltaCom’s characterization of the Complaint and, therefore, requires no response. To the extent a response is required, Hypercube denies the allegations in the opening paragraph.

INTRODUCTION

1. Hypercube denies the allegations in this paragraph. Hypercube provides the access services at issue in DeltaCom’s Complaint to DeltaCom, not wireless carriers.

2. Hypercube admits that wireless providers have the option of sending 8YY traffic to the ILEC tandem, but denies any “historical” practice in this regard. Hypercube denies DeltaCom’s characterization of federal law, which speaks for itself. Hypercube lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph concerning DeltaCom’s contracts or typical billing arrangements with wireless carriers and those allegations are therefore denied. Hypercube further adds that companies that sell 8YY services, like DeltaCom, are responsible for paying access charges incurred as a result of those companies’ use of other carriers’ networks as an input to their for-profit toll-free 8YY offerings.

3. Hypercube denies that it “help[s] wireless carriers accomplish indirectly what federal and state law bars them from doing directly.” Hypercube admits that it lawfully transports 8YY calls from wireless carriers to the ILEC tandem and may lawfully charge for the services it provides DeltaCom in doing so. Hypercube admits that it has contracts with wireless carriers to transport 8YY calls. Hypercube denies the remaining allegations of this paragraph.

4. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

PARTIES AND JURISDICTION

5. Hypercube lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and those allegations are therefore denied.

6. Hypercube admits the allegations in this paragraph. Hypercube further states that Hypercube, LLC acquired KMC Data, LLC in 2005. In 2008, KMC Data, LLC changed its name to Hypercube Telecom, LLC.

7. Hypercube admits the allegations in this paragraph. Hypercube Telecom, LLC, is a CLEC certified in Tennessee and is authorized to provide intrastate exchange access services within the State of Tennessee. Hypercube, LLC is not a carrier; rather it is Hypercube Telecom, LLC’s parent company.

8. Hypercube admits the allegations in this paragraph. Hypercube further states that it also is authorized to provide intrastate exchange access services within the State of Tennessee.

9. Hypercube denies the allegations in this paragraph as to Hypercube, LLC because Hypercube, LLC is not a licensee of this Authority and is not subject to the jurisdiction of the Authority. Hypercube, LLC is simply the parent company of a regulated telephone company, Hypercube Telecom, LLC formerly known as KMC Data, LLC. Hypercube Telecom, LLC is authorized to provide intrastate exchange access services in the State of Tennessee. Hypercube, LLC should be dismissed from the Complaint.

FACTUAL BACKGROUND

10. Hypercube admits the allegations in this paragraph.

11. Hypercube admits that wireless providers have the option of sending 8YY traffic to the ILEC tandem, but denies any “traditional” practice in this regard. Hypercube denies DeltaCom’s characterization of Federal Communications Commission (“FCC”) rulings, which speak for themselves. Footnote 2 cites to an order of the FCC, which speaks for itself, and otherwise contains legal conclusions to which no response is required. If a response is required, the allegations are denied. Hypercube lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph concerning DeltaCom’s contracts or typical billing arrangements with wireless carriers and those allegations are therefore denied. Hypercube denies that the diagram attached as Exhibit A to Deltacom’s Complaint accurately reflects a “typical call flow.” Hypercube further adds that nothing precludes DeltaCom from directly interconnecting with wireless carriers or with Hypercube. Exhibit Hypercube-A, Slides 1 and 2, attached hereto, illustrates the services provided by Hypercube and the alternatives available to DeltaCom.

12. Hypercube denies the services it provides are redundant or that Footnote 3 fully encompasses the services provided by Hypercube. Hypercube admits that it lawfully

transports 8YY calls from wireless carriers to the ILEC tandem and may lawfully charge for the services it provides DeltaCom in doing so. As the 8YY provider, DeltaCom (and no other carrier) is responsible for paying access charges associated with DeltaCom's provision of toll-free, 8YY service to its customers. Hypercube denies that the diagram attached as Exhibit A to the Complaint accurately reflects its role in delivering a call for termination. Hypercube further adds that to the extent DeltaCom argues that Hypercube's tandem is unnecessary or duplicative of the ILEC's tandem, nothing precludes DeltaCom from directly interconnecting with wireless carriers or with Hypercube. Exhibit Hypercube-A, Slides 1 and 2, attached hereto, illustrates the services provided by Hypercube and the alternatives available to DeltaCom.

13. Hypercube admits that it has contracts with wireless carriers to transport 8YY calls. Hypercube denies the remaining allegations of this paragraph. Hypercube denies DeltaCom's characterization of FCC rulings in this paragraph and Footnote 4. Those are legal documents which speak for themselves.

14. Hypercube admits that Hypercube may lawfully charge for the services it provides DeltaCom in the form of access charges and database dips. Hypercube denies the remaining allegations of this paragraph. Hypercube denies DeltaCom's characterization of federal law, which speaks for itself.

15. Hypercube admits that it properly and lawfully billed DeltaCom for the services it provided DeltaCom and that DeltaCom has not paid what it owes Hypercube. Hypercube's Tariff is attached hereto as Exhibit Hypercube-B. Hypercube admits that KMC Data, LLC's tariff was substantially the same as Hypercube's Tariff as alleged in Footnote 5.

16. Hypercube admits the letters attached as Exhibit C and D to the Complaint were exchanged between the parties, but denies any suggestion that these two letters accurately reflect all correspondence between the parties. Footnote 6 contains DeltaCom's characterization of Hypercube's Tariff, which is a legal document that speaks for itself. Footnote 6 also contains legal conclusions to which no response is required, but to the extent an answer is required Hypercube denies the allegations of this paragraph. Hypercube denies the remaining allegations of this paragraph.

17. Hypercube admits DeltaCom has unlawfully refused to pay for the services it received from Hypercube. Hypercube admits it and DeltaCom have not been able to resolve this dispute outside of litigation.

COUNT I

18. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

19. Hypercube admits that it properly and lawfully billed DeltaCom for the services it provided DeltaCom. Hypercube admits that it has contracts with certain wireless carriers for access to their networks. Hypercube denies the remaining allegations in this paragraph.

20. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT II

21. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

22. Hypercube admits that it properly and lawfully billed DeltaCom for the services it provided DeltaCom. Footnote 7 references an Authority order, which is a legal document that speaks for itself. Hypercube denies the remaining allegations in this paragraph.

23. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT III

24. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

25. Hypercube admits that it properly and lawfully billed DeltaCom for the services it provided DeltaCom. Hypercube denies the remaining allegations in this paragraph.

26. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT IV

27. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

28. Hypercube denies the allegations in this paragraph. To the extent DeltaCom relies on correspondence exchanged between the parties, the correspondence speaks for itself. To the extent DeltaCom characterizes FCC rulings in Footnote 8, those are legal documents that speak for themselves. To the extent a response is required, the allegations in Footnote 8 are denied.

29. To the extent DeltaCom relies on correspondence exchanged between the parties in this paragraph, the correspondence speaks for itself. To the extent DeltaCom quotes Hypercube's Tariff in this paragraph, the Tariff is a legal document which speaks for itself. The remaining allegations of this paragraph are denied.

30. Hypercube denies the allegations in this paragraph and Footnote 9. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

31. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT V

32. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

33. Hypercube admits it has provided the services at issue in DeltaCom's Complaint to DeltaCom pursuant to Hypercube's Tariff. The remaining allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

34. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff or characterizes Hypercube's Tariff in Footnote 10, the Tariff is a legal document which speaks for itself.

35. The allegations of this paragraph and in Footnotes 11 and 12 are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

36. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

37. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

38. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

39. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

40. The allegations of this paragraph and Footnote 13 are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. Hypercube further adds that it only bills for services it provides.

41. The allegations of this paragraph and Footnote 14 are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

42. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

43. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

44. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT VI

45. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

46. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

47. Hypercube admits DeltaCom has not submitted an access service request to Hypercube. Hypercube denies that DeltaCom has not ordered service from Hypercube otherwise. The remaining allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

48. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

49. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

50. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

51. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

52. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT VII

53. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

54. The allegations of this paragraph and Footnote 15 are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

55. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this

paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

56. Hypercube denies the first sentence of this paragraph. The remaining allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

57. Hypercube denies the allegations in this paragraph. Hypercube admits that it properly and lawfully billed DeltaCom for the services it provided DeltaCom. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

58. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

59. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT VIII

60. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

61. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph. To the extent DeltaCom quotes Hypercube's Tariff, the Tariff is a legal document which speaks for itself.

62. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

COUNT IX

63. Hypercube repeats and realleges its responses contained in the prior paragraphs, as if fully set forth herein.

64. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

65. The allegations of this paragraph are legal conclusions to which no response is required, but to the extent a response is required, Hypercube denies the allegations of this paragraph.

DEFENSES

1. Any allegation not expressly admitted herein is denied.
2. DeltaCom has failed to state a claim upon which relief may be granted.
3. DeltaCom is not entitled to retroactive relief.

COUNTERCLAIMS

Hypercube states as follows in support of its Counterclaims:

INTRODUCTION

1. These Counterclaims are based on DeltaCom's unlawful refusal to pay Hypercube, a competitive local exchange carrier ("CLEC"), for DeltaCom's use of Hypercube's network in connection with DeltaCom's provision of 8YY calls that originate and terminate

within the State of Tennessee. DeltaCom offers on a for-profit basis to certain of its customers toll-free calling services, or 8YY services.

2. DeltaCom is responsible for paying for all costs related to transporting a call to DeltaCom's 8YY subscribers.

3. Hypercube has provided services to DeltaCom related to transporting calls from wireless callers and others to DeltaCom's 8YY subscribers.³ Hypercube has performed and continues to perform the services that are the subject of this Complaint pursuant to Hypercube's Authority-approved Tariff, which sets forth the rates, terms, and conditions for Hypercube's provision of intrastate access services to DeltaCom and others. In the alternative, DeltaCom is obligated to compensate Hypercube under a quantum meruit theory when DeltaCom accepted valuable services of Hypercube without compensating Hypercube.

A. Switched Access Service Provided By Hypercube To DeltaCom

4. When DeltaCom provides its customers with an 8YY service, customers placing 8YY calls and carriers alike know that DeltaCom is responsible for all costs associated with delivering the toll-free call to DeltaCom's customer. These costs include payment for the use of other carriers' networks to originate and transport a toll-free call and the process by which other carriers query industry databases to make sure the 8YY call is routed correctly. When a carrier transports and switches a call to an 8YY number, the carrier must query a database that maintains a list of telecommunications carriers offering 8YY service. Through performing this database query, also known as a "dip," the carrier originating an 8YY telephone call ensures that calls have the appropriate features applied and are sent to the correct telecommunications carrier

³ DeltaCom's Petition only concerns wireless toll-free calls. Hypercube transports these types of calls, but its business also includes transporting other types of calls, such as wireline calls of cable operators, among others.

and, ultimately, to the correct customer destination. Maintaining this database and processing queries creates a cost burden on carriers involved in transporting and switching 8YY traffic. Carriers performing this work are entitled to cost recovery from the carriers, here DeltaCom, that sell 8YY service to end users.

5. Indeed, because the calling party is dialing an 8YY number (*i.e.*, a toll-free number), the wireless carrier and any intermediate LEC are precluded from assessing any charges on the person making the phone call. Instead, DeltaCom is responsible for the costs associated with calls to DeltaCom's 8YY customers, and DeltaCom recovers those charges from its customers.

6. Hypercube has performed its duties as a telecommunication carrier (i) by performing a query to the 8YY database to make sure only 8YY calls destined for DeltaCom's end users are routed to DeltaCom and (ii) by switching and transporting the 8YY calls to DeltaCom so that DeltaCom can deliver the 8YY calls to its end user customers who in return pay DeltaCom for the 8YY telephone number. *See* Exhibit Hypercube-A, Slide 2. However, DeltaCom refuses to pay Hypercube's lawfully assessed access charges and database queries for transmitting the 8YY calls.

B. The FCC's Access Charge Regime For CLECs

7. In its *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, ¶¶ 90-97 (2001) (the "*Seventh Report and Order*"), the FCC held that interexchange carriers ("IXCs"), such as DeltaCom, are obligated to purchase tariffed CLEC access services, including those related to toll calls that originate on wireless networks. The FCC found that an IXC's refusal to do so constitutes a violation of Section 201 of the

Communications Act.⁴ The FCC also held that tariffed CLEC access charges for such services are “conclusively deemed reasonable.”⁵

8. In making this finding, the FCC emphasized that calls must flow between carriers in order to ensure universal connectivity among consumers that use the Public Switched Telephone Network.⁶ This is particularly important with toll-free service (*i.e.*, “8YY”), where carriers, such as Hypercube, are precluded from charging the calling party (*i.e.*, the person making the call) for calling a toll free number. In offering toll-free service, the IXC, in this case DeltaCom, commits to paying all costs, including access charges, associated with toll free calls. IXCs may only recoup these costs from their toll-free subscribers (*i.e.*, the called party).

9. Specific to 8YY traffic, the FCC held that it was “not necessary immediately to cap [CLEC] access rates for 8YY traffic at the rate of the competing [ILEC].”⁷ “Rather,” the FCC continued, CLECs could “continue to charge the previously established” benchmark rate.⁸ Thus, at the federal level, 8YY traffic has always been compensable at the FCC benchmark rate.

⁴ *Seventh Report and Order* at ¶ 97. In the *Seventh Report and Order*, the FCC established a series of rate caps for CLEC access tariffs associated with interstate access services. Hypercube has complied with the FCC’s access charge regulations.

⁵ *Id.* at ¶ 60.

⁶ *Id.* at ¶ 93. *See also id.* at ¶ 23 (noting that “IXCs appear routinely to be flouting their obligations under the tariff system”); ¶ 24 (IXC traffic blocking “threaten[s] to compromise the ubiquity and seamlessness of the nation’s telecommunications network and could result in consumer confusion.”).

⁷ *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, ¶ 70 (2004) (“*Eighth Report and Order*”).

⁸ *Id.*

10. The FCC has also held that CLECs may assess tariffed access charges on IXCs when acting as an intermediate carrier delivering calls from wireless carriers to IXCs.⁹ CLECs are entitled to assess tariffed charges for the functionality they perform (*e.g.*, tandem switching); CLECs may not charge pursuant to their tariffs for the work that others, such as wireless carriers, perform in delivering 8YY calls to an IXC. Rather, carriers may only charge for the work they perform, and wireless carriers may assess such charges based on express or implied contracts.¹⁰

11. Specifically regarding traffic from wireless service providers, the FCC has stated that while “a competitive LEC has no right to collect access charges for the portion of the service provided by the [wireless] provider,” it can charge for access components at rates comparable to those charged by the ILEC for the comparable functions.¹¹ The FCC added, however, that CLECs “continue to have flexibility in determining the access rate elements and rate structure for the elements and services they provide.”¹² Thus, in contrast to the regulation of ILECs, the federal “benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so long as the composite rate does not exceed the benchmark.”¹³

⁹ *Eighth Report and Order* at ¶¶ 16-17.

¹⁰ *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192, ¶ 12 (2002) (“*Sprint PCS*”).

¹¹ *Eighth Report and Order* at ¶¶ 16-17; *see also id.* at ¶ 21 (“Competitive LECs also have, and always had, the ability to charge for common transport when they provide it, including when they sublend an incumbent LEC tandem switch. Competitive LECs that impose such charges should calculate the rate in a manner that reasonably approximates the competing incumbent LEC rate.”).

¹² *Id.* at ¶ 17 and n.58.

¹³ *Seventh Report and Order* at ¶ 55.

12. LECs may collect access charges even where there is more than one LEC involved in transporting the call to the IXC. At any time, an IXC may interconnect directly with an intermediate LEC to minimize the number of carriers involved in originating an 8YY call.¹⁴

13. The FCC's findings are consistent with that of state public utilities commissions addressing similar issues. For example, in a dispute brought by WilTel against Verizon at the New York Public Service Commission ("NYPSC"),¹⁵ WilTel alleged that Verizon was not entitled to access charges for the traffic it terminated to wireless carriers' end users because the wireless carriers themselves would not be entitled to compensation from an IXC for access charges unless a contract existed between the two parties. Under the filed tariff doctrine, the NYPSC held that WilTel was required to pay Verizon for the services Verizon performed in completing the call.

C. Specific Issues Related To The Origination Of Toll Free Calls Made By Consumers Over Wireless Networks

14. The calls at issue in this case are toll-free calls made by consumers using their wireless phones to DeltaCom's 8YY subscribers.

15. Wireless carriers may only charge IXCs and others access charges by express or implied contract for use of the wireless carrier's network for call origination and termination.¹⁶ Unlike LECs (CLECs and ILECs), however, wireless carriers may not file tariffs with the FCC or the state commissions for these services.

¹⁴ *Access Charge Reform, Prairie Wave Telecommunications Inc. Petition for Waiver, et al.*, Order, 23 FCC Rcd 2556, ¶¶ 26-27 (2008) ("*PrairieWave*").

¹⁵ A copy of this decision is attached hereto at Exhibit Hypercube-C. *Wiltel Communications, LLC v. Verizon New York Inc.*, Case 04-C-1548, 2006 WL 1479507 (N.Y.P.S.C. May 30, 2006).

¹⁶ *Sprint PCS* at ¶ 12.

16. Wireless carriers faced difficulty in negotiating individual contracts with IXC's, and the prohibition on wireless carriers filing tariffs artificially increased the costs to the wireless carriers of carrying their customers' calls to landline-based customers, even those that were purportedly "toll-free" calls to IXC's like DeltaCom.

17. Thus, certain wireless carriers have found it more convenient to route access calls, including 8YY calls, to LECs as early in the call stream as possible. By doing so, the wireless carrier minimizes the amount of work it must perform on behalf of the IXC's in cases where the IXC either: (i) does not directly interconnect with the wireless carrier or (ii) otherwise will not enter into a contract with the wireless carrier for network access.

18. LECs, like Hypercube, *are* entitled to bill the IXC for the work the LEC performs in delivering the calls from a wireless carrier's network to an IXC's network pursuant to filed tariffs.

19. On information and belief, DeltaCom pays ILEC access charges for DeltaCom's use of ILEC tandem switching in routing 8YY calls to DeltaCom's network.

20. In many instances, LECs contract with wireless carriers for access to the wireless carriers networks. And pursuant to such agreements, wireless carriers hand off toll-free calls to LECs for delivery to the IXC. The FCC has reviewed these types of arrangements and found no cause to limit or otherwise restrict the ability of an intermediate carrier to recover tariffed-based access charges for the work performed.¹⁷

21. This is true even in instances where there is more than one LEC involved in delivering an 8YY call to an IXC, such as DeltaCom. At any time, an IXC may interconnect

¹⁷ *Eighth Report and Order* at ¶¶ 69-72. With regard to agreements between wireless carriers and LECs related to access, the FCC has held that "carriers are free to arrange whatever compensation arrangement they like for the exchange of traffic." *Sprint PCS* at ¶ 7.

directly with an intermediate LEC (or in some cases, even directly with the calling party's carrier, which may be wireless or wireline) to minimize the number of carriers involved in originating an 8YY call.¹⁸ When an IXC does so, it avoids entirely the access charges associated with the functionality that previously was provided by an intermediate carrier. *See* Exhibit Hypercube-A, Slides 1 and 2.

22. Hypercube offers direct interconnection to all IXCs. Direct interconnection is Hypercube's preferred method of delivering traffic to (and receiving traffic from) IXCs. Despite multiple invitations from Hypercube, DeltaCom has declined to directly interconnect its network with Hypercube's network for 8YY calls destined to DeltaCom's customers. If DeltaCom directly interconnected with Hypercube, Hypercube would not need to route the call through an ILEC, but could send the call directly to DeltaCom. *See* Exhibit Hypercube-A, Slide 1.

23. DeltaCom could also interconnect directly with wireless carriers (and others), and thereby avoid using third-party networks for receiving its 8YY traffic (and other traffic). *See* Exhibit Hypercube-A, Slide 2.

FACTS

24. Hypercube provides interstate and intrastate access services to various customers, including IXCs, CLECs, and commercial mobile radio service carriers (commonly referred to as wireless carriers). Hypercube Telecom, LLC operates pursuant to Hypercube's Authority-approved Tariff. Hypercube's claims in this Counterclaim concern only its provision of intrastate access services to DeltaCom in the State of Tennessee.

¹⁸ *Prairie Wave* at ¶¶ 26-27.

25. When wireless customers' toll-free calls are routed through the Hypercube's facilities, Hypercube provides access services and database query services to the IXC that is being paid by its customers to provide the toll-free service to those customers.

26. When Hypercube provides access and associated database query services in connection with a call made from a wireless telephone, the call is routed from the wireless carrier's Mobile Telecommunications Switching Office to Hypercube's network and switching equipment.

27. While the call is in the Hypercube switch, Hypercube performs switching and routing functions and additional services, such as running a query of the national 8YY telephone number database to determine where the call should be routed (known as a "database dip"). Once the database returns information regarding the IXC whose 8YY customer has been called, Hypercube's switch performs the necessary routing to deliver the call to the IXC's network. The services provided by Hypercube are illustrated in Exhibit Hypercube-A, Slide 2.

28. Common carriers, like Hypercube, have an obligation to route traffic to other carriers, such as DeltaCom. As a result of this obligation and in consideration for work performed, Hypercube is entitled to bill and to collect charges for the access services and database query charges provided to other carriers, including DeltaCom for its 8YY customers, at tariffed rates approved by the Authority.

29. Hypercube's Tariff sets forth the terms and conditions according to which Hypercube provides intrastate access charges and database query charges to DeltaCom in connection with DeltaCom's 8YY offering. The tariff sets forth the terms and conditions of these same services where a call originates and terminates in Tennessee.

30. Hypercube's Tariff encompasses the services it provided DeltaCom in routing calls to DeltaCom's 8YY subscribers. Specifically, Hypercube has provided DeltaCom access service and has performed database dips in order to route calls to DeltaCom's 8YY subscribers.

31. From December 2004 through the present, Hypercube has routed calls to DeltaCom as part of the 8YY service that DeltaCom offers to its customers. On information and belief, no other entity has charged DeltaCom for the access services or database query services performed by Hypercube's switch and network.

32. Since December 2004 and continuing through the present, DeltaCom has received, accepted, and benefited from intrastate access services and database query services provided by Hypercube in connection with DeltaCom's 8YY offering to its customers. DeltaCom accepted the calls destined to DeltaCom's 8YY customers that Hypercube originated and confirmed (through database queries). DeltaCom delivered those calls to its customers as part of DeltaCom's for-profit 8YY service offering.

33. On information and belief, DeltaCom has received and continues to receive payment from its 8YY customers for all calls Hypercube transmits to DeltaCom. In short, DeltaCom wants to collect revenue from its customers for providing toll-free service without paying the costs that Hypercube (which is legally obligated to deliver calls to DeltaCom) incurs in delivering the toll-free calls to DeltaCom.

34. DeltaCom has refused to pay Hypercube for the services Hypercube provided DeltaCom in routing 8YY calls to DeltaCom. DeltaCom owes **\$199,395.81 as of August 7, 2009** for intrastate switched access charges in Tennessee, which includes \$141,772.76 for switched access services, \$15,010.74 in database query charges, and \$42,612.31 in late penalty charges as provided for in the Tariff. In addition to the foregoing intrastate charges, DeltaCom

owes Hypercube \$29,070.58 in Tennessee interstate switched access charges. Overall, DeltaCom owes Hypercube approximately \$2.9 million for inter- and intrastate switched access charges across the country.

35. DeltaCom has also attempted to manipulate the amount it owes Hypercube in violation of the tariff by claiming that none of its toll-free calls originate and terminate in Tennessee and by reporting a 100% PIU¹⁹ to Hypercube on or about October 11, 2007. *See* DeltaCom Complaint, Ex. C.

36. Hypercube asked DeltaCom to support its 100% PIU claim with data through a traffic study. DeltaCom refused to provide Hypercube any data to support DeltaCom's 100% PIU. DeltaCom did not base this PIU report on any data; and, instead, DeltaCom reported a 100% PIU based upon (i) a nonexistent "compromise and settlement agreement" between the parties, (ii) "regulatory uncertainty," and (iii) because "the jurisdiction of wireless calls to tollfree numbers cannot be determined with certainty." *Id.* Because DeltaCom refused to support its PIU claim with any data, Hypercube's Tariff sets a default PIU of 50%, which means half the traffic is considered intrastate and half interstate.

37. Hypercube's bills to DeltaCom for intrastate access charges have reflected this default PIU. DeltaCom has provided no data to support any other PIU. *See* Tariff § 2.3.3(F) ("For Switched Access Service, if a billing dispute arises ..., the Customer [DeltaCom] will provide the data issued to determine the projected PIU factor.").

38. Hypercube has attempted to resolve DeltaCom's non-payment through negotiations, but negotiations have been unsuccessful.

¹⁹ PIU stands for "percent interstate use."

39. At all times relevant hereto, DeltaCom has had actual and constructive notice of Hypercube's intrastate access and associated database query charges for originating 8YY traffic. DeltaCom continues to receive, use, and benefit from Hypercube's intrastate access service and database query services.

40. DeltaCom has refused to pay an amount not less than **\$199,395.81 as of August 7, 2009** in Hypercube's lawfully billed charges to DeltaCom for Tennessee intrastate switched access service.

41. The amount overdue from DeltaCom for access services provided by Hypercube represents service provided during the months of December 2004 through August 7, 2009. These amounts continue to grow each month as: (i) Hypercube continues to satisfy its statutory duty as a common carrier to provide services to DeltaCom; (ii) DeltaCom avails itself of Hypercube's services; (iii) DeltaCom utilizes those services as an input to the 8YY services DeltaCom provides to its customers and for which DeltaCom receives payment; and (iv) DeltaCom refuses to pay for the services received from Hypercube.

42. DeltaCom's refusal to pay these charges and associated late fees is without legal justification or excuse.

COUNTERCLAIM COUNT I
BREACH OF HYPERCUBE'S TARIFF

43. Hypercube incorporates the preceding paragraphs as if fully set forth herein.

44. Hypercube's Tariff sets forth the charges that Hypercube imposes on carriers that make use of its services.

45. The provisions of Hypercube's Tariff were approved by the Authority and therefore have the force of law, establishing Hypercube's lawful rates for providing the telecommunications services described above.

46. Hypercube has provided telecommunications services to DeltaCom within Hypercube's Tariff as described above.

47. DeltaCom has refused to provide Hypercube with any data to support its claimed PIU and, therefore, Hypercube is entitled to rely on the default procedures of the Tariff and set a 50% PIU. Hypercube's bills to DeltaCom have reflected the default PIU and DeltaCom has provided no supported alternative PIU.

48. DeltaCom has unlawfully refused to pay the Authority-approved tariff charges set forth in the invoices presented to DeltaCom by Hypercube.

49. As of August 7, 2009, the total amount of the tariffed charges that DeltaCom owes pursuant to Hypercube's Tariff but that DeltaCom has refused to pay is **\$199,395.81**.

COUNTERCLAIM COUNT II
QUANTUM MERUIT

50. Hypercube incorporates the preceding paragraphs as if fully set forth herein.

51. In the alternative, should it be determined that the services performed by Hypercube were not pursuant to the Tariff and that the Tariff does not cover the services provided by Hypercube to DeltaCom, Hypercube is entitled to compensation from DeltaCom under a quantum meruit theory.

52. Hypercube performed valuable services for DeltaCom in routing calls to DeltaCom's 8YY subscribers over Hypercube's network.

53. DeltaCom knowingly received and accepted Hypercube's services when it accepted wireless calls routed by Hypercube to DeltaCom's toll-free number subscribers.

54. DeltaCom has unjustly refused to pay Hypercube for the services provided by Hypercube.

55. Hypercube expected payment for the services it provided to DeltaCom. Because DeltaCom is offering on a for-profit basis 8YY services, LECs like Hypercube expect DeltaCom to pay for access charges incurred as a result of DeltaCom's use of the LEC's network to route calls to DeltaCom's toll-free 8YY subscribers. Hypercube fully expected payment for routing calls to DeltaCom's toll-free 8YY subscribers.

56. It would be unjust for DeltaCom to retain the benefits of Hypercube's services without compensating Hypercube. Hypercube is lawfully entitled to bill DeltaCom for the services Hypercube provides.

COUNTERCLAIM COUNT III
ORDER FOR PROSPECTIVE RELIEF

57. Hypercube incorporates the preceding paragraphs as if fully set forth herein.

58. DeltaCom has unreasonably, unjustly, and unlawfully refused to pay for services provided by Hypercube and will continue to refuse to pay Hypercube.

59. Hypercube is entitled to an order requiring DeltaCom to pay all amounts owed to Hypercube and barring DeltaCom from refusing to pay Hypercube in the future for services provided by Hypercube.

WHEREFORE, Hypercube respectfully requests that the Authority issue an Order:

- a. Dismissing DeltaCom's Complaint;
- b. Requiring DeltaCom to pay all sums due and owing to Hypercube;
- c. Barring DeltaCom from refusing to pay future sums due and owing to Hypercube;
- d. Granting Hypercube attorneys' fees and other costs as provided for in Hypercube's Tariff;
- e. Granting such other and further relief as the Authority may deem just and proper.

Respectfully submitted this 19th day of August 2009.

A handwritten signature in black ink, reading "H. LaDon Baltimore". The signature is fluid and cursive, with the first name "H." and last name "Baltimore" clearly legible.

H. LaDon Baltimore, Esq.

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Attorneys for Hypercube LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of August, 2009 served a true and exact copy of the within and foregoing **Answer to Complaint of DeltaCom, Inc. and Counterclaim of Hypercube Telecom, LLC f/k/a KMC Data, LLC** via United States First Class Mail, postage paid and properly addressed, overnight delivery, or electronic transmission to the following:

Henry Walker, Esq. (No. 000272)
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By: 
H. LaDon Baltimore

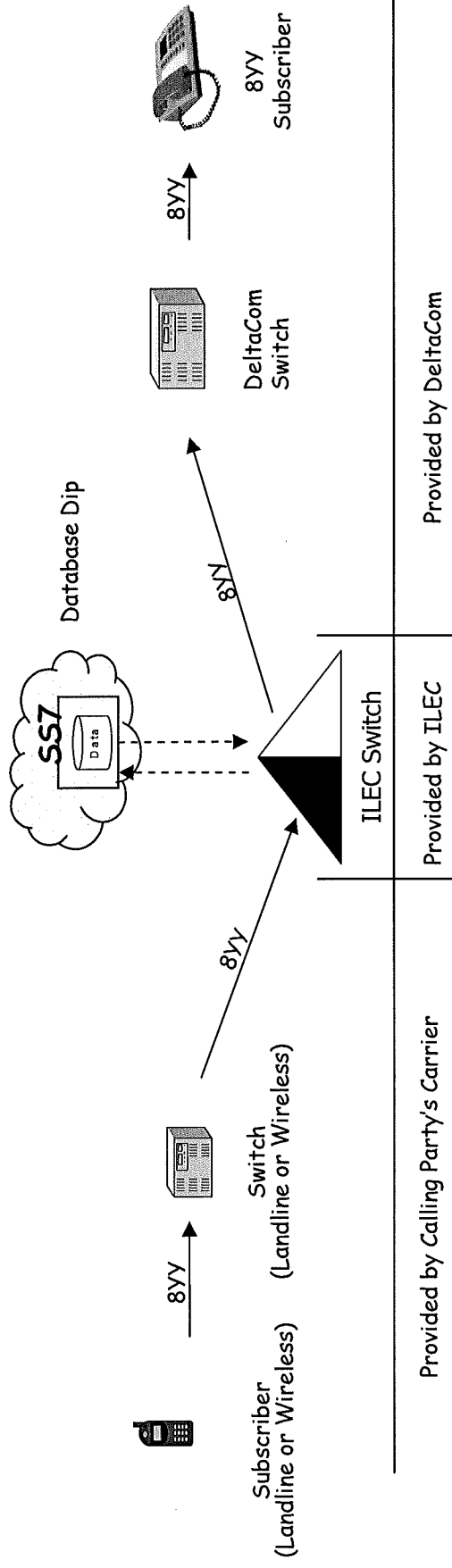
Exhibit Hypercube-A – Call Flow Slides
Exhibit Hypercube-B – Tennessee Access Tariff
Exhibit Hypercube-C – *WilTel* decision from NYPSC

EXHIBIT HYPERCUBE-A

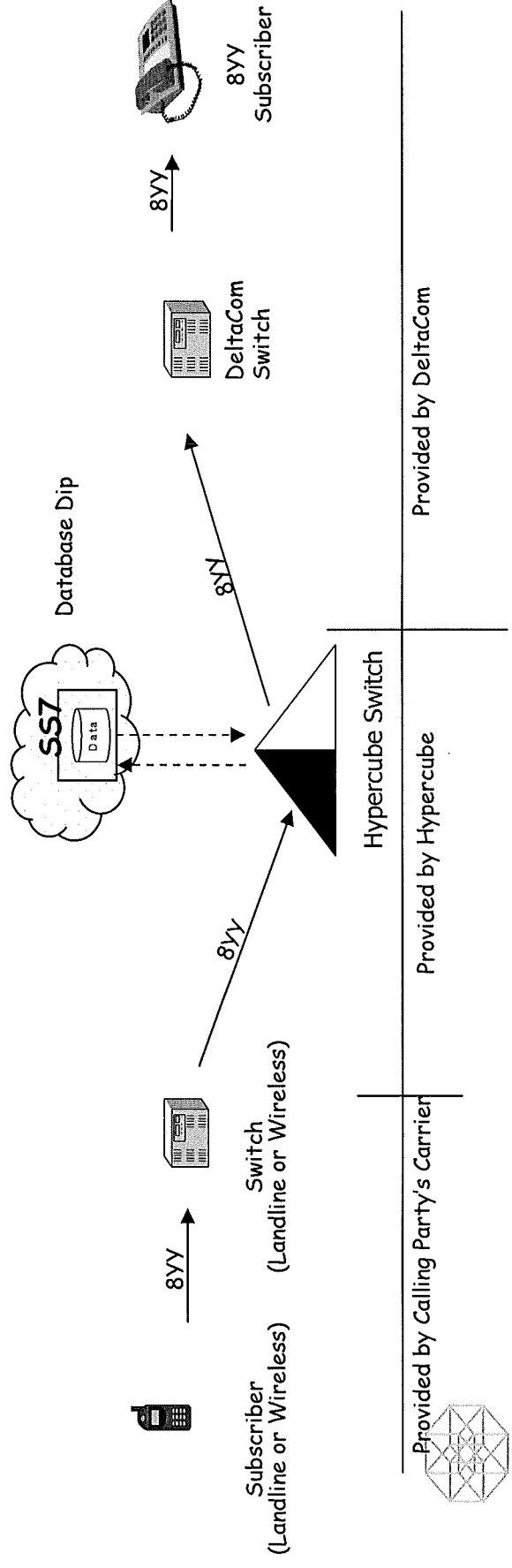
CALL FLOW SLIDES

Toll-Free Call Flow – Slide 1

Direct Interconnection Between DeltaCom and ILEC

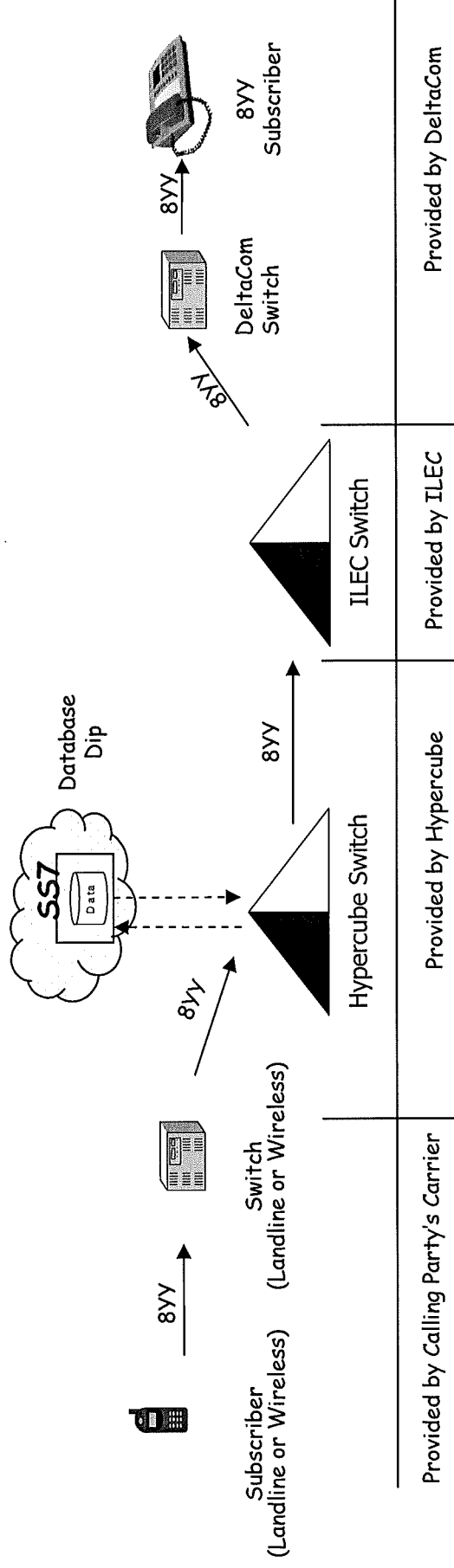


Direct Interconnection Between DeltaCom and Hypercube



Toll-Free Call Flow – Slide 2

Indirect Interconnection Between DeltaCom and Hypercube



Direct Interconnection Between DeltaCom and Calling Party's Carrier

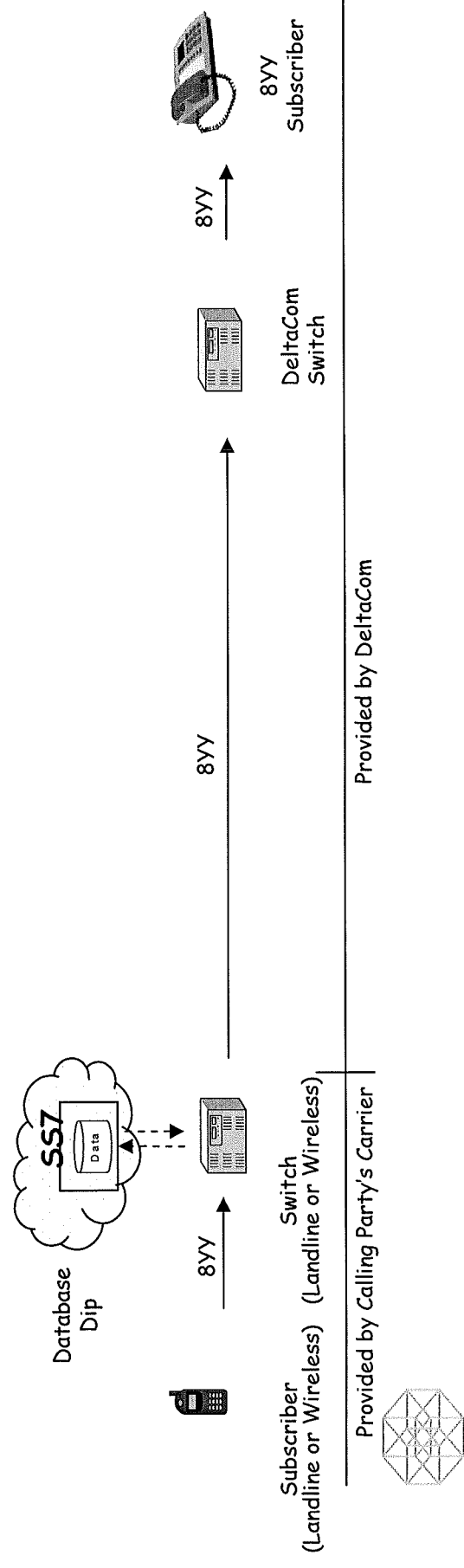


EXHIBIT HYPERCUBE-B

TENNESSEE ACCESS TARIFF

ACCESS SERVICES

REGULATION AND SCHEDULE OF INTRASTATE CHARGES
GOVERNING THE PROVISION OF SWITCHED ACCESS SERVICES
FOR CONNECTION TO COMMUNICATIONS FACILITIES WITHIN
THE STATE OF TENNESSEE

This tariff contains the descriptions, regulations and rates applicable to the furnishing of competitive access service and facilities for telecommunications services provided by HYPERCUBE TELECOM, LLC within the State of Tennessee. This tariff is on file with the Tennessee Regulatory Authority. Copies may be inspected during normal business hours at the Company's principal place of business at 5300 Oakbrook Parkway, Bldg 300, Suite 330, Norcross, GA 30093.

Issued: August 21, 2008

Effective: August 22, 2008

Issued By: James M. Mertz
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ACCESS SERVICES

CHECK SHEET

Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

SHEET	REVISION	SHEET	REVISION	SHEET	REVISION
1	Original	26	Original		
2	Original	27	Original		
3	Original	28	Original		
4	Original	29	Original		
5	Original	30	Original		
6	Original	31	Original		
7	Original	32	Original		
8	Original	33	Original		
9	Original	34	Original		
10	Original	35	Original		
11	Original	36	Original		
12	Original	37	Original		
13	Original	38	Original		
14	Original	39	Original		
15	Original	40	Original		
16	Original	41	Original		
17	Original	42	Original		
18	Original	43	Original		
19	Original	44	Original		
20	Original	45	Original		
21	Original	46	Original		
22	Original	47	Original		
23	Original	48	Original		
24	Original				
25	Original				

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ACCESS SERVICES

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ACCESS SERVICES

SYMBOLS

The following are the only symbols used for the purposes indicated below:

- C To signify changed regulation or rate structure.
- D To signify discontinued material.
- I To signify a increased rate.
- M To signify a move in the location of text.
- N To signify a new rate or regulation.
- R To signify a reduced rate.
- S To signify reissued material.
- T To signify a change in text but no change in rate or regulation.

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ACCESS SERVICES

TARIFF FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in its tariff approval process, the most current sheet number on file with the Commission is not always the sheet in effect. Consult the Check Sheet for the sheet currently in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to the next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a)
- 2.1.1 .A. I .(a).I.
- 2.1 .1 .A. I .(a).I.(i).
- 2.1 .1 .A. I .(a).I.(i).(1).

D. Check Sheets - When a tariff filing is made with the FCC, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross-reference to the current revision number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some sheets.) The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on file with the FCC.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS

Certain terms used generally throughout this tariff for the Access Services of this Company are defined below.

Access Code: A uniform seven digit code assigned by a Common Carrier to an individual customer. The seven digit code has the form 950-XXXX or 101XXXX.

Access Service: Switched Access to the network of an Interexchange Carrier for the purpose of originating or terminating communications.

Access Service Request (ASR): The industry service order format used by Access Service Customers and access providers as agreed to by the Ordering and Billing Forum.

Access Tandem: A switching system that provides traffic concentration and distribution function for originating or terminating traffic as an intermediate carrier between other switching facilities that originate or terminate calls to or from an End User.

Authorized User: A person, firm, corporation or other entity that either is authorized by the Customer to use Access Services or is placed in a position by the Customer, either through acts or omissions, to use Access Services.

Carrier or Common Carrier: See Interexchange Carrier or Exchange Carrier.

CMRS: Commercial Mobile Radio Service

Co-Carrier: Any other Telecommunications provider authorized by the Commission to provide local exchange service in the state.

Commission: The Tennessee Regulatory Authority

Common Channel Signaling (CCS): A high-speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. It is used to carry addressed signaling messages for individual trunk circuits and/or database related services between signaling points in the CCS network.

Company: HYPERCUBE TELECOM, LLC, issuer of this tariff.

Constructive Order: Delivery of calls to or acceptance of calls from the Company's locations constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer.

Customer: The person, firm, corporation or other entity which orders Service or receives service including through a Constructive Order and is responsible for the payment of charges and for compliance with the Company's tariff regulations. The Customer could be an interexchange carrier, a local exchange carrier, a wireless provider, or any other Carrier that operates in the state.

8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to local exchange services, interexchange services, CMRs, VOIP services, or other telecommunications service provided by an Exchange Carrier, Common Carrier, Wireless Provider, VOIP Provider or other provider of services that transit the Company's facilities.

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service, CMRS, wireless services or VOIP services.

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Inter-MTA Traffic: Wireless traffic originating on the network of a CMRS provider within one MTA and terminating to End Users in another MTA.

Intra-MTA Traffic: Wireless traffic originating on the network of a CMRS provider within a MTA and terminating to End Users in the same MTA.

Interexchange Carrier (IXC) or Interexchange Common Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in state, interstate or foreign communication for hire by wire or radio, between two or more exchanges.

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Line Information Data Base (LIDB): The data base which contains base information such as telephone numbers, calling card numbers and associated billed number restriction data used in connection with the validation and billing of calls.

Local Access: The connection between a Customer's premises and a point of presence of the Exchange Carrier.

Local Switching Center: The switching center where telephone exchange service Customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Local Traffic: Traffic, other than 8XX calls, is "Local Traffic" under this tariff if: (i) the call originates and terminates in the same exchange area; or (ii) the call originates and terminates within different HYPERCUBE TELECOM, LLC Exchanges that share a common mandatory local calling area, e.g., a mandatory Extended Local Calling Service (ELCS) or Extended Area Service areas (EAS) or other like types of mandatory local calling scopes.

Meet Point: A point of interconnection that is not an end office or tandem.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

Meet Point Billing: The arrangement through which multiple Exchange Carriers involved in providing Access Services, divide the ordering, rating, and billing of such services on a proportional basis, so that each Exchange Carrier involved in providing a portion of the Access Service agrees to bill under its respective tariff.

Mobile Telephone Switching Office: Location where the wireless Customer maintains a facility for purposes of interconnecting to the Company's Network.

MTA: Metropolitan Trading Area.

Mutual Traffic Exchange: A compensation arrangement between certified local exchange service providers where local exchange service providers pay each other "in kind" for terminating local exchange traffic on the other's network.

Network Services: The Company's telecommunications Access Services offered on the Company's Network.

Non-Recurring Charges: The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the Service Order is executed.

Off-Hook: The active condition of Switched Access or a telephone exchange service line.

Optional Expanded Area Service Traffic (OEAS): Optional service found in large urban areas financed by separate charge on end users that elect service as defined by a tariff approved by the Commission.

On-Hook: The idle condition of switched access or a telephone exchange service line.

Out of Band Signaling: An exchange access signaling feature which allows Customers to exchange call control and signaling information over a communications path which is separate from the message path.

Point of Presence: Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Premises: The space occupied by a Customer or Authorized User in a building or buildings or on contiguous property (except railroad rights-of-way, etc.).

Presubscription: An arrangement whereby an End User may select and designate to the Company an Interexchange Carrier (IXC) or Carriers it wishes to access, without an Access Code, for completing both intraLATA toll calls and/or interLATA calls. The selected IXC(s) are referred to as the End User's Primary Interexchange Carrier (PIC).

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this tariff.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Switched Access Service: Access to the switched network of an Exchange Carrier for the purpose of originating or terminating communications. Switched Access is available to Carriers, as defined in this tariff.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

VOIP Provider: Any individual association, corporation, governmental agency or any other entity that is providing voice over internet protocol. The VOIP provider may or may not be certified by the Tennessee Regulatory Authority.

Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging CMRS or any other form of wireless transmission.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS**2.1 Undertaking of HYPERCUBE TELECOM, LLC****2.1.1 Scope**

HYPERCUBE TELECOM, LLC' services offered pursuant to this tariff are furnished for Switched Access Service. HYPERCUBE TELECOM, LLC may offer these services over its own or resold facilities.

HYPERCUBE TELECOM, LLC installs, operates, and maintains the communications services provided herein in accordance with the terms and conditions set forth under this tariff. HYPERCUBE TELECOM, LLC may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities as required in the Commission's rules and orders, when authorized by the Customer, to allow connection of a Customer's location to the HYPERCUBE TELECOM, LLC network. The Customer shall be responsible for all charges due for such service agreement.

The Company's services and facilities are provided on a monthly basis unless otherwise indicated, and are available twenty-four hours per day, seven days per week.

2.1.2 Shortage of Equipment or Facilities

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of lack of facilities or due to some other cause beyond the Company's control.
- B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the company may obtain from other Carriers from time to time, to furnish service as required at the sole discretion of the Company.
- C. The provisioning and restoration of service in emergencies shall be in accordance with Part 64, Subpart D, Appendix A of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

2.1.3 Terms and Conditions

- A. Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than 30 days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B. Customers seeking to cancel service have an affirmative obligation to block traffic originating from or terminating to the Company's network. By originating traffic from or originating traffic to the Company's network, the Customer will have constructively ordered the Company's switched access service.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)

2.1.3 Terms and Conditions (Cont.)

- C. The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to section 2.1.3.D below.
- D. The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- E. A Customer that uses access services provided by HYPERCUBE TELECOM, LLC without submitting an actual order will be presumed to have ordered access services by using said services and charging its End User for retail services that could not be provided without the use of access services.
- F. In any action between the parties to enforce any provision of this tariff, HYPERCUBE TELECOM, LLC shall be entitled to recover its legal fees and court costs from the Customer in addition to other relief a court may award when it is the prevailing party.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)**2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)****2.1.4 Liability of the Company**

- A. The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, errors, other defects, or representations by the Company, or use of these services or damages arising out of the failure to furnish the service whether caused by act or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6 below. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B. With respect to any other claim or suit, by a Customer or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair interruption or restoration of any service or facilities offered under this tariff, and subject to the provisions of the Company's liability, if any, shall be limited as provided herein.
- C. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction action, or request of The United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts work stoppages, or other labor difficulties.
- D. The Company shall not be liable for (a) any act or omission of any entity furnishing the Company or the Company's Customers facilities or equipment used for the interconnection with Access Services; or (b) for the acts or omissions of other Common Carriers.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)****2.1.4 Liability of the Company (Cont.)**

- E. The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- F. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location, or use of any installation or equipment provided by the Company. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4.F as a condition precedent to such installations.
- G. The Company shall not be liable for any defacement of or damage to Customers Premises resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, unless such defacement or damage is caused by the gross negligence or willful misconduct of the Company's agents or employees. No agents or employees of other participating Carriers shall be deemed to be agents or employees of the Company.
- H. Notwithstanding the Customer's obligations as set forth in Section 2.3 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the service, against any claim, loss or damage arising from Customer's use of services furnished under this tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's service; and patent infringement claims arising from combining or connecting the service offered by the Company with apparatus and systems of the Customer or others; all other claims arising out of any act or omission of the Customer or others, in connection with any service provided by the Company pursuant to this tariff.
- I. The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this tariff including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another Interexchange Carrier; or all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this tariff.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)****2.1.4 Liability of the Company (Cont.)**

- J. The entire liability of the Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to the Company by the Customer for the specific services giving rise to the claim, and no action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- K. The Company makes no warranties or representation, express or implied, including warranties or merchant's ability or fitness for a particular use, except those expressly set forth herein.
- L. The Company shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, Channels, or equipment which result from the operation of Customer-provided systems, equipment, facilities or service which are interconnected with Company services.
- M. The Company does not guarantee nor make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. The Customer and End User shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to, or death of, any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, locations or use of service furnished by the Company at such locations.
- N. The Company shall not be liable for the Customer's failure to fulfill its obligations to take all necessary steps including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's Network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service, that the signals emitted into the Company's Network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in Section 2.1.6 following, and that the signals do not damage Company equipment, injure its personnel or degrade service to other Customers. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to Company equipment, personnel, or the quality of service to other Customers, the Company, may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service without liability.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)****2.1.5 Notification of Service-Affecting Activities**

The Company will provide the Customer reasonable notification of service-affecting activities within its control that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)

2.1.6 Provisions of Equipment and Facilities

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B. The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E. The Customer shall be responsible for the payment of service charges imposed on the Company by another entity, for visits to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)

2.1.6 Provisions of Equipment and Facilities (Cont.)

- F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Notwithstanding the above, the Company shall not be responsible for:
1. the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;
 2. the reception of signals by Customer-provided equipment; or
 3. network control signaling where such signaling is performed by Customer-provided network control signaling equipment.
- G. The Company intends to work cooperatively with the Customer to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.
- H. The Company reserves the reasonable right to assign, designate or change telephone numbers, any other call number designations associated with Access Services, or the Company serving central office prefixes associated with such numbers, when necessary in the conduct of its business.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)****2.1.7 Non-routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.8 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken and characterized by one or more of the following:

- A. where facilities are not presently available and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. where facilities are to be installed over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. where facilities are requested in a quantity greater than that which the Company would normally construct;
- E. where installation is on an expedited basis;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of HYPERCUBE TELECOM, LLC (Cont.)

2.1.8 Special Construction (Cont.)

- F. on a temporary basis until permanent facilities are available;
- G. installation involving abnormal costs; or
- H. in advance of its normal construction schedules.

Special construction charges for Switched Access Service will be determined on an individual use basis.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its agents, contractors or suppliers.

2.2 Prohibited Uses

- 2.2.1 The services the Company offers shall not be used for any unlawful purposes or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming their use of the Company's offerings complies with relevant laws and applicable state regulations, policies, orders, and decisions; and if the Reseller intends to provide intrastate services, is certified with the appropriate state entity.
- 2.2.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.3 Obligations of the Customer****2.3.1** The Customer shall be responsible for:

- A. the payment of all applicable charges pursuant to this tariff. For the avoidance of doubt and notwithstanding any other provision in this Tariff or other Customer service agreement or arrangement, including but not limited to Meet Point Billing arrangements, in addition to service charges imposed by HYPERCUBE TELECOM, LLC for the Service, the Customer shall be responsible for and reimburse HYPERCUBE TELECOM, LLC for any and all charges, fees, assessments of any kind or nature, including but not limited to interstate and intrastate switched access charges, imposed by any third party (collectively "Third Party Charges") upon HYPERCUBE TELECOM, LLC relating to usage incurred by the Customer in connection with the Services. The Customer hereby indemnifies HYPERCUBE TELECOM, LLC for all Third Party Charges and agrees to defend and hold HYPERCUBE TELECOM, LLC harmless for all damages, losses, claims or judgments arising out any Third Party Charges;
- B. reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages to its facilities or equipment, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subjugated in the Company's right of recovery of damages to the extent of such payment;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space, and power to operate Company facilities and equipment installed on the Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Access Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.C above. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be owned entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this subsection prior to accepting an order for service;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.1 The Customer shall be responsible for, (cont.):

- E. providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- F. complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses, and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible obtaining under Section 2.3.1.D above; and granting or obtaining permission for Company agents or employees to enter the Customer Premises at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company; and
- G. not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees for:

- A any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;
- B. any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.3 Obligations of the Customer (Cont.)****2.3.3 Jurisdictional Reporting**

The jurisdictional reporting requirements will be as specified below. When a Customer orders Access Service or uses Access Service based upon a Constructive Order, its projected Percent Interstate Usage (PIU) must be provided in whole numbers to the Company. These whole number percentages will be used by the Company to apportion the use and/or charges between interstate and intrastate until a revised report is received as set forth herein. Reported or default PIU factors are used only where the call detail is insufficient to determine the appropriate jurisdiction of the traffic.

- A. **Originating Access:** Originating access minutes is only traffic originating from the Company Local Switching Center(s). The Customer should provide the Company with a projected PIU factor on a quarterly basis.

If no PIU for originating minutes is submitted as specified herein, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

- B. **Terminating Access:** For Feature Group D Switched Access Service(s), the Customer should provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of terminating access minutes on a quarterly basis, as described in Sections 2.3.3.E below.

If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

- C. **800 Originating Access:** 800 Originating Access is for 8XX traffic that is switched by the Company's switches and originated by an End User of an Exchange Carrier.

If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

- D. Except where the Company measured access minutes are used as set forth above, the Customer reported Projected PIU factor as set forth above will be used until the Customer reports a different projected PIU factor, as set forth below.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.3 Obligations of the Customer (Cont.)****2.3.3 Jurisdictional Reporting (cont.)**

- E. Effective on the first of January, April, July and October of each year the Customer should update its interstate and intrastate jurisdictional report. The Customer should forward to the Company, to be received no later than 15 days after the first of each such month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June, and September, respectively, for each service arranged for interstate use, based solely on the traffic originating from or terminating to the Company. The revised report will serve as the basis for the next three months' billing and will be effective on the bill date for that service. No prorating or back billing will be done based upon the report. If the Customer does not supply the reports for those services where reports are needed, the Company will assume the percentage to be the same as that provided previously. For those cases in which a quarterly report has never been received from the Customer, the Company will assume the percentages to be the same as those provided in 2.3.3A and 2.3.3B above.

- F. Jurisdictional Reports Verification: For Switched Access Service, if a billing dispute arises or a regulatory commission questions the projected PIU factor, the Customer will provide the data issued to determine the projected PIU factor. The Customer will supply the data within 30 days of the Company request.

The Customer shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The Company reserves the right to conduct an audit at any time during the year. The Customer, as its own expense, has the right to retain an independent auditing firm.

- G. For switched access services for which the Company cannot determine the jurisdictional nature of Customer traffic and its related access minutes, the company reserves the right to require the Customer to provide a projected estimate of its traffic, split between the interstate and intrastate jurisdictions. The Customer shall upon ordering service, and quarterly thereafter, report the percentage of interstate use and such report will be used for billing purposes until the Customer reports a different projected interstate percentage for a working trunk group. When the Customer adds trunks to or removes trunks from an existing group, the Customer shall furnish a revised projected interstate percentage for each service arranged for interstate use. The revised report will serve as the basis for future billing and will be effective on the next bill date. No prorating or back billing will be done based on the report.

The Company may request detailed information in support of the reported annually and retains the right to retroactively adjust the Customer's most recent bills covering the preceding eleven months if a substantial discrepancy is found to exist. If an audit of the reported percentages reveals a substantial deviation from the Customer's previously reported PIU for the period upon which audit was based, the call detail records may be requested more than once annually.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.3 Obligations of the Customer (Cont.)****2.3.4 Jurisdictional Audits**

- A. The Customer shall keep sufficient detail from which the percentages of interstate and intrastate intraLATA use reported to the Company can be verified and upon request of the Company make such records available for inspection and audit. The Customer must maintain these records for 24 months from the date the report became effective for billing purposes.
- B. Initiation of an audit will be at the sole discretion of the Company. An audit may be initiated by the Company for a single Customer no more than once per year. The Customer shall supply required data within 30 calendar days of the Company request.
- C. In the event that an audit reveals that any Customer reported PIU or PLU was incorrect, the Company shall apply the audit result to all usage affected by the audit. The Customer shall be back billed for a period retroactive to the date that the incorrect percentage was reported, but not to exceed 24 months. Back billed amounts are subject to a late payment penalty and payment shall be made in immediately available funds, within 31 days from receipt of bill or by the following bill date, whichever is shorter period.
- D. Should an audit reveal that the misreported percentage(s) of use has resulted in an underpayment of Access charges to the Company of five percent or more of the total switched Access Services bill, the Customer shall reimburse the Company for the cost of the audit. Proof of cost shall be the bills, in reasonable detail submitted to the Company by the auditor.
- E. Within 15 days of completion of the auditor's report, the Company will furnish a copy of the audit results to the person designated by the Customer to receive such results.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels

2.4.1 General

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

- A. The Customer is responsible for providing and maintaining any terminal equipment on the Customer Premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinue forthwith the use of a service temporarily if such action is reasonable under the circumstances. In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels (Cont.)

2.4.2 Station Equipment (Cont.)

- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

2.4.3 Interconnection of Facilities

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Access Services and the Channels, facilities, or equipment of others shall be provided at the Customers expense.
- B. Access Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.4 Customer Equipment and Channels (Cont.)****2.4.4 Inspections**

- A. Upon reasonable notification of the Customer, and at reasonable times, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.B for the installation, operation, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment, and personnel from harm. The Company will, upon request 24 hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

2.5 Payment Arrangements**2.5.1 Payment for Service**

The Customer is responsible for payment of all charges for services and facilities furnished by the Company to the Customer or its Joint or Authorized Users. Customer must pay HYPERCUBE TELECOM, LLC for all services provided regardless of whether the Customer submitted an order to HYPERCUBE TELECOM, LLC to provide such services.

A. Taxes

The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on the Company's net income imposed on or based upon the provision, sale or use of Access Services. All such taxes shall be separately designated on the Company's invoices.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges

Unless otherwise specified herein, bills are due and payable upon receipt.

The Company shall bill on a current basis all charges incurred by, and credits due to, the Customer under this Tariff attributable to services established, provided, or discontinued during the preceding billing period. Any known unbilled charges for prior periods and any known adjustments also will be applied to the current bill.

Non-Recurring Charges are due and payable within 30 days after the invoice date.

The Company shall present invoices for all Charges monthly to the Customer.

Amounts not paid within 30 days after the date of invoice will be considered past due. HYPERCUBE TELECOM, LLC will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 30 days. If the Company becomes concerned at any time about the ability of a Customer to pay its bills, the Company may require that the Customer pay its bills within a specified number of days and make such payments in cash or the equivalent of cash.

If the Customer does not provide remittance advice with its payments, payments will be applied to outstanding charges in the following order: 1.) the oldest to the most recent late payment charges, 2.) the oldest to the most recent outstanding intrastate charges, and finally to 3.) the oldest to most recent outstanding interstate charges.

If a service is disconnected by the Company in accordance with Section 2.5.3 following and later restored, restoration of service will be subject to all applicable installation charges.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.5 Payment Arrangements (Cont.)****2.5.2 Billing and Collection of Charges (Cont.)**

The Customer shall notify the Company of any disputed items on an invoice within 90 days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Commission in accordance with the Commission's rules of procedures.

Any disputed charges must be paid when due. After the dispute is settled, the Customer will be credited with any payments in excess of those actually due the Company. The Company will also remit interest for all such credited amounts. Interest will be paid at rate required by the Commission for Customer deposits.

2.5.3 Refusal and Discontinuance of Service

- A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer discontinue or suspend service without incurring any liability. HYPERCUBE TELECOM, LLC may deliver such notice via electronic mail, facsimile, regular mail or certified mail.
- B. Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 10 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D. Upon any governmental prohibition, or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any Liability.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

- E. Upon the Company's discontinuance of service to the Customer under Section 2.5.3.A or 2.5.3.B above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.
- F. The Company may discontinue the furnishings of any and/or all service(s) to Customer, without incurring any liability:
 - 1. Immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section 2.5.3.F.1. (a-e), if
 - (a) The Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s); or
 - (b) The Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s); or

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

F. (cont.)

1. (cont.)

- (c) The Customer states that it will not comply with a request of the Company for security for the payment for service(s) in accordance with Section 2.5.3.A above, or
- (d) The Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used; or
- (e) The Customer uses, or attempts or use, service with the intent to void the payment, either in whole or in part, of the tariff charges for the service by:
 - I. Using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff, or
 - II. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or
 - III. By delivering calls to or accepting calls from the Company's locations over Company switched local exchange services; or
 - IV. Continuing to have Company End Users presubscribed to the Customer; or
 - V. Any other Fraudulent means or devices; or

2. Upon ten (10) days written notice to the Customer of any sum thirty (30) days past due;

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

F. (cont.)

3. Upon ten (10) days: written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.5.3.A, above; or
4. Seven (7) days after sending the Customer written notice of noncompliance with any provision of this tariff if the noncompliance is not corrected within that seven (7) day period. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

- G. In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.5.4 Cancellation of Application for Service

Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

The special charges described will be calculated and applied on a case-by-case basis.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)**2.6 Allowances for Interruptions in Service**

Interruptions in service which are not due to the negligence of or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power, or equipment provided by the Customer will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

The credit allowance will be calculated by the Company after the Customer notifies the Company of service interruption. The amount of the allowance will depend on the length of the outage and the service impacted. Service Outage conditions are defined as complete loss of call origination and/or receipt capability. Credit Allowances, if any, will be deducted from the charges payable by the IXC and will be expressly indicated on the next invoice. A Service Outage begins when the IXC reports the outage to HYPERCUBE TELECOM, LLC. A Service Outage ends when the affected circuit and/or associated HYPERCUBE TELECOM, LLC equipment is fully operational in accordance with the technical specifications.

Credit allowances do not apply to outages (i) caused by the IXC; (ii) due to failure of equipment provided by the IXC; (iii) during any period in which HYPERCUBE TELECOM, LLC is not given access to the service premises; (iv) failures of LEC facilities or equipment which are carrying the failures resulting from the activities or negligence of LEC employees; (v) inability to gain access to the IXC's equipment; and (vii) due to mutually agreed upon maintenance and repair.

Credit Allowances received by HYPERCUBE TELECOM, LLC from the LEC for Off-Net facility outages which affects the IXC's Switched Services will be passed through to the IXC in the form of a credit on the next invoice.

For calculating credit allowances, every month is considered to have 30 days. A credit allowance for fixed recurring fees only is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

The Customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the service affected for each hour or major fraction thereof that the interruption continues. Calculations of the credit shall be made in accordance with the following formula:

$$\text{Credit} = \frac{A}{720} \times B$$

"A" = outage time in hours

"B" = total monthly charge for affected facility, where applicable

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service (Cont.)

2.6.1 Limitations on Allowances

No credit allowance will be made for:

- A. interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, Authorized User, Joint-User, or other Common Carrier providing service connected to the service of Company;
- B. interruptions due to the negligence of any person other than the Company, including, but not limited to, the Customer or other Common Carriers connected to the Company's facilities;
- C. interruptions due to the failure or malfunction of non-Company equipment;
- D. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- E. interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- F. interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. interruption of service due to circumstances or causes beyond the control of the Company.

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SECTION 2- RULES AND REGULATIONS (Cont.)**2.7 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent Company or affiliate of the Company (b) pursuant to any sale or transfer of substantially all the assets of the Company; or pursuant to any financing, merger or reorganization of the Company.

2.8 Notices and Communications

- 2.8.1 Delivery of calls to or acceptance of calls from the Company's locations over Company-switched exchange services constitutes an order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes an order of switched access by the Customer. In these cases, an invoice will be the first communication from the Company to the Customer. In other instances a Service Order may be used.
- 2.8.2 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.8.3 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.
- 2.8.4 All notices or other communications required to be given pursuant to this tariff shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.8.5 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.9 Meet Point Billing

Meet Point Billing applies when more than one Exchange Company is involved in the provision of Access Service. All recurring and nonrecurring charges for services provided by each Exchange Company are billed under each company's applicable rates as set forth below.

The Company accepts and adheres to the Ordering and Billing Forum guidelines, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD).

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ACCESS SERVICES

SECTION 3 - SWITCHED ACCESS SERVICE**3.1 General**

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer and an End User. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User to a Customer, and to terminate calls from a Customer to an End User.

Switched Access Service is available when originating or terminating calls from or to an End User.

Rates and charges are set forth in Section 4. The application of rates for Switched Access Service is described in Section 4.

3.2 Provision and Description of Switched Access Service Arrangements**3.2.1 Feature Group Access**

FG Access is provisioned at the DS-1 level and provides trunk-side access to Switching Center switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist).

All traffic is routed to and from the Company's switching center via direct trunking or via an alternative route when direct trunking has not been arranged. Delivery of calls to, or acceptance of calls from, the Company's locations over Company-switched exchange services shall constitute an agreement by the Customer to purchase switched access services as described herein. The Company reserves the right to require the Customer to submit an ASR for switched access.

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.2 Provision and Description of Switched Access Service Arrangements (Cont.)

3.2.2 Manner of Provision

Trunks used for Switched Access Service may be configured for one-way (either originating only or terminating only) or for two-way directionality.

3.2.3 Call Types

The following Switched Access Service call types are available:

- A. Originating FG Access
- B. Originating 800 FG Access
- C. Terminating FG Access

3.2.4 Originating FG Access

The access code for FG Access switching is a uniform access code of the form 1+ or 011+ or 101XXXX. For 101XXXX dialing a single access code will be the assigned number of all FG Access provided to the Customer by a Common Carrier. When the access code is used, FG Access switching also provides for dialing the digit 0 for access to the Customer's operator service, 911 for access to emergency service, and/or the end of dialing digit (11) for cut-through access to the Customer's premises. The Company will provide originating routing information access consistent with dialing parity obligations.

Originating FG Access is assessed for each minute of use.

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SECTION 3- SWITCHED ACCESS SERVICE (Cont.)**3.2 Provision and Description of Switched Access Service Arrangements (Cont.)****3.2.5 Originating 800 FG Access**

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will utilize the Signaling System 7 (SS7) network to query an 800 data base to identify the Customer to whom the call will be delivered and provide vertical features based on the dialed ten digits. The call will then be routed to the identified Customer over FGD switched access. The 800 series includes the following service access codes: 800, 888, 877, 866, 855, 844, 833 and 822.

Originating FG Access is assessed for each minute of use.

Originating 800 FG Access includes the delivery of 8XX traffic that is initiated by a Wireless Provider's End User and is delivered from a CMRS Mobile Telephone Switching Office to the Company switch and then to a Customer. The Company will charge for all elements of service that it provides in routing such traffic.

A Basic or Vertical Feature Query charge is assessed for each completed query returned from the data base identifying the Customer to whom the call will be delivered whether or not the actual call is delivered to the Customer. The Basic Query provides the identification of the Customer to whom the call will be delivered and includes area of service routing which allows routing of 800 series calls by telephone companies to different interexchange carriers based on the Local Access Transport Area (LATA) in which the call originates. The Vertical Feature Query provides the same Customer identification as the basic query and vertical features which may include: (1) call validation, (ensuring that calls originate from subscribed service areas); (2) POTS translation of 800 series numbers; (3) alternate POTS translation (which allows subscribers to vary the routing of 800 series calls based on factors such as time of day, place or origination of the call, etc.); and (4) multiple carrier routing (which allows subscribers to route to different carriers based on factors similar to those in (3)).

3.2.6 Terminating FG Access

FG Access, when used in the terminating direction, may only be used to access End Users who are connected to the Company or other Co-Carrier. Calls in the terminating direction will not be completed to 950-OXXX or 950-1XXX access codes, local operator assistance (0-and 0+), Directory Assistance, (411 or 555-1212) service codes 611 and 911 and IO1XXXX access codes.

Terminating FG Access is assessed for each minute of use.

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.3 Reports and Testing

- 3.3.1 Design Layout Report: At the request of the Customer, the Company will provide to the Customer the makeup of the facilities and services provided from the Customer's Premises to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the Customer at no charge.
- 3.3.2 Acceptance Testing: At no additional charge, the Company will, at the Customer's request, cooperatively test, at the time of installation, the following parameters: loss, C-notched noise, Cmessage noise, 3-tone slope, d.c. continuity and operational signaling.

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ACCESS SERVICES

SECTION 4-SWITCHED ACCESS RATES

4.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES, (Cont.)**4.2 Rate Categories**

4.2.1 There are several rate categories which apply to Switched Access Service:

- Blended Carrier Switched Access Originating
- Blended Carrier Switched Access Terminating
- 800 Data Base Access Service

The Company provides originating and terminating switched access service through a single blended rate based on aggregate traffic volumes from the following cost categories:

Switched Transport

The Switched Transport cost category establishes the charges related to the transmission and tandem switching facilities between the Customer designated premises and the end office switch(es) where the Customer's traffic is switched to originate or terminate the Customer's communications.

Switching – (End Office, Tandem or both)

The Switching cost category establishes the charges related to the use of office switching equipment, the terminations in the office of lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the switching office and the STP.

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SECTION 4- SWITCHED ACCESS RATES, (Cont.)

4.2 Rate Categories (Cont.)

4.2.2 800 Data Base Query

The 800 Data Base Query Charge will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

4.2.3 Optional Features

Other optional features may be available on an Individual Case Basis (ICB).

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES (Cont.)**4.3 Billing of Access Minutes**

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center-(indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.4 Rates and Charges

4.4.1 Blended Carrier Switched Access

HYPERCUBE TELECOM, LLC bills originating and terminating access per minute as a blended rate. The blended rate includes Switching and Transport.

Originating FG Access	\$0.025
Terminating FG Access	\$0.025

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.4 Rates and Charges (Cont.)

4.4.2 800 Data Base Access Service Queries

Per Query

Basic	\$0.005
Vertical Feature	\$0.0055

4.4.3 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

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ACCESS SERVICES

SECTION 5 CONTRACTS AND INDIVIDUAL CASE BASIS ARRANGEMENTS

5.1 Contracts

The Company may provide any of the services offered under this tariff, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this tariff do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under contract are not eligible for any promotional offerings which may be offered by the Company from time to time.

5.2 Individual Case Basis Arrangements

Arrangements will be developed on an individual case basis (ICB) in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.

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EXHIBIT HYPERCUBE-C

WILTEL DECISION FROM NYPSC

C

PUR Slip Copy

WilTel Communications, Inc.

v.

Verizon New York Inc.

Case 04-C-1548

New York Public Service Commission

May 30, 2006

BY THE COMMISSION:

INTRODUCTION

In a complaint against Verizon New York Inc. (Verizon), WilTel Communications, LLC (WilTel) requests that the Commission prohibit Verizon from imposing unlawful access charges and require Verizon to amend its PSC Tariff No. 11 to bring it into compliance with the rules and regulations of this Commission and the Federal Communications Commission (FCC). WilTel complains that it is inappropriate for Verizon to charge carrier common line (CCL) and local switching rates for intrastate calls originated by WilTel, but carried by Verizon for termination at radio telephone utilities (RTU).^{FN1} Verizon argues that the existing tariff provision that allows such charges is appropriate and urges the Commission to reject WilTel's demands and dismiss its complaint.

We find that for intrastate calls terminated to an RTU, it is appropriate for Verizon to be compensated pursuant to the tariff language because the rate is consistent with the balance struck in Opinion No. 98-10 and the tariff is being applied properly. Therefore, WilTel's complaint is dismissed.

PLEADINGS

On December 6, 2004, WilTel filed a complaint against Verizon requesting that the Commission prohibit Verizon from imposing unlawful access charges upon WilTel and requiring Verizon to amend PSC Tariff No. 11 to bring it into compliance with the rules and regulations of the Commission and the FCC.^{FN2} WilTel further requests that Verizon be ordered to credit WilTel for disputed charges imposed by Verizon under its tariff. WilTel claims that, in some instances, its New York intrastate traffic is terminated to a wireless carrier's network over facilities owned by the wireless carrier's rather than Verizon's network. WilTel argues that even though Verizon does not provide the local switching or CCL service^{FN3} in such instances, Verizon, nevertheless, bills WilTel for such services and has done so since November 10, 2002 pursuant to PSC Tariff No. 11 - Access Service. WilTel claims that the existing tariff language which allows such charges is flawed and should be modified. Specifically, WilTel disputes section 2.4.8, which states:

When Switched Access Service involves intrastate traffic which originates or terminates at RTU Services, where the local transport is provided by the Telephone Company and the end user connection is provided by an RTU Carrier, the Telephone Company will provide its portion of the Switched Access Service in accordance with Section 6 following.

For traffic which originates or terminates at RTU Interconnections, Carrier Common Line Service and Switched Access Service Local Switching rates and charges as specified in Sections 3.9 and 6.8 following respectively, will apply.

WilTel asserts that both state and federal law support its claim that Verizon is prohibited from charging WilTel access charges for wireless services. According to WilTel, the FCC has sole jurisdiction

over the rates charged by wireless carriers and wireless carriers are not entitled to compensation from an IXC for access charges unless a contract exists between the two parties that specifically require the IXC to compensate the wireless carrier.^{FN4} Further, WilTel argues that recent FCC rules prohibit LECs from assessing access charges on behalf of wireless carriers.^{FN5} In contrast, WilTel does not dispute the imposition of transport and tandem switching charges, as Verizon clearly provides those services, pursuant to tariff, when an intrastate call is terminated by an RTU carrier. WilTel also argues that, consistent with Section 91 of the Public Service Law (PSL), Verizon may only assess charges that are just and reasonable and is prohibited from demanding compensation for a service it does not actually perform.

Verizon argues that Section 2.4.8, which has been in effect since 1998, allows it to impose access charges in any situation where it handles intrastate traffic that is terminated to a wireless carrier's end user in New York, whether Verizon provides the local switching component or not, by virtue of the filed rate doctrine. Verizon rebuts WilTel's argument that the FCC prohibits it from charging for local switching when a wireless carrier terminates the call. First, Verizon argues that the FCC's ruling applied only to interstate traffic, while the charges that are the subject of WilTel's complaint apply only to intrastate traffic. Second, Verizon claims that the wireless carrier attempting to impose a payment obligation in the FCC's Sprint/AT&T Declaratory Ruling had no tariff permitting it to do so. Verizon claims that in the ruling, the FCC noted that a tariff, even without a contract, would permit a carrier to impose such a charge.^{FN6} Third, the Sprint/AT&T Declaratory Ruling is not applicable because it applies only to a wireless carrier's ability to impose such charges, and Verizon is not a wireless carrier. Lastly, Verizon claims that the CLEC Access Reform Order should not apply here because it applies only to interstate traffic and the

charges in dispute here are not part of any joint billing arrangement with a wireless carrier.

In a subsequent filing, Verizon further argues that Section 2.4.8 of the Switched Access tariff was approved pursuant to a 1998 rate proceeding,^{FN7} and that nothing has occurred since that proceeding to justify a rate change. Verizon argues that application of section 2.4.8 complies with overall rate level mandated in Opinion No. 98-10. Verizon claims that modifications to that section of the tariff cannot be looked at in isolation, but only in the context of overall switched access revenues and any rate changes by the Commission should be subject to a full hearing. Verizon further claims that the change in rate structure being sought by WilTel, absent any other changes, will reduce Verizon's overall switched access revenues by approximately \$40 million annually. Verizon argues that reductions to switched access rates are less appropriate now than they were in 1998 and that the Commission must consider Verizon's financial health when determining rate changes that could potentially cause revenue loss.

WilTel disagrees with Verizon's additional filing. It argues that Verizon seeks to obfuscate the issues in its complaint by introducing a 1998 Commission Opinion on intrastate access charges. However, WilTel submits that the Commission's Opinion in fact supports WilTel's argument here. In Opinion No. 98-10, WilTel contends, the Commission found that access charges apply to only services actually provided by Verizon over its network. Therefore, Verizon cannot charge for services it does not provide. Moreover, WilTel argues that even if the Commission finds that Verizon's tariff allows it to charge for services it does not provide, the CCL charge should not apply because Verizon's tariff incorrectly refers to a rate that does not exist in the tariff. Verizon's response, that it was a typographical error, according to WilTel, is inadequate. WilTel submits that Verizon should not be allowed to go outside the tariff to impose a rate that is not clearly

set forth in the tariff.

Finally, WilTel argues that Verizon's application of the tariff is not equal in that when access charges paid by Verizon Long Distance accrue to another Verizon company, costs incurred by the long distance carrier are offset by revenues from other Verizon affiliates. Ultimately, WilTel asserts that because the rate at issue here is unjust and unreasonable, the Commission must order Verizon to withdraw it from its tariff. At that time, WilTel submits, Verizon can seek a tariff change to increase other rates to account for lost revenues.

DISCUSSION

Based on the pleadings from both parties regarding Verizon's recovery of costs when a wireless carrier terminates an intrastate call, we find that Verizon's charges are consistent with our prior determination in Opinion No. 98-10 and the tariff language is clear and unambiguous.

When Verizon terminates an intrastate call to a Verizon end-user, traffic is delivered by the IXC to the access tandem, and Verizon utilizes all three components of switched access service to complete the call. Intrastate calls from an IXC to an entity other than Verizon are also routed through the Verizon access tandem, however, the terminating carrier is responsible for delivery of the traffic thereafter. Wireless carriers interconnect with Verizon at the access tandem office (Type 2A Interconnection) or at a Verizon end office (Type 2B Interconnection).

The fundamental issues in this case involve whether Verizon's tariffed rate assessed to the IXC for handling traffic that terminates at a wireless RTU is just and reasonable and being applied properly.

Initially, with regard to whether the charge is just and reasonable, Verizon correctly points out that the subject charge was approved pursuant to Opinion No. 98-10. That proceeding ordered Verizon to

reduce overall Switched Access revenues by approximately \$85 million in a manner consistent with a rate design ordered by the Commission. The charge at issue here was developed pursuant to that overall rate design and instituted during the compliance phase of that proceeding. Nothing in the record here demonstrates that the rates were not properly implemented consistent with Opinion 98-10. WilTel simply asserts that Verizon cannot charge for a service it does not perform. WilTel's complaint amounts to a collateral attack on that rate design. WilTel does not provide any support that the rate design developed pursuant to Opinion No. 98-10 fails to comply with the Public Service Law in some material aspect. Because we conclude that the rate at issue complies with Opinion No. 98-10, granting WilTel's request would require that we alter the balance that was established there, which we decline to do.

Thus, WilTel's complaint turns on whether the tariff language is clear and unambiguous and being properly applied. Based on the plain reading of the language in the tariff, Section 2.4.8 allows Verizon to charge the disputed rate when switched access service involves intrastate traffic that terminates at a wireless RTU where the local transport is provided by Verizon. Nothing in the tariff language assumes that Verizon performs all of the stated functions including the CCL and local switching. The tariff simply implements the rate design ordered by the Commission in Opinion No.98-10. The language of the tariff is, therefore, clear and unambiguous and is being applied properly consistent with Opinion No. 98-10.

We also find that WilTel's reliance on the FCC's rulings is not dispositive here because those rulings involved interstate services that may only have been applicable to competitive LECs and not ILECs. At the time they became effective, those rulings were not grounds for Verizon to change its intrastate Access Service tariff.

WilTel's assertion that the rate is misplaced in the tariff due to a typographical error is also unpersuasive. A review of the tariff language at issue would allow a customer to ascertain the applicable rate despite the alleged error.

Finally, as to WilTel's complaint regarding past bill credits, because we find Verizon's rate to be in compliance with the PSL, that aspect of WilTel's complaint is also denied.

CONCLUSION

Based on the foregoing, we deny WilTel Communications, LLC's complaint against Verizon New York Inc.

The Commission orders:

1. WilTel Communications, LLC's complaint is denied.
2. This proceeding is closed.

FOOTNOTES

FN1 The acronym 'RTU' means 'radio telephone utilities', which Tariff No. 11 defines as radio common carriers and cellular carriers.

FN2 WilTel is an interexchange carrier (IXC) purchasing switched exchange access service from Verizon, an incumbent local exchange carrier (ILEC), in order to terminate intrastate telephone calls to customers in New York.

FN3 Carrier Common Line (CCL) access provides for the use of telephone company common lines by customers for access to end users to furnish customer intrastate communications. CCL is the charge that

IXCs pay to LECs to connect to the end user through LEC local loop facilities. The local switching rate category provides the local end office switching and end user termination functions necessary to complete the transmission of Switched Access communications to and from the end users by the local end office.

FN4 *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd. 13192 (2002) ('Sprint/AT&T Declaratory Ruling'), petitions for review dismissed, *AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003).

FN5 *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, para. 16 (2004) (the 'CLEC Access Reform Order').

FN6 Sprint/AT&T Declaratory Ruling, para. 8, noting that '[t]here are three ways in which a carrier seeking to impose charges on another carrier can establish a duty to pay such charges pursuant to (1) [FCC] rule; (2) tariff; or (3) contract.'

FN7 Cases 28425 and 94-C-0095, Opinion and Order Establishing Access charges for New York Telephone Company and Instituting a Targeted Accessibility Fund (issued June 2, 1998) (Opinion No. 98-10).

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