

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

In re:

DeltaCom, Inc.

Complainant,

-v.-

KMC Data, LLC, Hypercube, LLC and  
Hypercube Telecom, LLC,

Respondent.

filed electronically in docket office on 10/20/09

Docket No.: 09-00077

**AMENDED COMPLAINT OF DELTACOM, INC. FOR ORDER DETERMINING  
DELTACOM, INC. NOT LIABLE FOR ACCESS CHARGES OF  
KMC DATA, LLC, HYBERCUBE, LLC, AND HYPERCUBE TELECOM, LLC**

DeltaCom, Inc. ("DeltaCom"), files this Complaint seeking entry of an order against Respondents KMC Data LLC ("KMC") and Hypercube Telecom, LLC (collectively, "Hypercube"). Specifically, DeltaCom requests that the Tennessee Regulatory Authority ("TRA" or the "Authority") issue an order finding that Hypercube's attempt to impose charges for intrastate access services it alleges to have provided to DeltaCom is unjust, unreasonable, and otherwise unlawful, barring Hypercube from engaging in such conduct in the future, and requiring Hypercube to refund to DeltaCom any amounts previously remitted with respect to the charges in dispute. Because DeltaCom claims Hypercube has unlawfully billed DeltaCom for what Hypercube claims are intrastate services pursuant to a tariff on file with this Authority, DeltaCom's substantial interests are affected in this proceeding and the Authority is the proper venue for this matter.

## INTRODUCTION

1. DeltaCom and Hypercube have a long-running dispute over allegedly intrastate access charges billed by Hypercube to DeltaCom for services apparently provided by Hypercube to wireless carriers whose mobile customers initiate toll-free (“8XX”) calls to DeltaCom’s customers.

2. Historically, wireless providers have sent such calls – like any others bound for DeltaCom’s customers – to the incumbent local exchange carrier (“ILEC”) tandem and the ILEC in turn has forwarded the calls to DeltaCom. Calls between wireless carriers and DeltaCom typically have been exchanged on a “bill-and-keep” basis. Indeed, federal law prohibits wireless carriers from imposing access charges on other carriers in the absence of an express contract that provides for such charges. DeltaCom has no such contracts with any wireless carriers.

3. Hypercube appears to have developed a business plan oriented toward helping wireless carriers accomplish indirectly what federal and state law bars them from doing directly. To implement this scheme, Hypercube has contracted with various wireless carriers so that they send 8XX calls originated on wireless networks to Hypercube first, before those calls are sent onto the ILEC for delivery to DeltaCom (and other carriers). With its (needless) insertion into the call-flow, Hypercube in effect replicates that which the wireless carrier otherwise does for itself (sending the call to the ILEC for delivery to DeltaCom and other carriers). One difference, however, is that Hypercube attempts to charge access charges to DeltaCom and other carriers whereas the wireless carriers could not. Another difference is that it appears that Hypercube often delivers such calls to an ILEC tandem outside the LATA in which the calls originate. To induce wireless carriers to participate in this scheme,

Hypercube offers those wireless carriers a “kick-back” of access charges in the form of substantial percentage of any amounts collected.

4. With this Complaint, DeltaCom seeks entry of an order by the Authority proscribing Hypercube’s conduct.<sup>1</sup> DeltaCom seeks an order that Hypercube’s imposition of intrastate access charges and related kick-back payments to wireless providers is unjust, unreasonable and otherwise unlawful.

5. This scheme, to the extent tariffed by Hypercube, is unlawful and otherwise is preempted by the Federal Communications Commission (“FCC”), which has barred the imposition of tariffed access charges on IXC’s for functionalities performed by wireless carriers. The FCC also has preempted the imposition of tariffed access charges on intraMTA wireless traffic which Hypercube makes no attempt to distinguish.

6. DeltaCom also seeks an order that Hypercube was not authorized to provide any intrastate services in Tennessee and was not permitted to impose charges filed by another entity (namely, KMC), at least with respect to the time prior to which it obtained competitive local exchange carrier (“CLEC”) authority and filed its tariffs.

7. To the extent that Hypercube is found to have been at relevant times duly certificated and its services properly tariffed, DeltaCom also seeks an order that Hypercube unlawfully rejected DeltaCom’s reported PIU which establishes that none of the traffic at issue is intrastate in nature.

8. To the extent that it is somehow found that there are any intrastate services at issue, DeltaCom also seeks an order that DeltaCom has not ordered and Hypercube has not provided any of the services set forth in the intrastate tariff at issue. DeltaCom also seeks an

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<sup>1</sup> To the extent that KMC is found to be the service provider at issue, DeltaCom seeks the same relief requested herein, with the exceptions of Counts Two and Three.

order that KMC's and Hypercube's rates and charges are unjust, unreasonable, and otherwise unlawful because the charges imposed include charges for interstate and intraMTA traffic and services not provided and are based upon tariff provisions which fail to describe the services and charges with reasonable clarity. DeltaCom seeks an Authority order requiring Hypercube to cease such unjust, unreasonable, and otherwise unlawful conduct and to return any amounts previously remitted by DeltaCom for amounts unlawfully billed.

9. Finally, to the extent that the Authority finds Hypercube to have provided any tariffed intrastate services to DeltaCom, DeltaCom seeks an order finding Hypercube liable for corresponding charges imposed pursuant to DeltaCom's intrastate access tariff.

#### **PARTIES AND JURISDICTION**

10. DeltaCom is, among other things, a certificated interexchange carrier ("IXC") with its principal place of business at 7037 Old Madison Pike, Huntsville, Alabama. DeltaCom offers, among other services, toll-free calling ("8XX") services to its customers, under which the customer receives telephone calls dialed on a toll-free basis by members of the public. DeltaCom also is a CLEC certificated by the Authority.

11. Upon information and belief, Hypercube Telecom, LLC is a Delaware limited liability company with its principal place of business at 3200 West Pleasant Run Road, Suite 260, Lancaster, Texas 75146. It appears that, by virtue of a name change filing Hypercube Telecom, LLC became or at least purports to be a CLEC certificated to provide local telecommunications exchange services or access services in Tennessee.

12. Upon information and belief, KMC Data LLC ("KMC") was a certificated CLEC whose Tennessee intrastate access services tariff is at issue in this complaint. The relationship between KMC and Hypercube, LLC and Hypercube Telecom, LLC is not entirely

known. Hypercube maintains that KMC is or was at some point in time affiliated with Hypercube, LLC.

13. The Authority has jurisdiction over this Complaint pursuant to T.C.A. §§ 65-4-115, 117 and 124 and § 65-5-104.

#### **FACTUAL BACKGROUND**

14. DeltaCom furnishes toll-free services (8XX) to its customers which allow those customers to receive telephone calls dialed on a toll-free basis by members of the public. The calling parties who dial the 8XX numbers of DeltaCom's customers may subscribe to local phone service from an incumbent local exchange carrier ("ILEC") or a competitive local exchange carrier ("CLEC"), or they may be customers of a commercial mobile radio service ("CMRS") or "wireless" carrier.

15. When the calling parties are customers of a carrier other than DeltaCom, the calls typically are routed to DeltaCom through the ILEC, which in most cases is BellSouth Telecommunications, Inc. dba AT&T Tennessee. When the calling parties are customers of a wireless carrier, the wireless carrier traditionally has routed the calls to DeltaCom through the ILEC tandem. Wireless carriers and DeltaCom typically do not pay each other compensation for traffic exchanged between them in either direction. Federal law provides that such charges by wireless carriers may be imposed pursuant to contract only (not tariff),<sup>2</sup> and DeltaCom has reached no such contractual arrangements with wireless carriers. Thus, traffic between

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<sup>2</sup> In 2002, the Federal Communications Commission ("FCC") issued a Declaratory Ruling prohibiting wireless carriers from charging originating access charges to IXC's for the mobile carrier's role in originating long distance calls, including 8XX calls, unless the IXC agrees in a contract with the wireless carrier to pay such charges. *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd. 13192, ¶¶ 8-9, 12 (2002) ("*Sprint PCS*"). This Declaratory Ruling further implemented the FCC's deregulatory policies with respect to wireless carriers, which include exempting wireless carriers from the process of filing tariffs, granting wireless carriers broad exemptions from many categories of regulation, and encouraging wireless carriers to earn their revenues from their own end user customers and not through access charges collected from other telecommunications carriers.

wireless carriers and carriers like DeltaCom typically is exchanged on a “bill-and-keep” basis. The typical call flow described here is depicted in the diagram appended hereto as **Exhibit A**.

16. Upon information and belief, Hypercube furnishes a transport and routing service to wireless carriers for the 8XX traffic originated on the wireless carriers’ networks for calls placed by the wireless carriers’ customers.<sup>3</sup> With Hypercube inserted into the call flow, the wireless carrier evidently passes the traffic to Hypercube – instead of to the ILEC to which it already is directly connected – and then Hypercube delivers the traffic to the ILEC.

Hypercube does not deliver the traffic to DeltaCom. Upon information and belief, when Hypercube delivers 8XX traffic to the ILEC, it delivers a significant percentage of this traffic to an ILEC tandem outside the LATA in which the call originates, making the service interexchange in nature. Upon information and belief, Hypercube does not charge wireless providers for this transport and routing service, but instead seeks to impose access charges on carriers such as DeltaCom for the service. Through its composite rate, Hypercube also unlawfully seeks to charge DeltaCom and other carriers tariffed access charges for functionalities performed by a wireless carrier. The call flow described here – with Hypercube inserted – also is depicted in the diagram appended hereto as **Exhibit A**.

17. Upon information and belief, Hypercube typically contracts to pay a substantial portion of any such revenues collected to the wireless carriers who originate the traffic and route it first through Hypercube, instead of routing it directly to the ILEC for through routing to DeltaCom. Thus, wireless carriers route traffic through Hypercube to accomplish indirectly that which the FCC says they cannot do directly. The FCC rejected as unjust, unreasonable, and otherwise unlawful the arbitrage scheme created by Hypercube:

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<sup>3</sup> Hypercube LLC's website promotes tandem services only. See <http://www/hypercube-llc.com/corporate/markets.html>

“We reject the argument made by Verizon Wireless that the *Sprint/AT&T Declaratory Ruling* does not limit the ability of a CMRS provider to collect access charges from an IXC if the CMRS provider has a contract with an intermediate competitive LEC. *We will not interpret our rules or prior orders in a manner that allows CMRS carriers to do indirectly that which we have held they may not do directly.*”<sup>4</sup> The FCC also has prohibited the tariffing of access charges for functionalities performed by wireless carriers.<sup>5</sup>

18. Upon information and belief, for such wireless-originated 8XX traffic, Hypercube bills DeltaCom (and others) access charges and 8XX data base query charges. When 8XX traffic is exchanged between carriers, a data base “dip” is performed so that the originating carrier can determine where to send the traffic. Typically, the wireless carrier that originates the call is responsible for the 8XX data base dip. As is the case with other access charges, federal law prevents wireless carriers from imposing charges on DeltaCom in the absence of an express contract allowing for them. DeltaCom has reached no contractual agreement with wireless carriers for the mutual billing of access charges, including related data base dips. With Hypercube inserted into the call flow, the wireless carrier contracts with Hypercube to do the data base dip and to charge some other party – DeltaCom included – for the service. Again, Hypercube provides a wireless carrier with a means of attempting to accomplish indirectly what it cannot do directly.

19. From June 2006 to October 2009, Hypercube or its predecessor KMC Data, LLC has charged DeltaCom \$203,956.31 in such intrastate access and related charges.

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<sup>4</sup> *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report & Order & Fifth Order on Recon., 19 FCC Rcd. 9108, para. 16, n.57 (internal citations omitted) (emphasis added) (2004) (“*FCC Eighth R&O*”).

<sup>5</sup> *Sprint PCS*, 17 FCC Rcd. 13192, ¶¶ 7, 9, 11; see also 47 U.S.C. § 332(c)(3)(A) (preempting state commission rate setting for wireless service providers).

Of this amount, \$151,718.16 purportedly has been for “8YY Originating Access Service” related charges, \$16,092.29 has been for “800 Data Base Query” charges and approximately \$36,145.86 for related late fees. For a time, Hypercube purports to have imposed these charges pursuant to the KMC Intrastate Access Services tariff. DeltaCom is unaware of any authority Hypercube had to provide such services or of any right Hypercube has to charge, bill and collect for services posted in a tariff issued by another entity. In August 2008, Hypercube apparently made a filing with the Authority changing the name of the issuing carrier on the tariff from KMC to Hypercube. A copy of the tariff is appended hereto as **Exhibit B**.<sup>6</sup>

20. DeltaCom also is not aware that it has received any traffic subject to the KMC or Hypercube Intrastate Access Services tariff. DeltaCom has neither affirmatively nor constructively ordered such services. Further, DeltaCom is under no regulatory obligation to accept service from KMC or Hypercube. Not admitting that it was a customer of Hypercube or that Hypercube had the authority to bill DeltaCom for such traffic and with all rights reserved, DeltaCom reported a 100% percent interstate usage (“PIU”) to Hypercube indicating that all of the traffic at issue (traffic Hypercube claims to have handled) belonged to the interstate jurisdiction and that none of it is subject to any intrastate tariff. A copy of this letter is appended hereto as **Exhibit C**. On March 28, 2008, Hypercube unilaterally pronounced DeltaCom’s PIU report to be “invalid”. A copy of this letter is appended hereto as **Exhibit D**.<sup>7</sup> DeltaCom has no real-time ability to detect which traffic is being handled by Hypercube

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<sup>6</sup> DeltaCom has not been able to obtain a copy of the Tennessee tariff of KMC as it existed prior to August 2008 but believes that it contained the same language (other than the change in the name of the company) as the Hypercube tariff filed August 20, 2008.

<sup>7</sup> The tariff provides for audits as the means of challenging a PIU report and does not permit such rejection by means of unilateral declaration. Hypercube also claims to have billed under the default provision of the tariff section which sets a default PIU of 50% (meaning that half of the traffic it claims to have been originated in Tennessee is considered interstate and half intrastate). This tactic is advantageous to Hypercube because the rates in the tariff are approximately ten times higher than those billed by Hypercube for traffic it, by default, recognizes as interstate. KMC never had an analogous FCC tariff and Hypercube has had one only since March 2009.



and, if appropriate, to block the traffic on a discretionary basis. To DeltaCom's knowledge, all traffic in dispute flows in only one direction – typically, from an originating wireless carrier to Hypercube, then to the ILEC, then to DeltaCom. Hypercube itself neither originates nor terminates traffic.

21. In response to Hypercube's unlawful intrastate access charge arbitrage scheme, DeltaCom filed a tariff modification adding Intermediate Provider Access Service to its tariff. This service includes the origination or termination by DeltaCom of a call any portion of which traverses the network of an Intermediate Provider, as defined in the tariff. These tariff modifications went into effect on September 10, 2008. A copy of DeltaCom's tariff is appended hereto as **Exhibit E**. DeltaCom billed Hypercube \$148,683.70 under this tariff for the time period between September, 2008 and September , 2009. Hypercube has disputed these charges and refused to pay DeltaCom.

22. DeltaCom has disputed all of the charges invoiced by Hypercube pursuant to the KMC and Hypercube Intrastate Access Services tariffs. DeltaCom's attempts to resolve this matter privately with Hypercube have not been successful.

### **COUNT ONE**

#### **HYPERCUBE'S SCHEME OF IMPOSING INTRASTATE ACCESS CHARGES FOR WIRELESS ORIGINATED TRAFFIC IS UNJUST, UNREASONABLE, AND OTHERWISE UNLAWFUL**

23. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

24. Hypercube charges DeltaCom and other IXC's for services performed by and for wireless carriers through its imposition of intrastate access charges. Hypercube then kicks-back a portion of those access charges to wireless carriers who are not entitled to impose those charges on IXC's. This scheme, whereby Hypercube needlessly inserts itself into the call

flow so that it can collect and remit in part intrastate access charges to wireless carriers who are not authorized to charge them is an unjust, unreasonable and a practice that violates state law. See T.C.A. §§ 65-4-115, 124 and 65-5-104. In addition, the service provided by Hypercube is not exchange access or any other service that is properly tariffed by a CLEC in this state. To the extent that Hypercube has tariffed such services, its tariff violates the law that gives rise to its filing and is not consistent with the filed rate system nor compatible with its effective operation in this State.

25. As a result of Hypercube's unjust, unreasonable, and otherwise unlawful conduct, the Authority should order that, to the extent Hypercube provided any intrastate services to DeltaCom, (a) Hypercube did so unlawfully, (b) its tariff is void *ab initio*, (c) it is not entitled to charge for such service, and (d) it is prohibited from further engaging in such conduct.

## **COUNT TWO**

### **HYPERCUBE'S SCHEME OF IMPOSING INTRASTATE ACCESS CHARGES FOR WIRELESS ORIGINATED TRAFFIC IS PREEMPTED BY FEDERAL LAW**

26. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

27. Hypercube has tariffed and imposed intrastate access charges on DeltaCom and other IXCs for services performed by and for wireless carriers. Hypercube's composite rate includes recovery for end office functionality provided by wireless carriers. Hypercube's tariffed intrastate access charges make no carve-out for intraMTA wireless traffic. The FCC has prohibited the practice of recovering through tariffed access charges for the functionalities performed by wireless carriers and has concluded that intraMTA wireless

traffic is not subject to access charges. As such, federal law preempted this Authority from approving Hypercube's tariff containing such charges.

28. As a result of Hypercube's unlawful tariffing of access charges for functionalities performed by wireless carriers and for intraMTA wireless traffic, the Authority should find that (a) it was preempted from accepting, approving or allowing such tariff to go into effect, (b) Hypercube's tariff is void *ab initio*, (c) Hypercube is not entitled to impose intrastate access charges for functionalities performed by wireless carriers or for intraMTA wireless traffic, and (d) Hypercube is prohibited from further engaging in such conduct.

### **COUNT THREE**

#### **PRIOR TO AUGUST 20, 2008, HYPERCUBE HAD NO RIGHT TO PROVIDE OR IMPOSE CHARGES FOR INTRASTATE SERVICES**

29. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

30. Hypercube purports to have imposed charges on DeltaCom for intrastate access services provided within the state of Tennessee. Upon information and belief, Hypercube was not authorized to provide such services by the Authority prior to August 22, 2008.<sup>8</sup>

31. As a result of Hypercube's unjust, unreasonable, and otherwise unlawful conduct, the Authority should order that, to the extent Hypercube provided any intrastate services to DeltaCom prior to August 2008, Hypercube did so unlawfully and is not entitled to charge for such services.

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<sup>8</sup> On August 20, 2008, KMC filed a notice of name change to "Hypercube" and revised tariffs under the name Hypercube. The tariff became effective August 22, 2008. The name change was approved on December 22, 2008, in Docket 08-00151.

#### **COUNT FOUR**

##### **HYPERCUBE HAD NO RIGHT TO PROVIDE OR IMPOSE CHARGES FOR INTRASTATE SERVICES POSTED IN A TARIFF BY ANOTHER ENTITY**

32. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

33. For a period of time prior to August 2008, Hypercube purports to have imposed charges on DeltaCom for intrastate access services provided within the state of Tennessee pursuant to the KMC Intrastate Access Services tariff. No Tennessee statute or rule authorizes Hypercube to provide or charge for services posted in a tariff by another entity. Such practice is contrary to state law and deprives customers of the notice and clarity which tariffs are intended to provide.

34. As a result of Hypercube's unjust, unreasonable, and otherwise unlawful conduct, the Authority should order that, to the extent Hypercube provided any intrastate services to DeltaCom pursuant to the KMC Access Services tariff prior to August 2008, Hypercube did so unlawfully and is not entitled to charge for such services.

#### **COUNT FIVE**

##### **HYPERCUBE HAS NO RIGHT TO DECLARE A REPORTED PIU INVALID**

35. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

36. To the extent that Hypercube is authorized to provide intrastate services in Tennessee, and to provide them at certain times pursuant to another entity's tariff, it is not entitled to impose such charges on interstate traffic. While reserving all rights and without any admission whatsoever that DeltaCom was or is a "Customer" of Hypercube or that Hypercube was or is providing tariffed services to DeltaCom, on or about October 11, 2007,

DeltaCom reported to Hypercube a 100% PIU for the traffic at issue, thus indicating that, to the extent such traffic is not intra-MTA traffic, which would not be subject to the KMC and Hypercube Access Services tariffs,<sup>9</sup> it is jurisdictionally interstate in nature. Thus, per DeltaCom's PIU report, none of the traffic at issue is intrastate access traffic subject to the KMC and Hypercube Access Services tariffs.

37. On or about March 28, 2008, Hypercube pronounced DeltaCom's PIU report to be "invalid" and indicated that it would apply a "default jurisdictional rate of 50% interstate use in accordance with Hypercube's interstate and intrastate tariffs." Upon information and belief, Hypercube had no such intrastate tariffs prior to August 2008 and it had no interstate tariff prior to March 2009. Section 2.3.3.C of the KMC Access Services tariff provides, in part, that: "If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on the default basis of 50 percent interstate traffic and 50 percent intrastate traffic." To the extent that this tariff provision is found to apply, DeltaCom did submit a PIU factor and thus the default provision of Section 2.3.3 does not apply. KMC does not have an FCC tariff. The FCC Access Services tariff on file at the FCC for other KMC entities (but not KMC Data, LLC) and to which Hypercube's name was added in March 2009 does not appear to contain provisions governing PIU reporting.

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<sup>9</sup> Federal law bars the imposition of access charges on intra-MTA wireless-originated traffic. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 1036 (1996) ("[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5) [*i.e.*, reciprocal compensation], rather than interstate and intrastate access charges."); *see also Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶ 134 (2005) (stating that the Commission has found "that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges."); 47 C.F.R. § 51.713 (explaining that "Bill-and-keep arrangements for reciprocal compensation" are appropriate "if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so."). Thus, to the extent intraMTA traffic is not excluded, Hypercube's arbitrary imposition of a "default PIU" violates federal law.

38. The KMC and Hypercube Access Services tariffs do not provide for the unilateral rejection of a reported PIU by declaring it to be “invalid” or otherwise. Instead, Section 2.3.3.D provides that the reported PIU factor “will be used until the Customer reports a different projected PIU factor”.<sup>10</sup> Section 2.3.4 provides for jurisdictional audits as the means of validating a reported PIU factor. Hypercube has not availed itself of this process and the tariff does not provide it with any other way of rejecting, invalidating or otherwise challenging a reported PIU factor. Hypercube’s failure to abide by the terms of the tariff – which it purports to govern this controversy – is unjust, unreasonable, and otherwise unlawful.

39. Because Hypercube has engaged in unjust, unreasonable, and otherwise unlawful conduct in violation of the tariff pursuant to which it imposed the charges at issue here, the Authority should order that Hypercube’s pronouncement that DeltaCom’s reported PIU is invalid was unlawful and that no intrastate charges should have been imposed. The Authority also should order that, to the extent Hypercube imposed intrastate access charges on interstate traffic or intraMTA wireless traffic, it did so in violation of state and federal law.

#### **COUNT SIX**

#### **HYPERCUBE HAS NOT PROVIDED TO DELTACOM ANY OF THE SERVICES INCLUDED IN THE KMC AND HYPERCUBE ACCESS SERVICES PRICE TARIFFS**

40. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

41. Hypercube has asserted that it has provided and charged DeltaCom for at least two services included in the KMC and Hypercube Access Services tariffs. To the extent these tariffs are found to apply, the descriptions set forth therein of these services lack

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<sup>10</sup> DeltaCom does not admit to being a Customer and instead seeks declaratory relief affirming that it is not a Customer. See Count Seven, *infra*.

reasonable clarity necessary to support a finding that those services were provided by Hypercube to DeltaCom and that related charges apply.

42. Hypercube has asserted that it has provided to DeltaCom tariffed “Switched Access Service”. Section 3.1 of the tariff contains the following service description:

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.

This service description is not applicable and does not clearly describe the service Hypercube alleges it provides to DeltaCom.<sup>11</sup>

43. The service provided by Hypercube does not provide a “two-point communications path between a Customer and an End User.” DeltaCom is not a Customer of Hypercube.<sup>12</sup> Also, Hypercube does not provide a two-point communications path between DeltaCom and an End User, regardless of whether the End User is considered to be the calling or called party or (by artifice) even the wireless carrier.<sup>13</sup> Instead, Hypercube provides a redundant two-point link between a wireless carrier and an ILEC. *See, Exhibit A.* Under the tariff, such a link does not constitute a two point path between a Customer and an End User.

44. Hypercube does not provide DeltaCom with “the use of common terminating, switching and transport facilities”. Hypercube provides no “terminating” services to DeltaCom.

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<sup>11</sup> The Hypercube tariff is identical.

<sup>12</sup> As explained in Count Seven, *infra*, DeltaCom has neither ordered nor received service provided pursuant to the KMC and Hypercube Access tariffs and thus is not a “Customer” of KMC or Hypercube. *See* tariff, § 1 Definitions at Original Page 6.

<sup>13</sup> A carrier is not an end user.

45. Hypercube does not provide DeltaCom with “the ability to originate calls from an End User to a Customer, and to terminate calls from a Customer to an End User.”

DeltaCom is not a Customer. Also, Hypercube provides DeltaCom with no ability to “originate” and “terminate” calls to End Users, whether they be the calling or called party, or even the wireless carrier.

46. The tariffs also include the following language in Section 3.2.5:

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.

This service description is not applicable and does not clearly describe the service

Hypercube alleges it provides to DeltaCom.

47. DeltaCom is not a Customer of Hypercube. And, Hypercube does not deliver calls to DeltaCom. Instead, the calls at issue here are delivered to an ILEC.

48. The charges imposed by Hypercube on DeltaCom are based on a “composite rate” which includes costs for elements of service not provided by Hypercube (to anyone) in routing 8XX traffic from wireless carriers to ILECs. It is axiomatic that no carrier is entitled to charge another for services it does not provide.<sup>14</sup> Because the charges are not limited to the “elements of the service” Hypercube allegedly provides when routing 8XX calls from wireless carriers to ILECs (Hypercube does not route calls to DeltaCom), the posted rates used by Hypercube are unjust, unreasonable, and otherwise unlawful. *See* Count Seven, *infra*.

49. The tariffs also include the following language in Section 3.2.5:

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<sup>14</sup> For example, the FCC has found that CLECs are not entitled to charge for services they do not provide. *See FCC Eighth R&O*, para. 21.



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.<sup>15</sup>

This service description is not applicable and does not clearly describe the service

Hypercube alleges it provides to DeltaCom.

50. DeltaCom is not a Customer of Hypercube and Hypercube does not provide the Switched Access Services described in the KMC Access Services tariff to DeltaCom.

51. Hypercube does not deliver the traffic at issue to DeltaCom over FGD trunks, but rather sends it to an ILEC. Because Hypercube has not provided any of the tariffed services to DeltaCom, its attempt to impose charges on DeltaCom for such services violates the tariff and is unjust, unreasonable, and otherwise unlawful. Further, because the tariff does not clearly describe and unambiguously identify the services and applicable charges at issue here, it is unreasonable for Hypercube to seek to impose charges for such services and it cannot lawfully do so.

52. Because Hypercube has engaged in unjust, unreasonable, and otherwise unlawful conduct in violation of the tariff pursuant to which it imposed the charges at issue here and in violation of state law, the Authority should order that Hypercube has not provided to DeltaCom any of the services included in the KMC and Hypercube Access Services tariffs and that Hypercube may not lawfully impose charges for such services.

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<sup>15</sup> Section 1 of the tariff, at Original Page 6, contains a different definition for "8XX Data Base Access Service". There appear to be no other provisions of the tariff using this term.

COUNT SEVEN

DELTA COM HAS NOT ORDERED ANY OF THE SERVICES INCLUDED IN THE KMC AND  
HYPERCUBE ACCESS SERVICES TARIFFS AND IS NOT A “CUSTOMER” UNDER THOSE TARIFFS

53. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

54. DeltaCom is not required to purchase intrastate services from Hypercube, nor has DeltaCom ever ordered any.

55. DeltaCom has never submitted an access service request (“ASR”) or other order to Hypercube for the services at issue here.

56. DeltaCom also has never constructively ordered such services from Hypercube, pursuant to the KMC and Hypercube Access Services tariffs or otherwise.

57. Section 1 (at Original Page 6) of the tariffs defines constructive ordering as follows:

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.

This definition is not applicable with respect to the services Hypercube alleges it provides to DeltaCom.

58. DeltaCom neither delivers calls nor accepts them from “the Company’s locations”. And, upon information and relief, in no case has a “Company End User” selected DeltaCom as its presubscribed IXC. Further, because the tariffs do not clearly describe and unambiguously identify the services and applicable charges at issue here, it is unjust,

unreasonable, and otherwise unlawful for it to seek to impose charges for such services and it cannot lawfully do so.

59. The tariffs define “Customer” as follows:

Customer: The person, firm or 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.

*See* Tariff, § 1 Definitions at Original Page 6. DeltaCom is not a “Customer” under this definition. As explained herein, DeltaCom has neither ordered service or received service pursuant to the tariffs.

60. Based on the foregoing, the Authority should order that DeltaCom is not required to order and has not ordered any services from Hypercube – affirmatively or constructively – pursuant to the KMC and Hypercube Access Services tariffs and that it is not a Customer under those tariffs.

#### **COUNT EIGHT**

#### **HYPERCUBE’S RATE FOR 8XX ORIGINATING ACCESS IS UNJUST, UNREASONABLE, AND OTHERWISE UNLAWFUL**

61. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

62. Section 3.2.5 of the KMC and Hypercube Access Services tariffs provides:

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.

The rate imposed by Hypercube for allegedly providing this service to DeltaCom encompasses more than the elements of service Hypercube claims it provides in routing such service and is therefore contrary to the terms of the tariff itself and unjust, unreasonable, and otherwise unlawful because no carrier is entitled to charge for services it does not provide.<sup>16</sup>

63. The tariffs do not specify with reasonable clarity which rate applies to Originating 800 FG Access. Section 4.4.1 of the KMC and Hypercube Access Services tariffs establishes that a “blended rate” will be imposed “per minute” for “originating and terminating access”. Section 4.4.1 establishes a rate of \$0.025 for Originating FG Access and Terminating FG Access, but includes no rate expressly applicable to “Originating 800 FG Access”.

64. Upon information and belief, Hypercube applies the same “blended rate” of \$0.025 per minute regardless of the service it provides. Section 4.2.1 of the tariffs explains that the “blended rate” is based on “aggregate traffic volumes from the following cost categories” and includes “Switched Transport” and “Switching (End Office, Tandem or both)” among those categories. Each category appears to include functionalities and associated costs not provided or incurred by Hypercube when providing the service at issue here. For example, the “Switched Transport cost category” appears to include costs for switched transport actually provided by the wireless carrier with respect to the traffic at issue here. Also, Hypercube provides no switched transport to or from any “designated premise” of DeltaCom. Similarly, the “Switching cost category” appears to include charges for end office switching, which with respect to the traffic at issue here, also would have been provided by the wireless carrier.

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<sup>16</sup> For example, the FCC has found that CLECs are not entitled to charge for services they do not provide. See *FCC Eighth R&O*, para. 21.

65. Because the “blended rate” imposed by Hypercube includes charges for functionalities not provided by Hypercube, it violates Section 3.2.5 of the tariffs which states that “The Company will charge for all elements of service that it provides in routing such traffic.”

66. Because the “blended rate” imposed by Hypercube includes charges for functionalities not provided by Hypercube, it is unjust, unreasonable, and otherwise unlawful.

67. Based on the foregoing, the Authority should order that Hypercube’s rate for Originating 800 FG Access is unjust, unreasonable and otherwise unlawful.

#### **COUNT NINE**

#### **HYPERCUBE’S IMPOSITION OF 800 DATA BASE ACCESS SERVICE “DIP CHARGES” ON DELTACOM IS UNLAWFUL**

68. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

69. Section 1 (at Original Page 6) of the KMC and Hypercube Access Services tariffs defines a service called “8XX Data Base Access Service” as follows:

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.

This definition is ambiguous and the defined term is not used anywhere else in the tariffs. The tariffs, at Section 4.2.2, also include the following provision:

#### **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.

This provision does not say who gets charged for the query used to determine how to route the wireless traffic which Hypercube has contracted with wireless carriers to direct to its network.

Section 3.2.5 of the tariffs describes "800 Data Base Access Service" as follows:

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.

Hypercube does not route the traffic at issue to DeltaCom over FGD access but instead routes the traffic to the ILEC tandem. Section 4.4.2 of the tariffs establishes the following rates for “800 Data Base Access Service Queries”:

Per Query	
Basic	\$0.005
Vertical Feature	\$0.0055

This provision does not indicate whether the wireless carrier gets charged for the data base dip used to forward its traffic onto the ILEC or whether the ILEC or IXC gets charged for the service.

70. Because the KMC and Hypercube Access Services tariffs do not clearly describe and unambiguously identify the services and applicable charges at issue here, it is unjust, unreasonable, and otherwise unlawful for Hypercube to seek to impose charges for such services and it cannot lawfully do so. Based on the foregoing, the Authority should order that Hypercube’s imposition on DeltaCom of charges for dips into a data base of 8XX numbers is unjust, unreasonable and otherwise unlawful.

#### **COUNT TEN**

#### **BREACH OF DELTACOM’S TARIFF**

71. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

72. In the alternative, to the extent that it is determined that DeltaCom is not entitled to relief on the foregoing counts, DeltaCom is entitled to relief and compensation from Hypercube under a breach of tariff theory.

73. In response to Hypercube's unlawful intrastate access charge arbitrage scheme, DeltaCom filed a modification to its own intrastate access services tariff adding Intermediate Provider Access Service to its tariff. These tariff modifications were approved by the Authority and went into effect on September 10, 2008. To the extent that Hypercube has provided tariffed intrastate services to DeltaCom, DeltaCom has provided the tariffed Intermediate Provider Access Service to Hypercube. Per Section 3.5 of the DeltaCom Tariff, this service includes the origination or termination by DeltaCom of a call any portion of which traverses the network of an Intermediate Provider, as defined in the DeltaCom Tariff. The DeltaCom Tariff defines Intermediate Provider as follows:

An Intermediate Provider is a provider that:

- (A) is not the telecommunications carrier for the customer who is either the originating end user or the terminating end user;
- (B) does not have a direct connection with the Company or a written agreement, executed by the Company, for the provision of such services; and,
- (C) seeks to levy any charge or fee, by tariff or otherwise, against the Company.

Per this definition, Hypercube is an Intermediate Provider. Section 3.7.9 of the DeltaCom Tariff sets forth the following rates for Intermediate Provider Access Service:

Rates will be billed at the greater of:

- (A) Per Minute Rate \$ 0.025
- (B) Per Call Rate\* \$ 0.005

\*The Per Call Rate is in addition to the Per Minute Rate.

Or, the amount charged to the Company by the Intermediate Provider plus an administrative fee equal to 10% of the total amount charged.

Per this section of the DeltaCom Tariff, DeltaCom billed Hypercube \$203,956.31 for the time period between September, 2008 and September, 2009. Hypercube has unlawfully refused to pay DeltaCom.

74. Based on the foregoing, and to the extent that it is determined that DeltaCom is not entitled to relief on the foregoing counts, the Authority should (a) find that Hypercube has unreasonably, unjustly and unlawfully refused to pay for the tariffed services provided to it by DeltaCom, and (b) enter an order requiring Hypercube to pay all amounts owed to DeltaCom and barring Hypercube from refusing to pay DeltaCom in the future for such services provided by DeltaCom. *See* T.C.A. §65-5-104.

#### COUNT ELEVEN

**AN ORDER BARRING HYPERCUBE FROM COLLECTING FOR SERVICES BILLED PREVIOUSLY UNDER THE KMC AND HYPERCUBE ACCESS SERVICES TARIFFS, BARRING HYPERCUBE FROM BILLING DELTACOM FOR SUCH SERVICES IN THE FUTURE, AND REQUIRING HYPERCUBE TO REFUND TO DELTACOM ANY SUCH AMOUNTS PREVIOUSLY REMITTED**

75. DeltaCom repeats and realleges each and every allegation contained in the preceding paragraphs hereof, as if fully set forth herein.

76. Hypercube's practices and actions complained of herein are unjust unreasonable, and otherwise unlawful for the reasons set forth herein, including federal preemption and violation of T.C.A. §§ 65-4-115 and 124 and 65-5-104.

77. Because of Hypercube's unjust, unreasonable and otherwise unlawful conduct and pursuant to the above-quoted statute sections, DeltaCom is entitled to an order barring Hypercube from collecting for services billed previously under the KMC and



Hypercube Access Services tariffs and barring Hypercube from billing DeltaCom for such services in the future.

**JUDGMENT AND RELIEF SOUGHT**

WHEREFORE, Petitioner, DeltaCom, respectfully requests that this Authority:

- (a) Issue an order on Count One in favor of DeltaCom that Hypercube's practice of needlessly inserting itself into the call flow so that it can collect and remit in part intrastate access charges to wireless carriers who are not authorized to charge them is an unfair and anticompetitive practice that violates state law, and that to the extent Hypercube provided any such intrastate services to DeltaCom, (a) Hypercube did so unlawfully, (b) its tariff is void *ab initio*, (c) it is not entitled to charge for such service, and (d) is prohibited from further engaging in such conduct;
- (b) Issue an order on Count Two in favor of DeltaCom that , in light of the FCC's prohibition on the tariffing of access charges for functionalities performed by wireless carriers and for intraMTA wireless traffic, (a) the Authority was preempted from accepting, approving or allowing Hypercube's tariff to go into effect, (b) Hypercube's tariff is void *ab initio*, (c) Hypercube is not entitled to impose intrastate access charges for functionalities performed by wireless carriers or for intraMTA wireless traffic, and (d) Hypercube is prohibited from further engaging in such conduct;
- (c) Issue an order on Count Three in favor of DeltaCom that, to the extent Hypercube provided any intrastate services to DeltaCom, Hypercube did so unlawfully and is not entitled to charge for such services;
- (d) Issue an order on Count Four in favor of DeltaCom that, to the extent Hypercube provided any intrastate services to DeltaCom pursuant to the KMC Access Services tariff, Hypercube did so unlawfully and is not entitled to charge for such services;
- (e) Issue an order on Count Five in favor of DeltaCom that Hypercube's pronouncement that DeltaCom's reported PIU is invalid was unlawful and that, consistent with the tariffs, no intrastate charges should have been imposed;
- (f) Issue an order on Count Six in favor of DeltaCom that Hypercube has not provided to DeltaCom any of the services included in the tariffs and that Hypercube may not lawfully impose charges for such services;

- (g) Issue an order on Count Seven in favor of DeltaCom that DeltaCom has not ordered any services from Hypercube – affirmatively or constructively – pursuant to the tariffs and that it is not a Customer there under;
- (h) Issue an order on Count Eight in favor of DeltaCom that Hypercube's rate for Originating 800 FG Access is unlawful;
- (i) Issue an order on Count Nine in favor of DeltaCom that Hypercube's imposition on DeltaCom of charges for dips into a data base of 8XX numbers is unjust, unreasonable, and otherwise unlawful.;
- (j) Issue an order on Count Ten in favor of DeltaCom finding that Hypercube has unreasonably, unjustly and unlawfully refused to pay for the tariffed services provided to it by DeltaCom, requiring Hypercube to pay all amounts owed to DeltaCom, and barring Hypercube from refusing to pay DeltaCom in the future for such services provided by DeltaCom;
- (k) Issue an order with respect to Count Eleven barring Hypercube from collecting for services billed previously under the tariffs, and barring Hypercube from billing DeltaCom for such services in the future; and
- (l) Issue an order granting any other relief this Authority deems just and proper.

Respectfully submitted this 10 day of October, 2009.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

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*Attorneys for DeltaCom, Inc.*

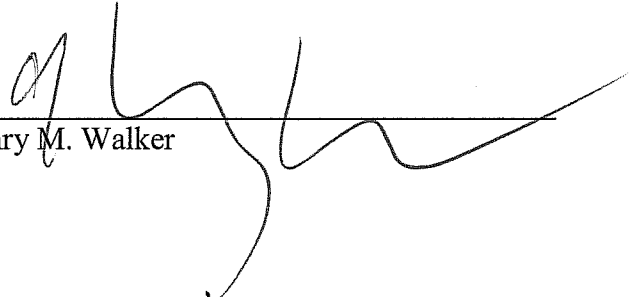
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Amended Complaint has been served upon the following by U.S. Mail this 26 day of October, 2009.

James Mertz  
Hypercube Telecom LLC  
5300 Oakbrook Parkway  
Building 300, Suite 330  
Norcross, Georgia 30093

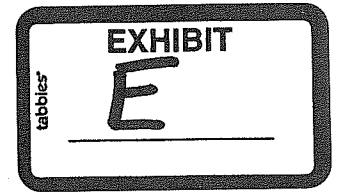
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\_\_\_\_\_  
Henry M. Walker

DeltaCom, Inc. T.R.A. No. 2 - Switched Access Tariff (T)  
d/b/a DeltaCom Business Solutions First Revision Page 1 (T)  
Tennessee Cancels Original Page 1

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Switched Access Service

Regulations and Rates

Of

**DeltaCom, Inc.** (T)  
**d/b/a DeltaCom Business Solutions** (N)

This tariff includes the rates, charges, terms, and conditions of service for the provision of intrastate communications services by DeltaCom, Inc. d/b/a DeltaCom Business Solutions in Tennessee. (InterLATA/IntraLATA) (T)

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ISSUED: September 8, 2006 EFFECTIVE: September 11, 2006  
Senior Manager - Regulatory Affairs (T)  
7037 Old Madison Pike, Suite 400 (T)  
Huntsville, Alabama 35806 (T)

**CHECK SHEET**

The pages of this tariff listed below are effective as of the date shown. Revised sheets contain all changes from the original tariff that are in effect as of the date indicated.

<u>Page</u>	<u>Revision</u>	
1	First	
2	Twelfth	*
3	Tenth	*
4	First	
5	Original	
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11	Second	
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12	First	
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16	Original	
17	Original	
18	Original	
19	Original	
20	Original	
21	Original	
22	Original	
23	First	
24	Second	
24.1	Original	
25	Original	
26	Original	
27	Original	
28	Original	
29	Original	
30	Second	
30.1	Original	

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ISSUED: May 20, 2009

EFFECTIVE: June 19, 2009

Senior Manager - Regulatory Affairs  
7037 Old Madison Pike, Suite 400  
Huntsville, Alabama 35806

**CHECK SHEET**

The pages of this tariff listed below are effective as of the date shown. Revised sheets contain all changes from the original tariff that are in effect as of the date indicated.

<u>Page</u>	<u>Revision</u>	<u>Page</u>	<u>Revision</u>	
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33	First	60	Original	
34	First	61	Original	
35	First	61.1	First	
35.1	Original	61.1.1	First	
35.2	Original	61.1.2	Original	
35.3	Original	61.1.3	Original	
35.4	Original	61.1.4	Original	
35.5	Original	61.1.5	Original	
36	Original	61.2	First	
37	Original	61.3	First	
38	First	61.4	Original	
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40	First	61.6	Original	
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42	First	62.1	First	
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45	First	62.4	First	
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47	First	62.6	First	
47.1	Original	62.7	First	
48	Original	63	First	
49	First	64	First	
50	Original			
51	Original			
52	Original			
53	First			
54	First			
55	First			
56	Second			
57	First			

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ISSUED: May 20, 2009

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DeltaCom, Inc. T.R.A. No. 2 - Switched Access Tariff  
d/b/a DeltaCom Business Solutions First Revision Page 4  
Tennessee Cancels Original Page 4

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(T)

(T)

**ISSUING CARRIERS**

DELTACOM, INC. d/b/a DeltaCom Business Solutions

(T)

**OTHER CARRIERS**

NONE

**CONCURRING CARRIERS**

NONE

**CONNECTING CARRIERS**

NONE

**OTHER PARTICIPATING CARRIERS**

NONE

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ISSUED: September 8, 2006 EFFECTIVE: September 11, 2006  
Senior Manager - Regulatory Affairs  
7037 Old Madison Pike, Suite 400  
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## **EXPLANATION OF SYMBOLS AND ABBREVIATIONS**

### **SYMBOLS**

- (C) To signify changed listing, rule or condition which may affect rates or charges.
- (D) To signify discontinued material, including listing, rate, rule, or condition.
- (I) To signify an increase.
- (M) To signify material relocated from or to another part of tariff schedule with no change in text, rate, rule or condition.
- (N) To signify new material including listing, rate, rule or condition.
- (R) To signify reduction.
- (S) To signify reissued material.
- (T) To signify change in wording of text but no change in rate, rule or condition.

### **ABBREVIATIONS**

- ANI - Automatic Number Identification; the codes transmitted between carriers that indicate the telephone number of the originating line.
- B8ZS - Bipolar with 8-Zero Substitution; a line coding technique which permits DS1 transmission with 15 consecutive zeros. B8ZS support 64 KBPS clear channel transmission.
- BNA - Billing Name and Address; the customer of record and billing address associated with an originating ANI.
- CCS/SS7 - Common Channel Switching/Signaling System 7; a switching network and transmission control standard.
- DACS - Digital Access Cross Connect.



**EXPLANATION OF SYMBOLS AND ABBREVIATIONS, (Cont'd.)**

- DNAL - Dedicated Network Access Line; a point to point circuit that provides interconnection to the CCS network and a dedicated Signal Transfer Point (STP) port. The DNAL provides the connection from the Customer designated premises to the Company STP.
- DS1 - Digital Signal Level 1; a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Bipolar with 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe (ESF) formats. DS1 Service has the equivalent capacity of 24 Voice Grade or DS0 services.
- FGD - Feature Group D; a trunk side switched access connection to the public switched network.
- FOC - Final Order Confirmation; the point prior to the start of installation when the order is confirmed.
- Gbps - Gigabits per second; billions of bits per second.

**EXPLANATION OF SYMBOLS AND ABBREVIATIONS, (Cont'd.)**

- GTA - Global Title Address; software instructions in the Signal Transfer Point (STP) that identify the signaling message destination.
- ICB - Individual Case Basis; standard tariff pricing is not available. Each installation is individually priced and negotiated with the customer.
- Kbps - Kilobits per second; 1000s of bits per second.
- LATA - Local Access and Transport Area; a geographic area established by the US District Court for the District of Columbia in Civil Action No. 17-49, within which a Local Exchange Company provides communications services.
- LEC - BellSouth Telecommunications, Inc.
- Mbps - Megabits per second; millions of bits per second.
- OPC - Originating Point Code; a field within a signaling message that identifies the originating network Signaling Node.
- POP - The physical location of an interexchange carrier's facilities.

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ISSUED: JULY 27, 2000

EFFECTIVE: AUGUST 28, 2000

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Huntsville, Alabama 35802

**EXPLANATION OF SYMBOLS AND ABBREVIATIONS, (Cont'd.)**

- SSP - Service Switching Point; an end office or tandem switch equipped with signaling link hardware and software to perform Signal Point functions. SSPs participate in processing a CCS/SS7 call by requesting and responding to call processing instructions issued by the SCP.
- STP - Signal Transfer Point; a specialized packet switch that routes and translates signaling messages in the CCS network.

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EFFECTIVE: AUGUST 28, 2000

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ISSUED: April 10, 2003

EFFECTIVE: April 11, 2003

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## SECTION 1 - DEFINITIONS

The following definitions are applicable to this tariff:

Access Code - Denotes a uniform code assigned by the Company to an individual Customer. The code has the form 10XXX, or 10XXXXX.

Access Minutes - Denotes usage of exchange for the purpose of calculating chargeable usage.

Access Tandem - A switching system that provides a traffic concentration and distribution function for originating or terminating traffic between end offices and a Customer's premises.

Account - The Customer who has agreed, verbally or by signature, to honor the terms of service established by the Company. An account may have more than one access code billed to the same Customer address.

Answer Supervision - The transmission of the switch trunk equipment supervisory signal (off-hook or on-hook) to the Customer's point of termination as an indication that the called party has answered or disconnected.

Bit - The smallest unit of information in a binary system of notation.

Bits Per Second (bps) - The number of bits transmitted in a one second interval.

Channel - A path for electrical transmission between two or more points, the path having a bandwidth and termination of the Customer's choosing.

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**SECTION 1- DEFINITIONS, (Cont'd.)**

City - For the purposes of this tariff, the term City denotes a specific geographic area served by the Carrier. A City is typically a metropolitan area and may include one or more adjacent or nearby areas in which the Carrier has network facilities.

Call - A Customer attempt for which the complete address code is provided to the service end office.

Central Office - A local Company switching system where Customer station loops are terminated for purposes of interconnection to each other and to trunks.

Channel - A communications path between two or more points of termination.

Communications System - Denotes channels and other facilities which are capable of communications between terminal equipment provided by an entity other than the Company.

Company - DeltaCom, Inc., d/b/a DeltaCom Business Solutions, unless the context means otherwise.

Collocation - Carrier facilities and/or equipment located in LEC central offices.

*Certain material that originally appeared on this Page now  
appears on Page 11.1.*

**SECTION 1- DEFINITIONS, (Cont'd.)**

Commission - Tennessee Public Service Commission.

(M)

Constructive Order - Delivery of calls to or acceptance of calls from the Company's locations either by direct trunking or an alternate (indirect) route constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Additionally, selection by a Company's End User of the Customer as the presubscribed IXC also constitutes a Constructive Order of switched access services by the Customer.

(N)

Customer - Any person, firm, partnership, corporation or other entity which uses service under the terms and conditions of this tariff and is responsible for the payment of charges.

(M)

Customer Agreement - The mutual agreement between the Company and the Customer for the provision of the Company's service.

Customer Designated Premises - The interconnection point in the Company Serving Wire Center for the termination of the Company's service.

(M)

*Certain Material that appears on this Page originally appeared  
on Page 11.*

**SECTION 1- DEFINITIONS, (Cont'd.)**

Customer Point of Presence - The physical location associated with the Customer's communication system.

Dedicated Access or Dedicated Transport - A method for a Customer to directly connect two locations of their choice with dedicated (non-switched) services.

DeltaCom - Refers to the Company, DeltaCom, Inc., d/b/a DeltaCom Business Solutions

(N)  
(N)

Dual Tone Multifrequency (DTMF) - Tone signaling, also known as touch tone signaling.

End Office Switch - A Company switching system where station loops are terminated for purposes of interconnection to each other and to trunks.

End User - Any Customer of a telecommunications service provided by the Company that is not a Carrier or Common Carrier, except that a Carrier shall be deemed to be an End User when such Carrier uses a telecommunications service solely for administrative purposes. A person or entity that offers telecommunications service exclusively as a reseller shall be deemed to be an End User if all resale transmissions offered by such reseller originate on the premises of such reseller when making telecommunication service available to others, directly or indirectly.

Entry Switch - First point of switching.

Exchange - A group of lines in a unit generally smaller than a LATA established by the Company for the administration of communications service in a specified area. An Exchange may consist of one or more central offices together with the associated facilities used in furnishing communications service within that area.



**SECTION 1- DEFINITIONS, (Cont'd.)**

Facilities - Denotes any cable, pole, conduit, carrier equipment, wire center distribution frame, central office switching equipment, etc., utilized to provide the service offered under this tariff.

First Point of Switching - The first Company location at which switching occurs on the terminating path of a call proceeding from the Customer premises to the terminating end office and, at the same time, the last Company location at which switching occurs on the originating path of a call proceeding from the originating end office to the Customer premises.

Interexchange Carrier (IXC) - Any individual, partnership, association, corporation or other entity engaged in interstate communication for hire by wire, fiber or radio between two or more exchanges.

Hertz - A unit of frequency equal to one cycle per second.

Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Interstate - For the purpose of this tariff, the term Interstate applies to the regulatory jurisdiction of services used for communications between locations located in different states within the United States or between one or more location in the United States and one or more international locations.

Intrastate Communications - Any communications which originates and terminates within the same state. (InterLATA/IntraLATA)

Local Access and Transport Area (LATA) - A geographic area established for the provision and administration of communications service. A LATA encompasses designated exchanges, which are grouped to serve common social, economic and other purposes.

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ISSUED: JULY 27, 2000

EFFECTIVE: AUGUST 28, 2000

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**SECTION 1- DEFINITIONS, (Cont'd.)**

Local Calling Area - A geographical area, as defined in the Company's local or general exchange service tariff, in which an End User may complete a call without incurring toll usage charges.

Message - A Message is a Call as defined above.

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

On-Hook - The idle condition of Switched Access Service or a telephone exchange line.

Originating Direction - The use of Switched Access Service for the origination of calls from an End User premises to an IXC premises.

Point of Presence - The physical location of an interexchange carrier's facilities.

Point of Termination - The point of demarcation within a Customer-designated premises at which the Company's responsibility for the provision of access service ends.

Premises - The physical space designated by the Customer for the termination of the Company's service.

Serving Wire Center - The wire center from which the Customer-designated premises would normally obtain dial tone from the Company.

**SECTION 1- DEFINITIONS, (Cont'd.)**

Special Access - See Dedicated Access.

Term Agreement - A method of purchasing the Company's services whereby the Customer agrees to purchase service between specific locations for a specified and mutually agreed upon length of time.

Terminal Equipment - Telecommunications devices, apparatus and associated wiring on the Customer-designated premises.

Terminating Direction - The use of Switched Access Service for the completion of calls from an IC's premises to an End User premises.

Transmission Path - An electrical path capable of transmitting signals within the range of the service offering. A transmission path is comprised of physical or derived facilities consisting of any form or configuration of plant used in the telecommunications industry.

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

Trunk Group - A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

Wire Center - A physical location in which one or more central offices, used for the provision of exchange services, are located.

United States - The contiguous United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

## **SECTION 2- TERMS AND CONDITIONS**

### **2.1 Undertaking of ITC^DeltaCom Communications, Inc.**

The Company's service is furnished to Customers for intrastate communications. The Company's service is available twenty-four hours per day, seven days per week.

The Company arranges for installation, operation, and maintenance of the service provided in this tariff for the Customer in accordance with the terms and conditions set forth in this tariff.

### **2.2 Unauthorized Change Charge**

If it is determined that an unauthorized change in service has occurred, ITC^DeltaCom will assess the Customer an Unauthorized Change Charge of \$50.00 per line. The appropriate nonrecurring charges to re-establish the end-user's service with the appropriate provider will also be assessed because of the unauthorized change.

### **2.3 Limitation On Service**

**2.3.1** Service is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this tariff. The Company may decline applications for service to or from a location where the necessary facilities or equipment are not available. The Company may discontinue furnishing service in accordance with the terms of this tariff.

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ISSUED: JULY 27, 2000

EFFECTIVE: AUGUST 28, 2000

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**SECTION 2- TERMS AND CONDITIONS**

**2.3      Limitation On Service, (Cont'd).**

**2.3.2**      The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control (examples of these conditions are more fully set forth elsewhere in this tariff), or when service is used in violation of provisions of this tariff or the law.

**2.3.3**      The Company does not undertake to transmit messages, but offers the use of its service when available, and, as more fully set forth elsewhere in this tariff, shall not be liable for errors in transmission or for failure to establish connections.

**2.3.4**      The Company reserves the right to discontinue service, limit service, or to impose requirements as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material affect on the business or economic feasibility of providing service, as determined by the Company in its reasonable judgment.

**2.4      Assignment or Transfer**

All service provided under this tariff is directly or indirectly controlled by the Company and the Customer may not transfer or assign the use of service without the express prior written consent of the Company. Such transfer or assignment shall only apply where there is no interruption of the use or location of service. All terms and conditions contained in this tariff shall apply to all such permitted transferees or assignees, as well as all conditions of service.

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## **SECTION 2- TERMS AND CONDITIONS**

### **2.5 Location of Service**

Service originates and terminates at locations within the state of Tennessee served by the Company.

### **2.6 Use of Service**

**2.6.1** Service may be used for any lawful purpose by the Customer or by any End User.

**2.6.2** The Customer obtains no property right or interest in the use of any specific type of facility. Interest to such items remains, at all time, solely with the Company.

**2.6.3** Recording of telephone is prohibited except as authorized by applicable federal, state and local laws.

**2.6.4** Any service provided under this tariff may be sold to or shared (jointly used) with other persons at the Customer's option. The Customer remains solely responsible for all use of service ordered by the Customer or billed to its account pursuant to this tariff, for determining who is authorized to use its service, and for promptly notifying the Company of any unauthorized use. The Customer may advise its customers that a portion of its service is provided by the Company, but the Customer shall not represent that the Company jointly participates with the Customer in the provision of the service.

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## **SECTION 2- TERMS AND CONDITIONS**

### **2.7        Discontinuance and Restoration of Service**

Service continues to be provided until canceled by the Customer, in writing, or until canceled by the Company as set forth below. The Company may render bills subsequent to the termination of service for charges incurred before termination.

#### **2.7.1        Cancellation by the Customer**

The Customer may have service discontinued upon written notice to the Company. The Company shall hold the Customer responsible for payment of all bills for service furnished until the cancellation date specified by the Customer or until the date that the written cancellation notice is received, whichever is later. A termination liability charge applies to early cancellation of a term agreement.

#### **2.7.2        Cancellation by the Company**

For Nonpayment: The Company, by written notice to the Customer and in accordance with applicable law, may discontinue service or cancel an application for service without incurring any liability after providing the Customer five (5) days prior written notice of any sum thirty (30) days past due.

**SECTION 2- TERMS AND CONDITIONS**

**2.7 Discontinuance and Restoration of Service (Cont'd.)**

**2.7.2 Cancellation by the Company (cont'd.)**

- (ii) For Returned Checks: The Customer whose check or draft is returned unpaid for any reason, after two attempts at collection, shall be subject to discontinuance of service in the same manner as provided for nonpayment of overdue charges. The return check charge is \$15.00.
- (iii) For any violation of law or of any of the provisions governing the furnishing of service under this tariff: The Customer shall be subject to discontinuance of service, without notice, for any violation of any law, rule, regulation or policy of any government authority having jurisdiction over service, or by reason of any order or decision of a court or other government authority having jurisdiction which prohibits the Company from furnishing such service.
- (iv) For the Company to comply with any order or request of any governmental authority having jurisdiction: The Customer shall be subject to discontinuance of service, without notice, for the Company to comply with any order or request of any governmental authority having jurisdiction.

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**SECTION 2- TERMS AND CONDITIONS**

**2.7           Discontinuance and Restoration of Service (Cont'd.)**

**2.7.3           Restoration of Service**

If service has been discontinued for nonpayment or as otherwise provided herein and the Customer wishes it continued, service shall, at the Company's discretion, be restored when all past due amounts are paid or the event giving rise to the discontinuance (if other than nonpayment) is corrected and the Customer pays a deposit at Company's discretion. Nonrecurring charges apply to restored services.

- (ii) Restoration of disrupted services shall be in accordance with the Tennessee Public Service Commission Rules and Regulations, which specify the priority system for such activities.

**2.8           Cancellation of Application for Service**

Where the Customer or applicant cancels an application for service prior to receipt of final order confirmation (FOC), or prior to the start of special construction, no charge applies.

Where installation of service has been started (after FOC) prior to the cancellation, a cancellation charge equal to the costs incurred by the Company may apply, but in no case shall such charge exceed the charge for the applicable installation charges.

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**SECTION 2- TERMS AND CONDITIONS**

**2.9 Minimum Period**

The minimum period for which services are provided and for which rates and charges are applicable is one month unless otherwise specified in this tariff or by mutually agreed upon contract. When a service is discontinued prior to the expiration of the minimum period, charges are applicable, whether the service is used or not.

**2.10 Billing and Payments**

**2.10.1** The Company shall bill on a current basis all charges incurred by and credits due to the Customer. The Customer may receive its bill in: 1) a paper format, 2) a paper format bill summary with a magnetic tape to provide the detailed information of the bill, 3) magnetic tape only, 4) computer disc, or 5) via electronic transmission. Such bills are due upon receipt regardless of the media utilized. The Company shall bill in advance charges for all services to be provided during the ensuing billing period except for charges associated with service usage. Adjustments for the quantities of service established or discontinued in any billing period beyond the minimum period in 2.9 will be prorated to the number of days based on a 30 day month. The Company will, upon request and if available, furnish such detailed information as may reasonably be required for verification of a bill.

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## SECTION 2- TERMS AND CONDITIONS

## 2.10 Billing and Payments (Cont'd.)

### 2.10.2 Rating and Billing of Access Services Where More than One Exchange Telephone Company is Involved

Feature Group D Switched Access Service and/or Directory Assistance Service may be ordered by a Customer where one end of the Local Transport element component is in the Company operating territory and the other end is in another Exchange Telephone Company operating territory. Each Exchange Telephone Company will provide and bill for the portion of the Transport in its operating territory to an interconnection point with another Exchange Telephone Company. The rates, billing and payment terms of the Company only apply to bills rendered by the Company.

**2.10.3** All bills for service provided to the Customer by the Company are due (payment date) by the next bill date (same day in the following month as the bill date) and are payable in immediately available funds. If such payment due date would cause payment to be due on a Saturday, Sunday or Legal Holiday, payment for such bills will be due from the Customer as follows:

**SECTION 2- TERMS AND CONDITIONS****2.10 Billing and Payments (Cont'd.)****2.10.3 (cont'd.)**

- .1 If such payment due date falls on a Sunday or on a Legal Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday date following such Sunday or Legal Holiday. If such payment due date falls on a Saturday or on a Legal Holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Legal Holiday.
- .2 Further, if any portion of the payment is received by the Company after the payment due date as set forth above, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment charge shall be due the Company. The late payment charge shall be that portion of the payment not received by the date due minus any charges billed as local taxes multiplied by the lesser of (i) 1.5 percent or (ii) the highest amount allowable by law.
- .3 In the event the Company incurs fees or expenses, including attorney's fees and/or court costs, in collecting or attempting to collect any charges owed to the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

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**SECTION 2- TERMS AND CONDITIONS**

**2.10 Billing and Payments (Cont'd.)**

**2.10.4 Invoice Reprint Charge**

At the Customer's request, a reprint of a previous complete invoice can be provided. Charges for the provision of a duplicate invoice are set below.

The duplicate bill will contain the same billing detail as the primary bill.

Each FTP CD copy of monthly bill	\$25.00
Each BDT CD copy of monthly bill	\$25.00
Each BDT Electronic copy of monthly bill	\$25.00

**Delivery Charges**

Each package shipped via 2-day mail*	\$25.00
Each package sent electronically**	\$20.00

\* Invoices will be sent via 2-day mail, so that proof of delivery will be received.

\*\* Sending invoices electronically is only an option if the customer receives its regular invoices electronically. A system receipt showing date and time the file is received will act as proof of delivery.

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**SECTION 2- TERMS AND CONDITIONS**

**2.11 Claims and Disputes**

In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within 120 days of receipt of billing for those services. If the Customer does not submit a claim as stated above, the Customer waives all rights to filing a claim thereafter.

**2.11.1** If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest credits or penalties will apply.

**2.11.2** If the dispute is resolved in favor of the Customer and the Customer has paid the disputed amount, the Customer will receive an interest credit from the Company for the disputed amount times a late factor as set forth in 2.10.3

**2.11.3** In the event that the Company agrees to refund a credit by check or wire transfer, interest will be applied up to and including the date of issuance for either the check or wire transfer.

**2.11.4** If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date, no interest credit or penalties will apply.

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**SECTION 2- TERMS AND CONDITIONS**

**2.11 Claims and Disputes (Cont'd.)**

**2.11.5** If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, any payments withheld pending settlement of the late disputed amount shall be subject to the late penalty as set forth in 2.10.3

**2.12 Payment of Deposits**

**2.12.1** The Company may, in order to safeguard its interests, require a Customer which has a proven history of late payments to the Company or does not have established credit to make a deposit prior to or at any time after the provision of service to the Customer, to be held by the Company as a guarantee of the payment of rates and charges. No such deposit will be required of a Customer which has established credit and does not have a history of late payments to the Company.

**2.12.2** A deposit may not exceed the actual or estimated rates and charges for the service for a two month period. The fact that a deposit has been made in no way relieves the Customer from complying with the Company's requirement as to the prompt payment of bills.

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**SECTION 2- TERMS AND CONDITIONS**

**2.12      Payment of Deposits (cont'd.)**

**2.12.3**      At such time as the provision of the service to the Customer is terminated, the amount of the deposit will be credited to the Customer's account and any credit balance which may remain will be refunded. After the Customer has established a one year prompt payment record, such a deposit will be refunded or credited to the Customer account at any time prior to the termination of the provision of the service to the Customer.

**2.12.4**      In case of a cash deposit, for the period the deposit is held by the Company, simple annual interest will be applied to the deposit for the number of days from the date the Customer deposit is received by the Company to and including the date such deposit is credited to the Customer's account or the date the deposit is refunded by the Company.

**2.12.5**      If the amount of a deposit is proven to be less than required to meet the requirements specified above, the Customer shall be required to pay an additional deposit upon request.



**SECTION 2- TERMS AND CONDITIONS**

**2.13 Inspection, Testing and Adjustment**

**2.13.1** The Company may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether the terms and conditions of this tariff are being complied with in the installation, operation or maintenance of the Customer's or the Company's facilities or equipment. The Company may interrupt service at any time, without penalty or liability, due to the departure from or reasonable suspicion of the departure from any of these terms and conditions.

**2.13.2** Upon reasonable notice, the facilities or equipment provided by the Company shall be made available to the Company for such tests and adjustments as may be necessary for their maintenance in a condition satisfactory to the Company. No interruption allowance shall be granted for the time during which such tests and adjustments are made, unless such interruption exceeds twenty-four hours in length and is requested by the Customer.

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**SECTION 2- TERMS AND CONDITIONS**

**2.14 Interconnection**

- 2.14.1** Service furnished by the Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to technical limitations established by the Company. Service furnished by the Company is not part of a joint undertaking with such other common carriers or systems. The Company does not undertake to provide any special facilities, equipment, or services to enable the Customer to interconnect the facilities or the equipment of the Company with services or facilities of other common carriers or with private systems.
- 2.14.2** Interconnection with the services or facilities of other common carriers shall be under the applicable terms and conditions of this tariff and the other common carrier's tariffs.
- 2.14.3** The Customer shall ensure that the facilities or equipment provided by the Customer are properly interconnected with the facilities or equipment of the Company. If the Customer maintains or operates the interconnected facilities or equipment in a manner which results or may result in harm to the Company's facilities, equipment, personnel, or the quality of service, the Company may, upon written notice, require the use of protective equipment at the Customer's expense.

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## **SECTION 2- TERMS AND CONDITIONS**

### **2.14 Interconnection (Cont'd.)**

#### **2.14.3 (cont'd.)**

If this written notice fails to eliminate the actual or potential harm, the Company may, upon written notice, terminate the existing service of the Customer.

### **2.14.4 Physical Network Interconnection Arrangements**

#### **2.14.4.1 SS7 Interconnection**

A Customer may connect to the Company's SS7 Network in one of three ways:

A. If a Customer chooses to connect to the Company's SS7 network using links(s) and port(s), the Customer shall pay the charges set forth in Section 3.7.8, or

B. The Customer and Company agree on another signaling interconnection arrangement on an Individual Case Basis.

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**SECTION 2- TERMS AND CONDITIONS**

**2.14.4 Physical Network Interconnection Arrangements Cont.**

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**2.14.4.1 SS7 Interconnection Cont.**

Where the Company acts as an SS7 Hubbing Provider for Customer (i.e. Customer does not have its own SS7 network) and the Company receives billing on behalf of its Customer for its SS7 usage, Company reserves the right to "pass through" Customer's portion of the SS7 billing to Customer.

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**2.15 Liability of the Company**

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**2.15.1** The liability of the Company for damages of any nature arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants, or employees, in the course of establishing, furnishing, rearranging, moving, terminating, or changing the service or facilities or equipment shall not exceed an amount equal to the charges applicable under this tariff (calculated on a proportionate basis where appropriate) to the period during which such error, mistake, omission, interruption or delay occurs.

**2.15.2** In no event shall the Company be liable for any incidental, indirect, special, or consequential damages (including lost revenue or profits) of any kind whatsoever regardless of the cause or foreseeability thereof.

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**SECTION 2- TERMS AND CONDITIONS**

**2.15 Liability of the Company (Cont'd.)**

**2.15.3** When the services or facilities of other common carriers are used separately or in conjunction with the Company's facilities or equipment in establishing connection to points not reached by the Company's facilities or equipment, the Company shall not be liable for any act or omission of such other common carriers or their agents, servants or employees.

**2.15.4** The Company shall not be liable for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, or preemption of existing service to restore service in compliance with the Tennessee Public Service Commission's Rules and Regulations.

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**SECTION 2- TERMS AND CONDITIONS**

**2.15 Liability of the Company (Cont'd.)**

**2.15.5** The Company shall not be liable for interruptions, delays, errors, or defects in transmission, or for any injury whatsoever, caused by the Customer, or the Customer's agents, End Users, or customers, or by facilities or equipment provided by the Customer.

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**2.16 Liability of the Customer**

The Customer shall indemnify, defend and hold harmless the Company (including the costs of reasonable attorney's fees) against:

Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information, or other content transmitted over the Company's facilities or equipment; and

(ii) Claims for patent infringement arising from combining or connecting the Company's facilities or equipment with facilities, equipment, apparatus or systems of the Customer; and

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**SECTION 2- TERMS AND CONDITIONS**

**2.16 Liability of the Customer (Cont.)**

- (iii) All other claims (including, without limitation, claims for damage to any business or property, or injury to, or death of, any person) arising out of any act or omission of the Customer, or the Customer's agents, End Users, or customers, in connection with any service or facilities or equipment provided by the Company.

**2.17 Taxes**

Federal excise tax and state and local sales, use, and similar taxes are not included in the rates set forth in this tariff, and shall be billed as separate line items, where applicable.

**2.18 Local Charges**

In certain instances, the Customer may be subject to local exchange company charges or message unit charges to access the Company's network or to terminate calls. The Company shall not be responsible for any such local charges incurred by the Customer gaining access to the Company's network.

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements**

**2.19.1 Determination of Switched Access Jurisdiction**

- (A) When the Company receives sufficient call detail to permit it to determine the jurisdiction of some or all originating and terminating access minutes of use or messages, the Company will bill according to these actual minutes of use and will not use Customer reported Percent Interstate Usage (PIU) factors.
- (B) When the Company receives insufficient call detail to determine the jurisdiction, the Company will apply the Customer's projected PIU factor to apportion the usage between interstate and intrastate.

**SECTION 2- TERMS AND CONDITIONS**

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements, (Cont'd.)**

**2.19.2 Jurisdictional Report Requirements**

**(A) Percent Interstate Usage (PIU)**

The Customer must upon ordering or first receiving service from the Company furnish the projected percentage of interstate usage to the Company. The report shall identify the Customer's Carrier Identification Code (CIC) and provide PIU by state, Operating Company Number (OCN), traffic type and traffic direction. The report shall be delivered to the Company via U.S. Mail, email or overnight delivery to the address as listed on the Customer's monthly invoice.

For purposes of developing the projected interstate percentage, the Customer shall consider every call that originates from a calling party in one state and terminates to a called party in a different state to be interstate communications. The Customer shall consider every call that terminates to a called party within the same state as the state where the calling party is located to be intrastate communications. The manner in which a call is routed through the telecommunications network does not affect the jurisdiction of a call, i.e., a call between two points within the same state is an intrastate call even if it is routed through another state.

The Customer may only provide a PIU factor that is in a whole number format, i.e., a number from 0 to 100. When the Customer provides the PIU factor, the Company will subtract the provided PIU from 100 and the difference is the percent intrastate usage. The sum of the interstate and intrastate percentages will equal 100 percent.

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**SECTION 2- TERMS AND CONDITIONS**

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements, (Cont'd.)**

**2.19.2 Jurisdictional Report Requirements, (Cont'd.)**

**(B) Report Updates**

Customers that provide the Company with an initial report must provide quarterly updates. Quarterly updates must arrive for processing by the last business day of the month following each calendar quarter (e.g., last business day in January, April, July, and October). Except where the Company is billing according to actuals by jurisdiction, the revised report will serve as the basis for the next three months billing beginning with the first billing period after the Company processes the quarterly report. If the report is not received as specified herein, the Company will not be responsible for implementing the projected and/or revised PIU in the manner described herein. No prorating or back billing will be done based on the report. Any late reports delivered to the Company will go into effect the next calendar quarter.

If the Customer does not supply an initial projected PIU as specified herein, the Company will use a default PIU of zero percent until such time as the Customer does supply such reports. If, after the Customer supplies a projected and/or revised PIU, the Customer fails to update such PIU for any reporting period (to be effective January, April, July or October), the Company will use a default PIU of zero percent until such time as the Customer does supply a revised PIU as specified herein.

**Section 2.20 has moved to Page 35.5**

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**SECTION 2- TERMS AND CONDITIONS**

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements, (Cont'd.)**

**2.19.3 Maintenance of Customer Records**

The Customer shall retain for a minimum of nine (9) months call detail records that substantiate the interstate percent provided to the Company as set forth in 2.19.2 (B) preceding for Switched Access Service. Such records shall consist of the following, if applicable:

- (A) All call detail records such as work papers and/or backup documentation including paper, magnetic tapes or any other form of records for billed customer traffic, call information including call terminating address (i.e., called number), the call duration, all originating and terminating trunk groups or access lines over which the call is routed, and the point at which the call enters the Customer's network and;
- (B) If the Customer has a mechanized system in place that calculated the PIU, then a description of that system and the methodology used to calculate the PIU must be furnished and any other pertinent information (such as but not limited to flowcharts, source code, etc.) relating to such system must also be made available.

**SECTION 2- TERMS AND CONDITIONS**

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements, (Cont'd.)**

**2.19.4 Jurisdictional Reports Verification**

**(A) Billing Dispute/Regulatory Commission Inquiry**

If a billing dispute arises or a regulatory commission questions the project PIU factor, the Company will ask the Customer to provide the data the Customer used to determine the projected PIU factor. The Customer shall supply the data within 30 days of the Company's request.

**(B) Company Traffic Studies**

The Company may, at its sole discretion, conduct its own traffic studies to validate the Customer's projected/revised PIU. If the Company determines from the traffic studies a variance in the reported PIU, the Company will ask the Customer to provide the data the Customer used to determine the projected PIU factor. The Customer shall supply the data within 30 days of the Company's request. The Customer's PIU may be adjusted based upon the Company's traffic studies if the Customer does not provide the information as requested by the Company.

**SECTION 2- TERMS AND CONDITIONS**

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements, (Cont'd.)**

**2.19.4 Jurisdictional Reports Verification, (Cont'd.)**

**(C) Company Audit**

On thirty (30) days written notice, the Customer must provide the Company the ability and opportunity to conduct an annual audit to ensure proper billing of traffic. The Customer shall keep records of call detail for a minimum of nine (9) months from which a PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the Customer. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by an independent auditory paid for by the Company unless the results of the audit determine that the Customer has overstated the PIU by ten percentage points (10%) or more, in which case the Customer will be responsible for the costs of the audit. Once the audit is completed, the PIU shall be adjusted based upon the audit results. The Company shall apply this audited PIU to the period covered by the audit. If in the Company's favor, the Company will apply this audited PIU to the usage for up to two quarters following the period covered by the audit and/or for up to the lesser of (i) two years prior to the period covered by the audit or (ii) the period covered by the applicable statute of limitations.

**SECTION 2- TERMS AND CONDITIONS**

**2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements, (Cont'd.)**

**2.19.5 Mixed Interstate and Intrastate Access Service**

When mixed interstate and intrastate Switched Access Service is provided, all charges, including nonrecurring charges, usage charges, and optional features, will be prorated between interstate and intrastate. The percentage provided in the reports as set forth in Section 2.19 will serve as the basis for prorating the charges unless the Company is billing according to actuals by jurisdiction. The percentage of an Access Service to be charged as intrastate is applied in the following manner:

- (A) For nonrecurring chargeable rate elements, multiply the percent intrastate use times the quantity of chargeable elements times the state tariff rate per element.
- (B) For usage sensitive chargeable rate elements, multiply the percent intrastate use times actual use (measure of Company assumed average use) times the tariffed rate.

**SECTION 2- TERMS AND CONDITIONS**

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**2.20 Damages**

The Customer shall reimburse the Company for damages to Company facilities utilized to provide services under this tariff caused by the negligence or willful act of the Customer, or resulting from improper use of the Company's facilities, or due to malfunction of any facilities or equipment provided by any entity other than the Company, except that no Customer shall be liable for another Customer's actions.

(M)

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## **SECTION 2- TERMS AND CONDITIONS**

### **2.21 Ownership of Facilities**

Facilities utilized by the Company to provide service under the provisions of this tariff shall remain the property of the Company. Such facilities shall be returned to the Company by the Customer, whenever requested, within a reasonable period following the request in as good condition as reasonable wear permits.

### **2.22 Testing**

The service provided under this tariff shall be made available to the Company at times mutually agreed upon in order to permit the Company to make tests and adjustments appropriate for maintaining the services in satisfactory operating condition. No credit will be allowed for any interruption during such tests and adjustments.

### **2.23 Design of Customer Services**

The Customer shall be responsible for its own expense for the overall design of its services and for any redesigning or rearrangements of its services which may be required because of changes in facilities, operations or procedures of the Company, minimum protection criteria or operating or maintenance characteristics of the facilities.

### **2.24 Network Contingency Coordination**

The Customer shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications service.

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### **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 electrical communications path between a Customer's premises and an End-User's premises. It provides for the use of common terminating, switching and trunking facilities, and for the use of common subscriber plant of the Company. Switched Access Service provides for the ability to originate calls from an End-User's premises to a Customer's premises in the LATA where it is provided.

The application of rates for Switched Access Service is described in Section 3.7 following. Rates and charges for services other than Switched Access Service, e.g., a Customer interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services.

##### **3.1.1 Measuring Access Minutes**

Customer traffic to end offices will be measured (i.e. recorded or assumed) by the Company at end office switches or access tandem switches. Originating and terminating calls will be measured (i.e., recorded or assumed) by the Company to determine the basis for computing chargeable access minutes. The measured minutes are the chargeable access minutes.

For originating calls over FGD with multifrequency address signaling, usage measurement begins when the originating FGD, except when equipped with tandem signaling and entry switch, receives the first wink supervisory signal (the second wink when equipped with tandem signaling) forwarded from the Customer's point of termination. For originating calls over FGD with CCSAC,



### **SECTION 3 - SWITCHED ACCESS SERVICE**

#### **3.1.1 Measuring Access Minutes (Cont'd.)**

usage measurement begins when the last point of switching sends the initial address message to the customer.

The measurement of originating call usage over FGD ends when the originating FGD entry switch receives disconnect supervision from either the originating end user's office, indicating the originating end user has disconnected, or the Customer's point of termination, whichever is recognized first by the entry switch.

For terminating calls over FGD, measurement of access minutes begins when the terminating FGD entry switch receives answer supervision from the terminating end user's end office, indicating the terminating end user has answered.

The measurement of terminating call usage over FGD ends when the terminating FGD entry switch receives disconnect supervision from either the terminating end user's end office, indicating the terminating end user has disconnected, or the customer's point of termination, whichever is recognized first by the entry switch.

#### **3.1.2 Mileage Measurement**

The mileage to be used to determine the rate for mileage-sensitive components is calculated on the airline distance using the method set forth in the National Exchange Carrier Association, Inc., Tariff F.C.C. No.4 for Wire Center Information (V&H coordinates).

(T)  
(T)

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### SECTION 3 - SWITCHED ACCESS SERVICE

#### 3.1.2 Two types of Feature Group Access are available:

(T)

- 1) Tandem Connect Access: This option applies when the Customer has no direct facilities to the End Office Switch. All traffic is routed to and from the End Office via the Access Tandem. Delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Tandem Connect Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein.
- 2) Direct Connect Access: This option applies when the Customer uses dedicated facilities between the Customer's premises and the End Office Switch. This transmission path is dedicated to the use of a single Customer. Delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Direct Connect Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein.

(T)

#### 3.2 Rate Categories

The Company combines traditional per minute switched access rate elements into a single composite per minute rate. There are three main categories of service components which are used to derive the composite rate:

(C)

- End Office Local Switching
- Switched Transport
- Carrier Common Line

(T)

(T)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2 Rate Categories, (Cont'd.)**

**3.2.1 End Office Local Switching**

End Office Local Switching provides for the use of end office switching equipment. Included in Local Switching are: Common Switching which provides the local end office switching functions and optional features.

Transport Termination which provides for the trunk side arrangements, terminates the Switched Transport facilities. The number of Transport Terminations provided will be determined by the Company.

**(T)**

**(T)**

Where end offices are appropriately equipped, international dialing may be provided. International dialing provides the capability of switching international calls with service prefix and address codes having more digits than are capable of being switched through a standard equipped end office.

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2 Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport**

**(T)**

The Switched Local Channel rate is assessed a monthly fixed charge based on the capacity (e.g. DS1) ordered. This charge applies when the Customer premises and the serving wire center are located in the same Telephone Company building.

The Company will work cooperatively with the Customer in determining (1) whether the service is to be directly routed to an end office switch or through an access tandem switch, and (2) the directionality of the service.

The Switched Transport component is related to the transmission and tandem switching facilities between the Customer and the end office switch(es) where the Customer's traffic is switched to originate or terminate the Customer's communications. The Switched Transport component also includes transport between an end office which serves as host for a remote switching system or module (RRS or RSM) and the RRS or RSM.

**(N)**

**(N)**

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2. Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

(T)

[Reserved for Future Use]

(D)

(D)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2. Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

(T)

[Reserved for Future Use]

(D)

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(D)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2. Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

(T)

[Reserved for Future Use]

(D)

(D)

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2. Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

(T)

[Reserved for Future Use]

(D)

(D)



**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2. Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

(T)

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(D)

(D)

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2 Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

(T)

(M)

|

(M)

**(A) Feature Group D**

(T)

FGD is provided at Company designated end office switches whether routed directly or via Company designated access tandem switches. FGD is provided as trunk side switching through the use of end office or access tandem switch trunk equipment. The switch trunk equipment is provided with wink start-pulsing signals and answer and disconnect supervisory signaling, or without signaling when the CCSAC optional feature is specified. FGD is provided with multifrequency address signaling, or common channel signaling.

FGD is provided with Directory Assistance service via Company designated access tandem switches appropriately equipped for DA measurement. Completion of these calls is set forth in Section 3.2.5 preceding. When Directory Assistance Access Service is provided with FGD switching, calls routed to the access tandem will be completed to the DA location. Calls completed to the DA location are subject to the charges in Section 3.7.5.

*Material that originally appeared on this Page now appears on Page  
47.1*

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2 Rate Categories, (Cont'd.)**

**3.2.2 Switched Transport (cont'd.)**

**(B) Other Feature Groups**

Other forms of trunk side switching may  
be available.

(N)

(N)

**3.2.3 Common Line**

Common Line provides for the use of End  
User's Company-provided common lines by  
Customers for access to such End Users to  
furnish Intrastate Communications.

(N)

(N)

**3.2.4 8XX Toll Free Dialing**

Rate elements applicable to 8XX Toll Free  
Dialing depend upon the services provided in  
the translation and routing of End User  
dialed 8XX numbers. Charges are applied on a  
per query basis. In addition, standard  
Feature Group D charges apply.

(M)

(M)

*Certain material now found on this page was previously located on  
Page 47.*

### **SECTION 3 - SWITCHED ACCESS SERVICE**

#### **3.2 Rate Categories (Cont'd.)**

##### **3.2.5 Directory Assistance Access Service**

Directory Assistance Access Service provides: (1) service to Directory Assistance Access Service locations; (2) the use of Directory Assistance Access equipment; and (3) the use of Directory Assistance Access operators to provide telephone numbers. A Company Directory Assistance operator, when furnished a name and locality, will provide or attempt to provide the telephone number listed in the Company Directory Assistance records associated with the name given at the rates and charges in Section 3.7.5. The Company will not transfer, forward or redial a Customer's end user call to any other location for any purpose other than the provision of Directory Assistance Access service.

A maximum of two (2) requests for telephone numbers will be accepted per call to the Directory Assistance Access operator. A telephone number which is not listed in Directory Assistance Access records will not be available to the Customer's end user. When the access tandem is appropriately equipped for Directory Assistance measurement, the Company will route all DA traffic to the DA Access location for completion over the Customer's switched access provided from the access tandem.

Directory Transport provides the transmission facilities and transport termination between the premises of the ordering customer and the DA Access service location. The mileage is measured from the wire center to the DA Access service locations.

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.2 Rate Categories (Cont'd).**

**3.2.5 Directory Assistance Access Service (cont'd).**

A local channel, interoffice channel and access tandem switching will be charged pursuant to 3.7, when applicable.

Type A Transmission Specification is provided.

In the event that the telephone number is unavailable, no credit applies for the charge for the call to the DA Operator.

**(A) Billing**

**(T)**

The Customer shall be responsible for all contacts and arrangements with its end users concerning the provision and maintenance of DA Access Service, and the billing and collecting of charges for DA Access service furnished to its end users.

**(B) Credit Allowance**

**(T)**

A credit will be provided to the Customer in the following circumstances:

- (1) an incorrect number has been provided, or
- (2) a call is not completed due to failure of DeltaCom's equipment.

The amount of the credit equals the amount charged for a DA Access Service Call.

### **SECTION 3 - SWITCHED ACCESS SERVICE**

#### **3.3 Obligations of the Company**

The Company has obligations pertaining only to the provision of Switched Access Service. These obligations are as follows:

##### **3.3.1 Network Management**

The Company will administer its network to insure provision of acceptable service levels to all telecommunications users of the Company's network services. Generally, service levels are considered acceptable only when both End Users and Customers are able to establish connections with little or no delay encountered within the Company network. The Company maintains the right to apply protective controls, i.e., those actions such as call gapping, which selectively cancel the completion of traffic, over any traffic carried over its network, including that associated with a Customer's Switched Access Service. Generally, such protective measures would only be taken as a result of occurrences such as a failure or overload of Company or Customer facilities, natural disasters, mass calling or national security demands.

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.3 Obligations of the Company (Cont'd.)**

**3.3.2 Design and Traffic Routing of Switched Access Service**

The Company shall design and determine the routing of Switched Access Service, including the selection of the first point of switching and the selection of facilities from the interface to any switching point and to the end offices where busy hour minutes of capacity are ordered. The Company shall also decide if capacity is to be provided by originating only, terminating only, or two-way trunk groups. Finally, the Company will decide whether trunk side access will be provided through the use of two-wire or four-wire trunk terminating equipment. Selection of facilities and equipment and traffic routing of the service are based on standard engineering methods, available facilities and equipment and the Company's traffic routing plans. If the Customer desires different routing or directionality than that determined by the Company, the Company will work cooperatively with the Customer in determining (1) whether the service is to be routed directly to an end office or (2) the directionality of the service.

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.3          Reserved for Future Use**



### **SECTION 3 - SWITCHED ACCESS SERVICE**

#### **3.4 Obligations of the Customer**

The Customer has certain specific obligations pertaining to the use of Switched Access Service. These obligations are as follows:

##### **3.4.1 Report Requirements**

Customers are responsible for providing the following reports to the Company, when applicable.

###### **(A) Jurisdictional Reports**

When a Customer orders or receives Switched Access Service for both interstate and intrastate use, the Customer is responsible for providing reports as set forth in Section 2.19 preceding. Charges will be apportioned in accordance with those reports.

**(C)**

###### **(B) Code Screening Reports**

The Customer must report the number of trunks and/or the appropriate codes to be instituted in each end office, for each of the arrangements ordered.

The Company will administer its network in such a manner that the impact of traffic surges due to access service traffic is minimized. Network controls as defined in Section 3.3.1 may be implemented at the Company's option to ensure acceptable service levels.

### SECTION 3 - SWITCHED ACCESS SERVICE

#### 3.4 Obligations of the Customer (Cont'd.)

##### 3.4.2 On and Off-Hook Supervision

The Customer facilities shall provide the necessary on and off-hook supervision for accurate timing of calls.

##### 3.4.3 Terminating Signaling

(N)

On all calls in the terminating direction, the Customer shall ensure that the calling party's number, if available to it, is transmitted to the Company's switch; and, on calls delivered over a common trunk group via another telephone company's tandem switch, that the Customer's carrier identification code (CIC) is transmitted to the Company's switch. Neither the Customer nor any intermediate carrier shall remove or alter either the calling party's number or the CIC. Any calls delivered from another telephone company's tandem switch to the Company's switch without a CIC, or with an invalid CIC, shall be the responsibility of the carrier operating the tandem switch, and that carrier shall be the Customer with respect to such calls.

#### 3.5 Intermediate Provider Access Service

Intermediate Provider Access Service is the origination or termination by the Company of a call any portion of which has been associated with the services provided by an Intermediate Provider.

An Intermediate Provider is a provider that:

- (A) is not the telecommunications carrier for the customer who is either the originating end user or the terminating end user;
- (B) does not have a direct connection with the Company or a written agreement, executed by the Company, for the provision of such services; and,
- (C) seeks to levy any charge or fee, by tariff or otherwise, against the Company.

(N)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.6 [Reserved for Future Use]**

(D)

(D)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges**

**3.7.1 Rate Regulations**

This section contains the specific regulations governing the rates and charges that apply for Switched Access Service.

Access Charges are applied on a per access minute basis. Access minute charges are accumulated over a monthly period.

**3.7.2 Minimum Periods**

Switched Access Service is provided for a minimum period of one month.

**3.7.3 Charges**

(A) End Office Local Switching\*

(T)

Usage Sensitive Rates, per access minute

(C)

Service provided via UNE-P/Commercial Agreement

Tandem Connect Access \$0.021825

Direct Connect Access \$0.019009

Service provided via Company Switches and Facilities

Tandem Connect Access \$0.028902

\* This is a composite per minute access rate which includes Local Switching, Switched Transport, and Common Line components.

(C)

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges, (Cont'd.)**

**3.7.3 Charges (Cont'd.)**

**(B) Switched Transport**

	<b>Nonrecurring Charges</b>		
	<b>Monthly</b>	<b>1<sup>st</sup> Service</b>	<b>Additional</b>
	<b><u>Rate</u></b>	<b><u>Installed</u></b>	<b><u>Service</u></b>
Direct Network			
Interconnection	ICB	ICB	ICB

All access minutes are billed using a composite per minute access rate found in Section 3.6.3.1, Local Switching. This composite rate includes the elements traditionally billed as Switched Transport, as applicable.

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges, (Cont'd.)**

**3.7.3 Charges (Cont'd.)**

(D)

(D)

**(C) Carrier Common Line Access Charges**

(M)

All access minutes are billed a composite per minute access rate found in Section 3.7.3.(A), Local Switching. This composite rate includes the element traditionally billed as Carrier Common Line.

(M)

*Material now found on this page was previously located on Page 62.1.*

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges, (Cont'd.)**

**3.7.4 8XX Toll Free Dialing**

- Per Toll Free Dialing Call with POTS Number Delivery for Toll Free Dialing Numbers with Optional Complex Features, e.g. Call Handling and Destination

	<u>Per Query</u>
Features	\$.0111

(I)

**3.7.5 Directory Assistance Access Service**

Directory Assistance Service Call \$.6000  
(Each call)

Directory Transport - Customer is responsible for providing directory transport to the operator services center.

- Switched Transport, per MOU \$0.007593

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges, (Cont'd.)**

**3.7.6 Service Order Charges**

		<u>Nonrecurring Charges</u>
A.	Change of service, per request	\$92.00
B.	Trunk Side Service -per transmission path	\$5.00
C.	Common Block/Translations Related -per end office and tandem office <sup>1,2</sup>	\$62.00
D.	64 CCC Option FGD with CCSAC -per transmission path <sup>1</sup>	<u>First</u>
		<u>Each Additional</u>
		\$470.00 \$76.00
E.	DS1, per rearrangement	\$866.97 \$486.83

<sup>1</sup> Services requested on multiple ASRs will be treated as one request when requirements are met.

<sup>2</sup> This charge is in addition to that in 3.7.5A.

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges (Cont'd).**

**3.7.6 Service Order Charges (Cont'd).**

**F. Transfer of Service**

Per Billing Number	\$176.00
Trunk Side Service	
Per transmission Path	\$8.00

**3.7.7 Primary Interexchange Carrier (PIC) Charge**

A \$15.00 PIC change Charge will be incurred and billed to the carrier for each eligible line where a PIC change is made.

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### SECTION 3 - SWITCHED ACCESS SERVICE

#### 3.7 Rates and Charges (Cont'd).

##### 3.7.8 SS7 Interconnection

3.7.8.1 The rates that apply for ITC^DeltaCom Signaling Service apply where the Customer interconnects with the signaling network at the Company's STP from the Customers' own SP/SSPs or from a Third-Party Provider of SS7 services.

A. There are recurring and non-recurring charges that apply for each Link Termination and Port that is established.

B. Non-recurring charges apply for the establishment or disconnection of Originating Point Codes (OPC). An OPC installation charge applies for each OPC established, as well as each OPC added or changed subsequent to the establishment of STP Access. An OPC disconnection charge applied for each OPC removed. The OPC charge applies on a per service basis.

C. Usage charges apply for the formulation, transport and switching of ISUP or TCAP messages related directly to the Customer's origination and termination of switched access services throughout the Company's network. The Company may bill these charges by using a surrogate charge or as a per message fee as delineated in 3.7.8 following.

(C)

(C)

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(T)

(T)

(T)

### SECTION 3 - SWITCHED ACCESS SERVICE

#### 3.7 Rates and Charges (Cont'd).

##### 3.7.8 SS7 Interconnection (Cont'd)

###### 3.7.8.1 C. (Cont'd)

To the extent non-local SS7 messaging is billed to the Company by another carrier, the Company will bill the carrier reciprocal SS7 charges for the number of messages billed.

(C)  
|  
(C)

D. Where the Customer chooses to bill on a per message basis, the Company will assess ISUP usage charges per signaling message delivered to or from the Customer, regardless of direction, through the dedicated port connection with the Company. TCAP usage charges will be assessed per signaling message delivered to or from the customer, regardless of direction, for such services as Toll Free Access Service, 500 Access Service, LIDB, LNP Query, EQLS, and TCAP Message Transmission.

###### E. **Reporting SPIU and SPLU Factors**

###### 1) **SPIU**

If Customer has access to CCS7 Signaling Services monitoring software, then that carrier may use this software to identify the appropriate jurisdictional factors

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**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges (Cont'd).**

**3.7.8 SS7 Interconnection (Cont'd)**

**3.7.8.1 E. (Cont'd)**

**1) SPIU (Cont'd)**

(Signaling Percent Interstate Usage and Signaling Percent Local Usage) on its signaling with Company and report these factors in the same format detailed herein. If however Customer does not have access to CCS7 Signaling Services monitoring software, then an SPIU for CCS7 Signaling Services shall be developed and reported based upon the associated billed minutes of use for SWA Usage based services. The signals associated with billed minutes that are jurisdictionally interstate, as a percentage of the signals associated with total billed minutes shall be reported as the CCS7 Access SPIU. Where the customer is a "Third Party Provider" of CCS7 services then the SPIU will be developed based upon a weighted average of all of that provider's "Third Party Customer's" end user traffic. Carriers developing and reporting an SPIU in this manner shall inform Company of the methodology used to determine the signals associated with billed

(N)

(N)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges (Cont'd).**

**3.7.8 SS7 Interconnection (Cont'd)**

**3.7.8.1 E. (Cont'd)**

**1) SPIU (Cont'd)**

minutes that are jurisdictionally interstate and the methodology used to determine the signals associated with total billed minutes.

(N)

**2) SPLU**

Where Customer is an approved local service provider, then the Customer may report an SPLU in the following manner:

If Customer has access to CCS7 Signaling Services monitoring software, then that Customer may use this software to identify the appropriate jurisdictional factors (SPIU/SPLU) on its signaling with Company and report these factors in the same format detailed herein.

If, however, a Customer does not have access to CCS7 Signaling Services, factors shall be developed and reported based upon

(N)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges (Cont'd).**

**3.7.8 SS7 Interconnection (Cont'd)**

**3.7.8.1 E. (Cont'd)**

**2) SPLU (Cont'd)**

the associated billed minutes of use for SWA Usage based services and Local services. The signals associated with billed minutes that are jurisdictionally local as a percentage of the signals associated with total intrastate billed minutes shall be reported as the CCS7 Access SPLU. Where the customer is a Third Party provider of CCS7 services then the SPLU will be developed based upon a weighted average of all of that provider's "Third Party Customer's" end user traffic. Customers developing and reporting an SPLU in this manner shall inform Company of the methodology used to determine the signals associated with billed minutes that are jurisdictionally local and the methodology used to determine the signals associated with total intrastate billed minutes.

(N)

(N)

### SECTION 3 - SWITCHED ACCESS SERVICE

#### 3.7 Rates and Charges (Cont'd).

##### 3.7.8 SS7 Interconnection (Cont'd)

###### 3.7.8.1 E. (Cont'd)

###### 3) **EXAMPLE**

In determining a factor for intrastate, non-local traffic, consider the following example:

(N)

Based on evaluating SWA usage-based services and local interconnection services, a Customer has determined that its signaling traffic merits an SPIU of 80 and SPLU of 60. As such the following will then be true:

80% of the carrier's signaling messages will be billed as interstate of the remaining 20%, 60% of the 20% ( $.60 \times .20 = .12$ ), 12% will be billed as local. And, the final 8% will be billed as intrastate, non-local.

(N)

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges (Cont'd).**

**3.7.8 SS7 Interconnection Cont.**

1. CCS7 Signaling Connection

	Monthly Rate	Nonrecurring Charge
(a) Per 56 kbps facility	\$250.00	\$255.00

2. CCS7 Signaling Termination

	Monthly Rate	Nonrecurring Charge
(a) Per STP port	\$300.00	\$350.00

3. CCS7 Signaling (T)

(1) Surrogate (per Link, per LATA, per month) (T)

	Monthly Rate
	\$400.00

(2) Per Message (ISUP, TCAP)

ISUP	\$.000035
TCAP	\$.000123

(N)  
|  
(N)  
(M)



### SECTION 3 - SWITCHED ACCESS SERVICE

#### 3.7 Rates and Charges (Cont'd).

##### 3.7.8 SS7 Interconnection (Cont.)

#### 4. CCS7 Point Code Establishment or Change

		Nonrecurring Charge	
		First	Additional
(a)	Originating Point Code, Established or Changed	\$40.00	\$20.00
(b)	Per Destination Point Code, Established or Changed	\$20.00	\$20.00

##### 3.7.9 Intermediate Provider Access Service

(N)

Rates will be billed at the greater of:

(A)	Per Minute Rate	\$0.025
(B)	Per Call Rate*	\$0.005

\*The Per Call Rate is in addition to the Per Minute Rate.

Or, the amount charged to the Company by the Intermediate Provider.

(N)

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**SECTION 3 - SWITCHED ACCESS SERVICE****3.7 Rates and Charges (Cont'd).****3.7.10 Wireless to Wireline Traffic**

This section applies to traffic originated by a Commercial Mobile Radio Service (CMRS) provider and terminated to end-user subscribers of the Company (i.e., wireless to wireline traffic).

IntraMTA traffic refers to wireless-to-wireline traffic that originates and terminates within the same Major Trading Area (MTA). InterMTA traffic refers to wireless-to-wireline traffic that originates and terminates in two different MTAs. The Major Trading Area as defined in 47 C.F.R. paragraph 24-102 of the FCC Rules and Regulations. The Switched Access rates in this tariff apply to interMTA traffic.

The Company shall issue a Switched Access bill to the CMRS provider based on the best information available to the Company including, but not limited to, records of terminating traffic created by the Company at its end office or tandem switch and/or records generated by a third party ILEC whose network is used to route the traffic. If possible, the CMRS provider will provide to the Company billing records in standard industry formats regarding calls it originates that terminate on the Company's network. Records will be provided at an individual call detail record, if possible, with sufficient information to identify the specific date and time of the call, the call duration, the originating and terminating numbers and the physical and/or geographic end points.

(N)

(N)

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**SECTION 3 - SWITCHED ACCESS SERVICE****3.7 Rates and Charges (Cont'd).****(N)****3.7.10 Wireless to Wireline Traffic (Cont'd).**

If a CMRS provider is unable to provide sufficient billing records to the Company, the CMRS provider will have the responsibility of providing, on a quarterly basis (or as otherwise agreed to by the Company), a report to the Company providing the percentage of the CMRS provider's traffic terminated to the Company that is intraMTA or interMTA. The report will also detail what percentage of the interMTA traffic is intrastate and what percentage is interstate (PIU).

Reports regarding the percentages of intraMTA or interMTA traffic (and the intrastate or interstate jurisdiction of interMTA traffic) shall be based on a reasonable traffic study conducted by the CMRS provider and available to the Company upon request. Upon reasonable written notice, the Company or its authorized representative shall have the right to conduct a review and verification of the CMRS provider's reported percentages. This includes on-site verification reviews at the CMRS provider's or vendor locations. The review may consist of an examination and verification of data involving records, systems, procedures and other information related to the traffic originated by the CMRS provider and terminated to the Company. The CMRS provider will provide the Company with reasonable access to such information as is necessary to determine amounts payable under this tariff.

**(N)**

**SECTION 3 - SWITCHED ACCESS SERVICE**

**3.7 Rates and Charges (Cont'd).**

**3.7.10 Wireless to Wireline Traffic (Cont'd).**

If the CMRS provider fails to provide the billing records or verifiable reports required under this section, the Company will apply a default percent interMTA of 100% (and a default PIU of 0% on all interMTA traffic), on all traffic originated by the CMRS provider for termination by the Company.

(N)

(N)

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**SECTION 4 - [RESERVED FOR FUTURE USE]**

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**SECTION 6 - PROMOTIONS**

(T)

**6.1 Promotions - General**

(T)

From time to time the Company shall, at its option, promote subscription or stimulate network usage by offering to waive some or all of the nonrecurring or recurring charges for the Customer (if eligible) of target services for a limited duration. Such promotions shall be made available to all similarly situated Customers in the target market area.

(T)

**6.2 Demonstration of Service**

From time to time the Company shall demonstrate service by providing free channels for a period of time to be determined by the Company. The Company will charge usage sensitive rates.

**SECTION 7 - CONTRACT SERVICES**

(T)

**7.1 General**

(T)

At the option of the Company, service may be offered on a contract basis to meet specialized requirements of the Customer not contemplated in this tariff. The terms of each contract shall be mutually agreed upon between the Customer and Company and may include discounts off of rates contained herein, waiver of recurring or nonrecurring charges, charges for specially designed and constructed services not contained in the Company's general service offerings, or other customized features. The terms of the contract may be based partially or completely on the term and volume commitment, mixture of services or other distinguishing features.

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