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June 15, 2010

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Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 090327-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Hypercube Telecom, LLC in this docket are an original and fifteen copies of the following documents:

1. Direct Testimony of Robert W. McCausland; and
2. Direct Testimony of J. Gregory Sidak.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter and returning same to me.

Thank you for your assistance.

Sincerely,

Floyd R. Self

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Enclosures
cc: Parties of Record

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 15th day of June, 2010.

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Floyd R. Self

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY**

3 **OF**

4 **ROBERT W. McCAUSLAND**

5 **DOCKET NO. 090327-TP**

6
7 **SECTION I - INTRODUCTION**

8 **Q. Please state your name, title and business address.**

9 A. My name is Robert W. McCausland. I am Senior Vice President, Regulatory and
10 Government Affairs, for Hypercube Telecom, LLC f/k/a KMC Data LLC
11 (“Hypercube”). My business address is 3200 W. Pleasant Run Road, Suite 300,
12 Lancaster, TX 75146.

13 **Q. What are your responsibilities as Senior Vice President, Regulatory and**
14 **Government Affairs?**

15 A. I am responsible for Hypercube’s compliance with all applicable state and federal
16 regulations and laws, including the regulations of the Florida Public Service
17 Commission (“Commission” or “PSC”) and the laws of the State of Florida. I also
18 serve as Hypercube’s lead contact with this Commission, other state Public Service
19 Commissions, the Federal Communications Commission (“FCC”), and other
20 governmental organizations. My responsibilities include, but are not limited to,
21 ensuring that Hypercube’s tariffs and price lists comply with all applicable
22 regulations and that Hypercube’s tariffs and price lists properly reflect the services
23 that Hypercube provides.

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1 In addition to those activities, I oversee traditional interconnection agreements
2 between Hypercube and Incumbent Local Exchange Carriers (“ILECs”), and I work
3 with others within Hypercube to address carrier-relations matters.

4 **Q. Please briefly describe your background and experience in the**
5 **telecommunications industry.**

6 A. I joined Hypercube in July of 2009 with over thirty years of telecommunications
7 industry experience. Twenty-five of those years include direct experience with
8 telecommunications company tariffs and tariff enforcement, and I have personally
9 developed, achieved effectiveness of, implemented and enforced numerous state and
10 federal tariffs. For much of my career, regulatory compliance has been a key
11 component of my responsibility. I have written tariffs to fully comply with the
12 plethora of laws, rules, and regulations imposed by local communities, states and the
13 federal government. All of the tariffs for which I have been responsible have
14 reflected the services provided and the rates, terms, and conditions that were
15 applicable to each.

16 I accepted my first telecommunications management position in 1984 at the
17 ILEC then known as Bell Atlantic. During the ten-year period that followed, I held
18 various positions and held various responsibilities at Bell Atlantic in the areas of state
19 regulatory, service costs, product management, marketing and federal regulatory.
20 Throughout my management career at Bell Atlantic, my involvement with intrastate
21 and interstate switched access services was extensive.

22 In 1994, I joined MFS Communications Company, Inc. (“MFS”), one of the
23 nation’s first Competitive Access Providers (“CAPs”). MFS was among the first

1 companies to compete with the access services and local exchange services of ILECs
2 and to offer exchange access services. While at MFS, I had national responsibility for
3 MFS's collocations, unbundled loop implementations, and ultimately inter-company
4 OSS interface management.

5 Following the acquisition of MFS by WorldCom, I resigned to become a
6 founding member of Allegiance Telecom, Inc. ("Allegiance") as Vice President –
7 Regulatory and Interconnection. My responsibilities included all aspects of the
8 company's regulatory compliance and authority, regulatory policy formation and
9 implementation, tariffs, traffic exchange contracts, interconnection agreements, and
10 legislative relations. In 2001, I resigned from Allegiance to begin a
11 telecommunications consulting service. There, I represented CloseCall America, Inc.
12 as an expert witness in various regulatory proceedings.

13 Then in 2003 I joined Sage Telecom, Inc., as its Vice President of Regulatory
14 and subsequently as its Vice President and Secretary. Sage is a CLEC whose primary
15 service offerings include local and long distance telephone services. At Sage I was
16 responsible for all aspects of the company's regulatory compliance, policy formation,
17 and implementation. While at Sage, I was instrumental in securing and maintaining
18 the nation's first commercial agreement with AT&T (then known as SBC) for
19 wholesale access to its local exchange network. That agreement replaced the
20 embattled "Unbundled Network Element Platform" ("UNE-P") regime.

21 In 2009, I joined Hypercube in the role described above. I have since become
22 familiar with all aspects of Hypercube's business including the disputes that have
23 arisen prior to my joining Hypercube.

1 **Q. Were you familiar with Hypercube before joining the company?**

2 A. Yes. Hypercube has a highly-experienced management team that is comprised of
3 talented and knowledgeable individuals with a long list of successes in the industry.
4 Principal members of the company's management team have, over many years,
5 helped drive groundbreaking changes that enabled competition and as such are well
6 known and well respected within the telecommunications industry. Hypercube is a
7 pioneer in the offering of competitive tandem services, which is becoming an
8 increasingly important segment of the telecommunications industry.

9 **Q. What is the purpose of your testimony?**

10 A. The purpose of my testimony is to address various issues in the dispute pending
11 between Hypercube and DeltaCom, Inc. ("DeltaCom") in the State of Florida, which
12 is the subject of this adjudicatory proceeding.

13 My testimony is structured as follows. First, I provide a brief summation of
14 the issues and facts before the Commission. Second, I describe the regulatory
15 framework in which Hypercube provides service to DeltaCom in support of
16 DeltaCom's for-profit 8YY offering. Third, I address Hypercube's position on each
17 of the 10 Joint Proposed Issues.

18 **SECTION II – STATEMENT OF THE CASE**

19 **Q. Please provide a summary of the essential aspects of this proceeding.**

20 A. Boiled down to its essence, this proceeding involves DeltaCom's failure to pay
21 Hypercube for the switched access services DeltaCom utilized (and continues to
22 utilize) for calls on DeltaCom's network. A terminating carrier like DeltaCom has
23 always been required to pay the switching carrier for the use of the switching carrier's

1 facilities and services. Were such not the case, the switching carrier, having no
2 relationship with the ultimate customer, would have no means of recovering charges
3 for the use of its facilities, and therefore no reason to permit the use of its facilities.
4 The compensation mechanism for switched access services has always been tariffs or
5 price lists like Hypercube and other CLECs and ILECs have on file with this
6 Commission. Hypercube's price lists are attached as Exhibit B to Hypercube's
7 Answer and Counterclaim filed with the Commission on November 23, 2009.

8 **Q. Does DeltaCom dispute whether Hypercube provided it with these switched**
9 **access services?**

10 A. No. DeltaCom does not dispute that Hypercube provided (and continues to provide)
11 DeltaCom with services which permitted (and continue to permit) DeltaCom to serve
12 and bill DeltaCom's 8YY subscribers.

13 **Q. So why won't DeltaCom pay for Hypercube's filed price list services?**

14 A. First, DeltaCom has claimed that Hypercube's price list is unlawful. But at all times
15 relevant to the service DeltaCom has received from Hypercube, Hypercube has held
16 Competitive Local Exchange Certificate of Public Convenience and Necessity No.
17 7955 under its current name and under its former name KMC Data LLC ("KMC
18 Data"). Further, at all relevant times Hypercube and KMC Data have had price lists
19 on file with the Commission that are textually virtually identical to those employed
20 by many other carriers. The terminology employed in Hypercube's price list is
21 standard, and the rates are both comparable to those assessed by other carriers and in
22 compliance with state and federal rate regulations. There is nothing different about

1 Hypercube's price list that would support DeltaCom's refusal to pay for the services
2 it has received and continues to receive.

3 **Q. Does DeltaCom raise any other arguments?**

4 **A.** DeltaCom refuses to pay Hypercube's lawful access charges because of Hypercube's
5 practice of compensating CMRS providers that deliver wireless-initiated toll free calls
6 (8YY) to Hypercube which Hypercube then routes to the responsible interexchange
7 carrier ("IXC"). But the relationship between Hypercube and the wireless carriers
8 that connect to Hypercube is irrelevant to DeltaCom's duty to pay Hypercube for the
9 switching and related access services that Hypercube provides to DeltaCom.

10 **Q. Can you elaborate on these wireless-initiated calls?**

11 **A.** In a typical 8YY call dialed by a wireless end-user customer (subscriber), the
12 following steps occur:

- 13 1. The call travels from the subscriber's handset to a cell site antenna owned by
14 the wireless carrier.
- 15 2. The wireless carrier routes the call from the cell site to the wireless carrier's
16 MTSO.
- 17 3. At the MTSO, the wireless carrier determines that the call is an 8YY call and
18 routes it to a port on the MTSO designated for Hypercube.
- 19 4. Hypercube picks up the call from the MTSO and transports it to a Hypercube
20 switch.
- 21 5. At the Hypercube switch, Hypercube conducts a database inquiry ("dip") and
22 determines the identity of the carrier (in this example, DeltaCom) to whom the
23 8YY number is assigned. (It goes without saying that the original caller and
24 the wireless carrier have no idea who that carrier may be.)
- 25 6. After Hypercube determines the identity of the carrier to whom the 8YY
26 number is assigned, Hypercube routes the call to that carrier (DeltaCom) over
27 tandem facilities owned by the ILEC.
- 28 7. The ILEC delivers the call routed by Hypercube to DeltaCom's switch.

- 1 8. DeltaCom delivers the call to its 8YY subscriber.
- 2 9. DeltaCom bills its subscriber for the call.
- 3 10. DeltaCom is paid by the subscriber.

4 The functions undertaken by the wireless carrier to transport an 8YY call from
5 a cell phone to the MTSO (numbers 1, 2, and 3 above) replicate the local switching
6 and transport functions for which a wireline carrier would assess access charges if an
7 8YY call were placed by one of its wireline subscribers. The activities undertaken by
8 Hypercube (numbers 4, 5, and 6) are performed by Hypercube under the switched
9 transport and database inquiry provisions of its price list described more fully in my
10 testimony, irrespective of whether the call sent to it for database inquiry and routing
11 is a wireline or wireless call. DeltaCom does not dispute that it is Hypercube and
12 only Hypercube that performs the database inquiry essential to getting the call to
13 DeltaCom (step 5). In this proceeding, DeltaCom asks to receive this “dip” service,
14 among other Hypercube services, for free.

15 Whether the call is a wireline call or a wireless call, DeltaCom will eagerly
16 perform functions 8, 9, and 10. It will deliver the call to its subscriber, bill its
17 subscriber, and collect the revenues for the call. The question to be determined in this
18 proceeding is whether DeltaCom will pay only for function 7 (the ILEC’s delivery of
19 a call routed to DeltaCom by Hypercube) or functions 4, 5, and 6 as well (the
20 activities of Hypercube in routing the call from the MTSO, ascertaining that the call
21 is sold by DeltaCom and the call’s appropriate routing method, and then ensuring that
22 it reaches DeltaCom).

23 At least in the context of wireless-initiated traffic for which there is not a
24 contract between the wireless provider and DeltaCom, DeltaCom is not being billed –

1 by anyone – for functions 1, 2, and 3, and that fact will not change regardless of the
2 outcome of this proceeding. In other words, DeltaCom has at all relevant times
3 received functions 1, 2, and 3 free of charge. Hypercube only charges for steps 4, 5,
4 and 6. This process is also outlined in **Exhibit __ (RWM-1)**. This proceeding will
5 simply determine whether Hypercube (the switching carrier) will (1) be compensated
6 by DeltaCom (the revenue carrier) for functions 4, 5, and 6 or (2) be required to
7 provide functions 4, 5, and 6 for free.

8 **Q. What do you understand to be DeltaCom’s bases for expecting free service from**
9 **Hypercube?**

10 A. DeltaCom suggests that Hypercube is (1) charging an inflated rate for tandem access
11 and transport and then (2) unlawfully paying a portion of the revenues back to the
12 wireless carrier.

13 **Q. Are these claims valid?**

14 A. No. Hypercube’s rates are (1) just and reasonable, and (2) comparable to other
15 carriers’ access charges. Hypercube’s rates may look different from some other
16 LECs’ rates because Hypercube charges a blended or composite rate, but Hypercube
17 only bills for the services utilized as set forth in its filed price list. Moreover,
18 Hypercube’s rates have been capped for nearly three years. Fla. Stat. § 364.163

19 Because Hypercube has provided the services described in 4, 5, and 6 above,
20 Hypercube does not bill for the services described in 1, 2, and 3. Thus, any financial
21 arrangements between Hypercube and the wireless carrier on whose network these
22 calls began are irrelevant to whether DeltaCom should compensate Hypercube for the

1 services Hypercube provides to DeltaCom. Hypercube's rates are just and
2 reasonable.

3 **SECTION III – TENTATIVE DOCKET ISSUES**

4 **ISSUE 1**

5 **Q. What services, if any, are being provided by Hypercube to DeltaCom (or to**
6 **other carriers in the call flow) and how?**

7 **a. Do such services fit into the regulatory framework in Florida? If so, how?**

8 **b. Is it appropriate or lawful to include such services in Hypercube's price list?**

9 A. Hypercube provides competitive tandem services to DeltaCom (and other
10 telecommunications carriers) in Florida through Hypercube's price list. As explained
11 below, such services are appropriate, lawful, and enforceable when included in a
12 price list. Competitive tandem services are a form of "access services," or "switched
13 access services," that maintain the free-flow of communications among all
14 consumers, regardless of their service providers. Competitive tandem services are
15 effectively bridges that allow carriers to access each others' networks to complete
16 calls made by consumers, while enabling network and service diversity.

17 Historically, the ILECs have been the "default" tandem service providers
18 because there was no other option and therefore everyone interconnected with them.
19 Then as now, the ILECs billed carriers for tandem services pursuant to federal and
20 state access tariffs. When competition was in its infancy, this made sense for a
21 couple of reasons. First, because each of the ILECs operated the largest (dominant)
22 network in its traditional franchise area, it was critical for new entrants to
23 interconnect with the ILECs in order to reach end user customers of each of the other

1 providers. Second, the technology available in the 1980s and even the 1990s made it
2 relatively difficult for carriers to maintain robust interconnections with multiple
3 carriers.

4 As competition and technology has matured, however, our nation's
5 telecommunications infrastructure has become much more flexible, and it has become
6 much easier for carriers to maintain interconnections with multiple carriers and thus
7 has resulted in additional competition in the tandem-service segment of the
8 telecommunications market. Hypercube is able to connect different network
9 architectures and protocols, many of which are not switched or were switched
10 inefficiently by the ILECs. Thus, a carrier may choose to use Hypercube's tandem
11 services so that it can get its traffic to a variety of carriers without having to worry
12 about technology issues. Finally, Hypercube also offers to customize interconnection
13 facilities to better suit the other carriers' business needs, whereas the ILECs
14 ordinarily have established interconnection protocol from which they do not deviate.
15 Accordingly, it no longer makes sense for only the ILECs to provide tandem services.

16 In short, Hypercube provides DeltaCom "Switched Access Service" as
17 described in its price list and as further described in this testimony.

18 **Q. Can you describe the service as a general matter?**

19 A. The calls in dispute in this proceeding are toll-free calls destined for DeltaCom's
20 8YY customers. In the vast majority, but not in every case, the toll-free calls at issue
21 are made by consumers using their wireless telephones. The wireless carrier takes the
22 call to its switch, which is known as a Mobile Telecommunications Switching Office
23 ("MTSO"). These were steps 1, 2, and 3 from the example above.

1 Hypercube picks the 8YY calls up at the wireless carriers' MTSOs and
2 transports the calls at Hypercube's own expense (with the expectation that Hypercube
3 will be paid by the IXC) to Hypercube's switch. Hypercube then queries (or "dips") a
4 national database of 8YY numbers to determine the IXC that is responsible for the
5 toll-free call. Among other information, the database dip yields a Carrier
6 Identification Code ("CIC"), which is a code that identifies the IXC that serves the
7 customer to which the 8YY call must be directed. Hypercube then uses the CIC
8 information to determine the proper route for the IXC's call, and then Hypercube
9 transports the call either directly or indirectly to the IXC, depending on the method
10 elected by the IXC. These are steps 4, 5, and 6 in the example above, graphically set
11 forth in **Exhibit __ (RWM-1)**.

12 **Q. Is this the only way to route these toll free calls?**

13 A. No. Hypercube offers direct interconnection to all IXCs, which is Hypercube's
14 preferred method of delivering traffic to (and receiving traffic from) IXCs. In fact, in
15 excess of 90% of the minutes that cross Hypercube's network are delivered using
16 direct interconnection with the IXCs.

17 **Q. Has DeltaCom been afforded the opportunity to direct connect?**

18 A. Yes. Despite multiple invitations from Hypercube, DeltaCom has declined to directly
19 interconnect its network with Hypercube. Thus, Hypercube can only indirectly route
20 DeltaCom's 8YY traffic to DeltaCom (*i.e.*, through an ILEC with which DeltaCom
21 has chosen to interconnect) for ultimate termination to its subscriber. *See Exhibit __*
22 **(RWM-1)** (chart outlining call flow). Direct interconnection, however, would
23 eliminate ILEC costs represented in step 7. *Id.*

1 **Q. How necessary is the database dip to the process?**

2 A. Hypercube does not know the identity of each 8YY call's terminating IXC until after
3 Hypercube transports the call to its switch and performs the database dip to obtain the
4 unique CIC associated with the 8YY number. The wireless carrier *never* knows the
5 identity of the IXC associated with the toll-free call that the wireless carrier's
6 customer commenced. The dip is a required service for transporting an 8YY call to
7 the responsible IXC, regardless of which LEC performs the dip. It must be noted that
8 DeltaCom pays this charge if a carrier other than Hypercube, such as an ILEC, were
9 to perform this necessary service. Thus, DeltaCom's position that it receives this
10 service for free just because it was provided by Hypercube is unreasonable.

11 **Q. Do other carriers compete with Hypercube in the tandem services market?**

12 A. Yes. Although DeltaCom would like the Commission to believe that Hypercube's
13 services are unnecessary, and even unlawful, that is simply untrue. In addition to the
14 ILECs, Hypercube's primary competitors include Level 3, Neutral Tandem, and
15 Peerless Communications. Additionally, many other entities offer competitive
16 tandem services. *See Exhibit __ (RWM-2), Beacon Equity, Market Alert for Neutral*
17 *Tandem* (Dec. 10, 2009) (noting that, in addition to AT&T, Verizon and Qwest,
18 "[d]irect competition [to Neutral Tandem] comes from Level 3 Communications
19 LLC, Hypercube and Peerless Networks."). The fact that so many carriers have
20 entered the competitive tandem services space demonstrates that the
21 telecommunications industry needs and values these types of carriers and that there is
22 a market for their services.

1 When Hypercube determines that a particular call is destined for a DeltaCom 8YY
2 subscriber, however, Hypercube cannot simply refuse to deliver it because DeltaCom
3 refuses to interconnect like the overwhelmingly majority of IXCs that find value in
4 Hypercube's services. Rather, Hypercube must rely on the rates, terms, and
5 conditions in its Commission-approved price list to receive compensation for the
6 work it performs on behalf of the few IXCs like DeltaCom that refuse to directly
7 connect with Hypercube. Any contrary result would simply reward IXCs like
8 DeltaCom with free service.

9 **Q. Is your position supported by Florida Statutes and the Commission's rules?**

10 A. Yes. Section 364.163 defines "network access service" as "any service provided by a
11 local exchange telecommunications company to a telecommunications company
12 certificated under this chapter or licensed by the Federal Communications
13 Commission to access the local exchange telecommunications network..." Fla. Stat.
14 § 364.163 (emphasis added). There can be no dispute that Hypercube is a
15 competitive local exchange telecommunications company, as Hypercube was
16 certificated as such by the Commission. *See* Fla. Stat. § 364.02(5) ("Competitive
17 local exchange telecommunications company' means any company certificated by the
18 commission to provide local exchange telecommunications services in this state on or
19 after July 1, 1995."); *see also* Fla. Stat. § 364.337(1). Nor does DeltaCom dispute
20 that it is a "telecommunications company certificated under this chapter or licensed
21 by the Federal Communications Commission." Hypercube, as a competitive local
22 exchange telecommunications company, is therefore providing DeltaCom, a

1 telecommunications company (specifically an IXC), with “network access service” as
2 defined by Section 364.163 and under Section 364.02(5).

3 Furthermore, Commission Rule 25-24.825(1) states that each company subject
4 to the Commission’s CLEC rules “shall file and maintain with the Commission a
5 current price list” for “basic local telecommunications services, as defined in Section
6 364.02(2), F.S.” Additionally, Rule 25-24.825(2) provides that, “[a]t the company’s
7 option, price list information in subsection (1) above and other information
8 concerning the terms and conditions of service may be filed for services other than
9 basic local telecommunication services.” Hypercube complied with Rule 25-24.825
10 by filing with the Commission the price list which unambiguously sets forth the rates,
11 terms and conditions of the switched access services DeltaCom has taken from
12 Hypercube. I detail the exact provisions of Hypercube’s price list that are relevant to
13 this proceeding in the section analyzing Issue 2 below.

14 **Q. Does DeltaCom’s CLEC have an access services price list on file with the**
15 **Commission?**

16 A. Yes, DeltaCom has its own tandem services detailed in its own price list, which is
17 very similar to Hypercube’s. DeltaCom Price List § 3.1.3 (describing DeltaCom’s
18 “Tandem Connect Access” service which “applies when the customer has no direct
19 facilities to the End Office Switch”). DeltaCom has never provided an explanation
20 for why it can provide competing tandem services via its price list, but Hypercube
21 cannot.

ISSUE 2

1
2 **Q. Does the filed rate doctrine apply to this case and if so, how should it be applied?**

3 A. Yes, the filed rate doctrine applies to Hypercube's price list in this case and requires
4 DeltaCom to pay Hypercube for the services Hypercube has provided DeltaCom
5 under Hypercube's filed price list.

6 **Q. What is the filed rate doctrine and does it apply to Hypercube's price list?**

7 A. The long-standing filed rate doctrine embodies the principle that a validly filed tariff
8 or price list has the force of law, and may not be challenged for unreasonableness or
9 retroactive refunds, except upon direct review of an agency's endorsement of the rate.

10 *E.g., Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 117 (1990);

11 *Telecom International America, Ltd. v. AT&T Corp.*, 67 F. Supp. 2d 189, 216-17

12 (S.D.N.Y. 1999); *MCI Telecommunications Corp. v. Dominican Communications*

13 *Corp.*, 984 F. Supp. 185, 189 (S.D.N.Y. 1997).

14 The filed rate doctrine is motivated by two principles. It (1) prevents carriers
15 from engaging in price discrimination between ratepayers, and (2) preserves the
16 exclusive role of regulatory agencies in approving reasonable rates for

17 telecommunications services. *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2d Cir.

18 1998). Thus, if a carrier such as DeltaCom receives services under a filed price list,

19 only the rate contained in the price list for that service will apply. The filed rate

20 doctrine is applied strictly, and it requires a party that receives tariffed services to pay

21 the filed rates, even if that party is dissatisfied with the rates or services, or even

22 alleges fraud or other defenses otherwise available in traditional breach-of-contract

23 actions. *Marcus*, 138 F.3d at 58-59.

1 **Q. Does the filed rate doctrine apply in Florida?**

2 A. Yes. Florida courts and this Commission have uniformly recognized the applicability
3 of the filed rate doctrine in proceedings such as this case. The United States District
4 Court for the Northern District of Florida has ruled that:

5 where a legislature has established a scheme for utility rate-making,
6 the rights of the rate-payer in regard to the rate he pays are defined by
7 that scheme.... A tariff filed with a regulatory agency has the force
8 and effect of law as to services arising under it, and supersedes all
9 other agreements between the parties. The utility that files the rate
10 cannot be held liable for any representations contrary to the tariff.
11 Once the tariff is approved, the rate must be charged and paid
12 regardless of mistake, inadvertence or contrary intention of the
13 parties.

14 *BellSouth Telecomms., Inc. v. Kerrigan*, 55 F. Supp. 2d 1314, 1318 (N.D. Fla. 1999)
15 (internal quotations and citations omitted).

16 The Florida Supreme Court has recognized the applicability of the doctrine.
17 *BellSouth Telecomms., Inc. v. Jacobs*, 834 So.2d 855 (Fla. 2002). The Court there
18 said that “once a tariff is filed by a carrier and accepted by the Commission, it has the
19 force and effect of law.” *Id.* at 859 (internal quotations and citations omitted).
20 Finally, this Commission in the *MCI Communications Services, Inc.* order has found
21 that “tariffs ... carry the force and effect of law and are enforceable by the
22 Commission.” *In re MCI Communications Services, Inc.*, PSC-08-0752-PCO-TP,
23 2008 WL 6347289 at *1 (Fl. P.S.C. Nov. 13, 2008).

24 **Q. Are there any decisions that expressly address the filed rate doctrine as applied**
25 **to CLEC access charge issues?**

26 A. Yes. The FCC reaffirmed and expressly applied the filed rate doctrine to CLEC
27 access charges in its *Seventh Report and Order*, explaining that “[t]ariffs require
28 IXC’s to pay the published rate for tariffed CLEC access services, absent an

1 agreement to the contrary or a finding by the Commission that the rate is
2 unreasonable.” *Seventh Report and Order*, at ¶ 28. The FCC later made clear that its
3 holding above applied to CLECs acting as intermediate carriers delivering calls from
4 wireless carriers to IXCs. *Eighth Report and Order*, at ¶¶ 16-17. Specifically, the
5 FCC stated that while “a competitive LEC has no right to collect access charges for
6 the portion of the service provided by the [wireless] provider, it can charge the IXC
7 for access components at rates comparable to those charged by [the competing ILEC]
8 for the same functions.”

9 **Q. So, how should the filed rate doctrine be applied to the present case?**

10 A. Both federal and state law are therefore in accord: Hypercube’s price list on file with
11 the Commission binds IXCs like DeltaCom to the rates, terms, and conditions
12 contained in the price list if the IXC receives services under it. DeltaCom’s
13 arguments regarding Hypercube’s network access arrangements with wireless carriers
14 do not in any way alter the services that Hypercube provides to DeltaCom.
15 Hypercube’s rates are just and reasonable.

16 The only document that matters for purposes of the filed rate doctrine is the
17 price list. The only determination necessary is whether the carrier performed the
18 services in the price list and charged the rates in the price list. Neither of those two
19 essential elements can be disputed here. Again, this case is really that simple.
20 Hypercube has provided DeltaCom with services unambiguously defined in its price
21 list, yet DeltaCom refuses to pay for these services. The filed rate doctrine compels
22 the conclusion that DeltaCom is required to pay Hypercube’s rates per Hypercube’s
23 price list.

1 **Q. What services does Hypercube provide to DeltaCom pursuant to its**
2 **Commission-approved price list?**

3 A. Hypercube provides DeltaCom with Switched Access Service pursuant to
4 Hypercube's price list.

5 Hypercube's price list defines Hypercube's "Switched Access Service" as one
6 that "provides for the use of common terminating, switching and transport facilities."
7 Hypercube Price List § 3.1. "Switched Access Service," Hypercube's price list
8 continues, "provides the ability to originate calls from an End User to a Customer,
9 and to terminate calls from a Customer to an End User." *Id.*

10 An "End User" under Hypercube's price list is defined as any
11 telecommunications service provider's subscriber:

12 End User: Any individual ... which subscribes to local exchange
13 services, interexchange services, CMRS, VOIP services, or other
14 telecommunications service provided by an Exchange Carrier,
15 Common Carrier, Wireless Provider, VOIP Provider or other provider
16 of services that transit the Company's facilities.

17 *Id.* § 1 (Definition of "End User"). In other words, anyone making a phone call that
18 traverses Hypercube's facilities, regardless of whether the call began on Hypercube's
19 network or another carrier's network, is an "End User" that implicates Hypercube's
20 price list. "End User" expressly includes wireless subscribers. As explained below,
21 DeltaCom is a Customer under Hypercube's price list. Thus, Hypercube is providing
22 "Switched Access Service" pursuant to Hypercube's price list when Hypercube routes
23 a call from a wireless subscriber (an End User) to DeltaCom (a Customer), regardless
24 of whether the call began on Hypercube's network.

25 Moreover, in case there was any doubt, Section 1.0 of Hypercube's price list
26 defines "Switched Access Service" as follows:

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

5 Hypercube Price List § 1 (Definition of “Switched Access Service”).

6 Section 1.0 of Hypercube’s price list further defines “Exchange
7 Carrier” as follows:

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

12 Accordingly, here, both the wireless carriers and Hypercube qualify as
13 “Exchange Carriers” for purposes of the price list’s definition of Switched Access
14 Service. Further, Section 1.0’s definition of “Carrier or Common Carrier” refers to
15 the definition of an “Interexchange Carrier” or an “Exchange Carrier.” And Section
16 1.0 defines an “Interexchange Carrier or Interexchange Common Carrier” as follows:

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

22 DeltaCom meets the definition of Interexchange Carrier under Hypercube’s
23 price list, and indeed, DeltaCom does not dispute that it is the responsible
24 Interexchange Carrier for the 8YY traffic that Hypercube sends to DeltaCom for
25 termination to DeltaCom’s 8YY customers.

26 Thus, Hypercube provides DeltaCom Switched Access Service pursuant to the
27 terms of Hypercube’s price list.

28 **Q. Are there any other applicable price list provisions?**

1 A. There are two additional provisions of Hypercube's price list that demonstrate
2 that Hypercube is unambiguously providing DeltaCom Switched Access
3 Service as defined in its price list. Section 3.2.3 defines the types of Switched
4 Access Service provided by Hypercube pursuant to its price list:

5 Call Types: the following Switched Access Service call types are
6 available:

- 7 A. Originating FG Access
- 8 B. Originating 800 FG Access
- 9 C. Terminating FG Access

10 Section 3.2.5 defines "Originating 800 FG Access," which is the call
11 type of Switched Access Service provided by Hypercube to DeltaCom
12 relevant to this dispute. Section 3.2.5 provides in relevant part:

13 Originating 800 FG Access

14 ...

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

20 *Id.* § 3.2.5.

21 Originating 800 FG Access also includes the database dip service, described
22 in step 5 in the example in my statement of the case. Hypercube's price list provides
23 that "the Company will utilize the Signaling System 7 (SS7) network to query an 800
24 data base to identify the Customer to whom the call will be delivered.... A Basic or
25 Vertical Feature Query charge is assessed for each completed query returned from the
26 data base to identify the Customer to whom the call will be delivered whether or not
27 the actual call is delivered to the Customer."

1 Consistent with the foregoing, when Hypercube carries 8YY traffic from a
2 wireless carrier's network or other entity's network (*i.e.*, an Exchange Carrier) to
3 DeltaCom (*i.e.*, an Interexchange Carrier Customer), including when Hypercube
4 performs the database dip, Hypercube is providing DeltaCom with Switched Access
5 Service. Specifically, Hypercube is providing the call type Originating 800 FG
6 Access, as set forth in Hypercube's price list. Thus, Hypercube provides the ability to
7 originate calls from an End User (wireless carrier subscriber) to a Customer
8 (DeltaCom). Hypercube's price list unambiguously covers the Switched Access
9 Services that Hypercube has provided DeltaCom.

10 Under the filed rate doctrine, because Hypercube has provided services to
11 DeltaCom pursuant to a filed price list, Hypercube is entitled to payment under the
12 rates in Hypercube's price list. I describe the rates involved later in my testimony in
13 Issue 6. In short, the rates fully comply with all applicable law and should be
14 enforced.

15 **Q. Has DeltaCom ordered service from Hypercube in accordance with the terms**
16 **and condition of Hypercube's price list?**

17 A. Yes. As is standard in the industry, Hypercube's price list provides two means for a
18 Customer to order service. First, a Customer may submit a written Access Service
19 Request to Hypercube. *See* Hypercube Price List § 1.0, Definition: "Access Service
20 Request." Second, a Customer may make a Constructive Order for service. *Id.* §§
21 2.1.3.B; 2.1.3.E; 2.5.1.

1 DeltaCom orders service from Hypercube through the Constructive Order
2 method. In relevant part, Section 1.0 of Hypercube's price list defines "Constructive
3 Order" as follows:

4 Constructive Order: Delivery of calls to or acceptance of calls from
5 the Company's locations constitutes a Constructive Order by the
6 Customer to purchase switched access services as defined herein.

7 Hypercube delivers to DeltaCom the 8YY calls for which DeltaCom is responsible.
8 DeltaCom accepts these calls and delivers them to DeltaCom's End Users. DeltaCom
9 has never blocked or rejected calls from Hypercube. DeltaCom has completed the
10 calls sent from Hypercube's locations to DeltaCom, and continues to complete such
11 calls. Therefore, DeltaCom has accepted, and continues to accept, calls from
12 Hypercube's locations. DeltaCom also bills its subscribers for the for-profit 8YY
13 service that DeltaCom provides.

14 Moreover, Hypercube's tariff makes clear that DeltaCom's self-help – by
15 taking Hypercube's services but refusing to pay *anything* for them – is prohibited. *Id.*
16 § 2.5.2 ("Any disputed charges must be paid when due. After the dispute is settled,
17 the Customer will be credited with any payments in excess of those actually due the
18 Company.").

19 DeltaCom accepts calls from Hypercube's network, and accordingly, there
20 can be no doubt that DeltaCom has issued a Constructive Order for Hypercube's
21 tariffed switched access services. DeltaCom has constructively ordered Hypercube's
22 service.

23 **Q. Why do you say that constructive orders are standard in the telecommunications**
24 **industry?**

1 A. Constructive ordering provisions are common in the industry because of the benefits
2 they provide to carriers and consumers alike. As this Commission and others have
3 noted, it is imperative that calls flow across networks from the calling party to the
4 called party. Constructive ordering supports the ubiquity and seamlessness of the
5 telephone network in Florida and throughout the nation. This is particularly true with
6 toll-free services. When a party subscribes to toll-free service from DeltaCom (or any
7 8YY provider, for that matter), it is purchasing the ability to receive calls from any
8 person over any carrier's network. By offering 8YY service to its subscribers,
9 DeltaCom is promising that any North American caller can reach DeltaCom's 8YY
10 subscriber toll free. In other words, by offering 8YY service in the first place, IXCs
11 necessarily need to avail themselves of any and potentially every carrier's network to
12 make that for-profit service marketable. Constructive-ordering provisions make that
13 8YY service possible by significantly lowering the transaction costs *ex ante*, for with
14 constructive order the IXC simply pays via regulated tariffs or price lists for whatever
15 access services its for-profit services engender on the networks of the other carriers
16 that provide the inputs that made that IXC's 8YY service possible in the first place.

17 Thus, without constructive ordering, a provider of 8YY services would have
18 to submit Access Service Requests to every access provider in the country before
19 being able to offer a comprehensive 8YY service. Moreover, every time a carrier
20 added a new switch or a company merged with another company, whole new rounds
21 of Access Service Requests would have to be issued before traffic could flow
22 properly. Consumers also would be harmed by not being able to make 8YY calls to
23 an unknown number of 8YY telephone numbers.

1 It is for these reasons that constructive-ordering provisions are commonplace
2 in access service tariffs and price lists of ILECs and CLECs alike throughout the
3 country. Indeed, DeltaCom's CLEC price list also provides for constructive ordering.
4 Section 1 of DeltaCom's price list defines "Constructive Order" in relevant part as
5 follows:

6 Constructive Order: Delivery of calls to or acceptance of calls from
7 the Company's locations either by direct trunking or an alternate
8 (indirect) route constitutes a Constructive Order by the Customer to
9 purchase switched access services as described herein.

10 This definition is nearly identical to Hypercube's. And, DeltaCom's price list has
11 other similar provisions for constructively ordering DeltaCom's tandem services.
12 DeltaCom Price List § 3.1.3 ("Delivery of calls to, or acceptance of calls from, the
13 Customer's End User locations(s) via Company-provided Tandem Connect Access
14 Services shall constitute a Constructive Order and an agreement by the Customer to
15 purchase the Company's switched access services as described and priced herein.").
16 Many carriers have similar constructive order provisions. DeltaCom's own practices
17 (and the common practice of the industry) demonstrate that constructive-order
18 provisions in a price list are lawful and reasonable.

19 **Q. Is DeltaCom a customer under Hypercube's price list?**

20 **A.** Yes. Section 1.0 of Hypercube's price list defines the term "Customer" as follows:

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

27 With regard to the calls in dispute in this case, DeltaCom is an interexchange carrier.

28 As noted above, DeltaCom constructively ordered the services provided by

1 Hypercube, which also makes DeltaCom a “Customer.” There can be no dispute that
2 DeltaCom falls within the definition of a “Customer” under Hypercube’s price list.

3 Section 2.1.3.E of Hypercube’s Price List also states:

4 A Customer that uses access services provided by [Hypercube]
5 without submitting an actual order will be presumed to have ordered
6 access services by using said services and charging its End User for
7 retail services that could not be provided without the use of access
8 services.

9 As noted above, DeltaCom is a Customer under the price list, and DeltaCom
10 provides its 8YY service to End Users. Also as noted above, Hypercube carries 8YY
11 calls from wireless carriers’ networks to Hypercube’s switch. Once the 8YY call is in
12 Hypercube’s switch, Hypercube performs a database dip, which returns the unique
13 CIC associated with the IXC responsible for the toll-free call. In cases where
14 database dips yield a CIC assigned to DeltaCom, Hypercube routes the call to
15 DeltaCom. DeltaCom therefore could not have provided retail 8YY service to its
16 subscribers without the integral services Hypercube has provided for the calls at issue
17 in this proceeding.

18 **Q. Can DeltaCom also rely upon the filed rate doctrine to effectively cancel out the**
19 **charges lawfully imposed on it by Hypercube?**

20 A. No. As I explain more fully below in analyzing Issue 7, DeltaCom provides no
21 service, in its price list or otherwise, to Hypercube during the flow of its customers’
22 8YY call. As the example earlier in my testimony demonstrates, at no point does
23 DeltaCom provide any service to anyone other than its own 8YY subscribers. It is a
24 common-sense notion that DeltaCom cannot put a non-existent service in its price list
25 in order to punitively offset the charges Hypercube lawfully charges DeltaCom for
26 the work Hypercube performs. Moreover, the regulatory framework for 8YY calls

1 has always mandated that a carrier offering 8YY service must recoup any costs for
2 such service solely from its 8YY subscriber, *i.e.*, the called party. A carrier cannot
3 put in a price list a “service” that directly conflicts with regulations pursuant to which
4 a tariff is filed. Finally, DeltaCom has only charged Hypercube for this service and
5 no other carrier, which is undoubtedly discriminatory and unlawful. The filed rate
6 doctrine enforces only valid price lists. For these reasons, DeltaCom cannot seek to
7 shield its unlawful conduct under the filed rate doctrine.

8 **ISSUE 3**

9 **Q: What are the proper procedures regarding Percent Interstate Usage under**
10 **Hypercube’s price list and were those procedures followed? Which Percent**
11 **Interstate Usage should have been applied?**

12 A: Carriers like Hypercube routinely perform access service involving millions or
13 billions of calls for customer-carriers. When Hypercube performs work pursuant to
14 its price list or tariff, it is entitled to bill for that service. If a call is interstate,
15 Hypercube bills rates under its interstate tariff. If a call is intrastate, Hypercube bills
16 rates under its intrastate price list. Interstate calls are calls that begin in one state and
17 end in another state, while intrastate calls begin and end in the same state. The
18 manner in which a call is routed through the telecommunications network does not
19 affect the jurisdiction of a call, *i.e.*, a call between two points within the same state is
20 an intrastate call even if it is routed through another state. The Commission has also
21 found that the jurisdiction and compensation of a call shall be based on its end points.
22 *In re KMC Telecom III LLC*, Docket No. 041144-TP, PSC-05-1234-FOF-TP, 2005
23 WL 3598148, at *12 (Fl. P.S.C. Dec. 19, 2005). DeltaCom agrees with these

1 principles, as they are contained in DeltaCom's own price list. DeltaCom Price List
2 § 2.19.2(A).

3 Rather than have the carrier-customers go call-by-call through millions or
4 even billions of calls to determine which calls were interstate and which calls were
5 intrastate for billing purposes, it is common industry practice to provide in price lists
6 or tariffs for so-called jurisdictional reporting where the customer reports a Percent
7 Interstate Usage ("PIU") to the billing carrier.

8 Hypercube's price list outlines the procedures for jurisdictional reporting in
9 Section 2.3.3. As stated in Hypercube's price list, "[w]hen a Customer orders Access
10 Service or uses Access Service based upon a Constructive Order, its projected Percent
11 Interstate Usage (PIU) must be provided in whole numbers to the Company."

12 Hypercube Price List § 2.3.3. As described above in Issue 2, DeltaCom is a
13 Customer that uses Access Service based upon a Constructive Order as outlined in
14 Hypercube's price list. Thus, DeltaCom is required to submit a PIU to Hypercube per
15 the terms of Hypercube's price list. For purposes of comparison, DeltaCom's
16 procedures for reporting a PIU are outlined in Section 2.19 of its switched access
17 price list. While DeltaCom's provisions in its price list relating to PIUs are similar, in
18 many ways they are much harsher than Hypercube's procedures as described below.

19 **Q: What is a PIU?**

20 A: The PIU stands for Percent Interstate Usage and is the percentage of the customer's
21 traffic that is interstate. It is industry practice for a carrier-customer to estimate the
22 PIU through a review of its own data and then submit the PIU to the billing carrier.
23 Then, according to their tariff or price list, the billing carrier divides up the total calls

1 by using the customer-reported PIU to determine what percentage of the traffic was
2 made up of interstate calls and what portion was made up of intrastate calls. For
3 example, a customer may report a 55% PIU, which the carrier providing service
4 would then bill the customer at 55% interstate and 45% intrastate. Hypercube's price
5 list requires that a customer-carrier send an updated PIU every quarter, but if no PIU
6 is submitted, the PIU from the prior quarter is used. Hypercube Price List § 2.3.3.E.
7 Thus, Hypercube applies the initial PIU submitted by a customer-carrier until that
8 customer-carrier submits an updated PIU.

9 **Q: What happens if a customer does not report a PIU?**

10 A: Most carriers provide for a "default PIU" in their price lists or tariffs. Hypercube
11 applies a default PIU when it has not received a PIU from the customer-carrier.
12 Hypercube Price List §§ 2.3.3.A-C. Hypercube's price list provides for a default PIU
13 of 50%, meaning Hypercube would bill the customer-carrier as if 50% of the traffic
14 was interstate and 50% of the traffic was intrastate. *Id.* In contrast, DeltaCom's price
15 list provides for a 0% default PIU, meaning DeltaCom would bill as if 0% of the
16 traffic was interstate and 100% of the traffic was intrastate. DeltaCom Price List
17 § 2.19.2(B). Thus, DeltaCom treats all of the traffic as if it were intrastate under its
18 default PIU. This is advantageous to DeltaCom because DeltaCom's intrastate rates
19 are generally higher than DeltaCom's interstate rates. Also, unlike Hypercube,
20 DeltaCom reverts back to the 0% default PIU if a customer-carrier does not send an
21 updated PIU on a quarterly basis. *Id.* Again, this allows DeltaCom to charge its
22 higher intrastate rates. Hypercube simply maintains the previously reported PIU and
23 does not revert to the default PIU. Hypercube Price List § 2.3.3.D-E. DeltaCom's

1 complaints about the PIU provisions in Hypercube's price list are *not well taken*
2 when the more favorable PIU provisions of Hypercube's price list are compared to
3 DeltaCom's price list. DeltaCom's PIU provisions are much harsher and subject
4 more traffic to higher rates.

5 **Q: What are the PIU dispute procedures in Hypercube's price list?**

6 A: Hypercube's price list states that, "For Switched Access Service, if a billing dispute
7 arises or a regulatory commission questions the projected PIU factor, the Customer
8 will provide the data issued to determine the projected PIU factor. The Customer will
9 supply the data within 30 days of the Company request." Hypercube Price List
10 § 2.3.3.F. Read together and read logically, those two sentences place two
11 independent obligations on a customer-carrier. First, the plain language requires a
12 customer to provide the data that supports their PIU if a dispute arises ("the Customer
13 will provide the data..."). Second, if the Company requests the data, the customer
14 will provide it within 30 days.

15 Furthermore, Hypercube's price list also allows Hypercube to initiate an audit
16 at its discretion to verify a PIU. *Id.* § 2.3.4.B. ("Initiation of an audit will be at the
17 sole discretion of the Company."). An audit is not required – it is discretionary.
18 Again, if a customer-carrier does not submit a PIU, the default PIU is used until a PIU
19 is submitted. *Id.* § 2.3.3.A-C.

20 **Q. Did DeltaCom submit a PIU to Hypercube?**

21 A: No. DeltaCom submitted a letter to Hypercube which purported to submit a PIU of
22 100%, meaning DeltaCom reported that all of its traffic was interstate. DeltaCom
23 Am. Petition, Ex. C. Besides the fact that it would be almost impossible for all of the

1 millions of calls for which Hypercube would have provided DeltaCom access service
2 to be solely interstate, DeltaCom's reported PIU was not based on any estimate or
3 review of data by DeltaCom. Instead, DeltaCom based its reported 100% PIU on
4 several factors that have nothing to do with an estimate of how much traffic was
5 interstate. DeltaCom's reported 100% PIU was based on (1) the "parties'
6 compromise and settlement agreement," (2) "[b]ecause the jurisdiction of wireless
7 calls to tollfree numbers cannot be determined with certainty" and (3) "in
8 [DeltaCom's] view, there is regulatory uncertainty surrounding the practices of
9 [Hypercube]." DeltaCom Am. Petition, Ex. C. DeltaCom further claimed that the
10 100% reported PIU "most closely approximates the terms of our compromise and
11 settlement agreement..." *Id.*

12 There is no "compromise and settlement agreement" between DeltaCom and
13 Hypercube. Therefore, Hypercube responded to DeltaCom's letter by stating the
14 obvious: because the basis upon which DeltaCom reported a 100% PIU did not exist,
15 DeltaCom had not reported a PIU to Hypercube. DeltaCom Am. Petition, Ex. D.
16 DeltaCom's other bases for its reported 100% PIU are also meaningless. The reason
17 companies, including DeltaCom, have PIU provisions in their price lists in the first
18 place is because jurisdiction cannot be determined with certainty; that uncertainty
19 does not justify a 100% PIU. *See e.g.*, DeltaCom Price List § 2.19.1(B) ("When the
20 Company receives insufficient call detail to determine the jurisdiction, the Company
21 will apply the Customer's projected PIU factor to apportion the usage between
22 interstate and intrastate."); Hypercube Price List § 2.3.3 ("Reported or default PIU
23 factors are used only where the call detail is insufficient to determine the appropriate

1 jurisdiction of the traffic.”). DeltaCom’s view of Hypercube’s business is also no
2 basis for which to report a 100% PIU. In short, DeltaCom never reported a PIU based
3 on data, as required by Hypercube’s price list. Hypercube Price List § 2.3.3.F

4 Because DeltaCom had not reported a PIU, Hypercube was entitled to rely on
5 the default PIU provisions of its price list described above. Hypercube assigned a
6 default 50% PIU to DeltaCom’s traffic. *Id.* Hypercube invited DeltaCom to submit a
7 valid PIU, but DeltaCom has not done so.

8 **Q: Is Hypercube required to request an audit?**

9 A: No. As described above, an audit is a discretionary method by which Hypercube can
10 verify whether a customer-reported PIU is supported by data. Hypercube was not
11 required to request an audit of DeltaCom’s reported 100% PIU because it was not
12 based on any data reviewed by DeltaCom. Instead, DeltaCom’s report 100% PIU
13 was based only on a nonexistent compromise and settlement agreement, and its
14 arguments about jurisdiction and Hypercube’s business practices. There was nothing
15 for Hypercube to audit because DeltaCom never reported a PIU.

16 Moreover, Hypercube’s price list requires a customer to provide the data
17 issued to support its reported PIU if a billing dispute arises. Hypercube Price List
18 § 2.3.3.F. DeltaCom has never provided data that supports its reported 100% PIU.
19 That is no doubt because DeltaCom has no data in support.

20 **Q. Does a default PIU violate federal law?**

21 A: No. I understand that DeltaCom argues that a default PIU would allow the imposition
22 of access charges on intra-MTA wireless-originated traffic which is barred under
23 federal law. DeltaCom Am. Petition at 14 n.14. DeltaCom’s arguments on this point

1 are remarkable in light of the fact that DeltaCom would treat *all* traffic as intrastate
2 under its default 0% PIU which would subject all traffic, including interstate and
3 intra-MTA wireless-initiated traffic, to intrastate access charges. DeltaCom Price List
4 §§ 2.19.2(B); 3.7.10 (“If the [wireless] provider fails to provide the billing records or
5 verifiable reports required under this section, the Company will apply a default
6 percent interMTA of 100% (and a default PIU of 0% on all interMTA traffic), on all
7 traffic originated by the [wireless] provider for termination by the Company.”). Thus,
8 to the extent DeltaCom complains about Hypercube’s default PIU, DeltaCom’s own
9 default 0% PIU would also need to be invalidated as violating federal law. Finally, as
10 explained elsewhere in this testimony, Hypercube is not imposing access charges for
11 intraMTA wireless traffic.

12 **Q: Which Percent Interstate Usage should have been applied?**

13 A: Hypercube’s default PIU of 50% should have been applied and should apply until
14 DeltaCom submits a valid PIU supported by data to Hypercube. As shown above,
15 DeltaCom has not followed the procedures in Hypercube’s price list for providing a
16 valid PIU. In fact, DeltaCom has never provided a PIU to Hypercube. Hypercube is
17 entitled to rely upon its default PIU of 50% under its price list. Accordingly,
18 Hypercube has charged DeltaCom for the services it has provided DeltaCom
19 according to Hypercube’s default 50% PIU as set forth in its price list.

20 **ISSUE 4**

21 **Q. Do payments by Hypercube to wireless carriers violate any state or federal law?**
22 **What action, if any, should the Commission take with respect to such payment?**

1 A. Hypercube's payments to wireless carriers through contracts that Hypercube has with
2 wireless carriers violate no state or federal law. Hypercube's contracts are entirely
3 lawful and a common practice in the industry. *See Petitions of Sprint PCS and AT&T*
4 *Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling,
5 17 FCC Rcd. 13192 ¶ 7 (2002) (“[i]n a detariffed, deregulated environment such as
6 this one, carriers are free to arrange whatever compensation arrangement they like for
7 the exchange of traffic.”). Such contracts have never been declared unlawful. The
8 Commission should take no action on such payment.

9 Hypercube's arrangements with wireless carriers have no bearing whatsoever
10 on DeltaCom's obligation to pay switched access charges for the service provided by
11 Hypercube pursuant to Hypercube's price list. Put another way, if Hypercube is
12 entitled to charge a nickel for its services under its price list and only charges a
13 nickel, this Commission does not regulate and has no jurisdiction to determine
14 whether it is appropriate for Hypercube to pay a penny to the wireless carrier, pay a
15 penny to its employees, use a penny to improve its network, or give a penny to a
16 charitable cause. As long as Hypercube only charges a nickel for the services it
17 provides to DeltaCom, everything else should be irrelevant. Hypercube's price list is
18 the only document that matters.

19 **ISSUE 5**

20 **Q. Did the bills rendered to DeltaCom comply with applicable law? If not, what**
21 **action, if any, should the Commission take?**

22 A. Yes, Hypercube's bills have always complied with applicable law. Hypercube's
23 invoices have always accurately reflected the correct minutes of use and rate in

1 Hypercube’s price list. DeltaCom has never complained that Hypercube charged an
2 inaccurate number of minutes, an inaccurate number of database dips, or at rates not
3 in Hypercube’s price list.

4 Instead, DeltaCom argues that the bills rendered by Hypercube have not
5 reflected the proper name of Hypercube and that Hypercube cannot rely on the price
6 list issued under Hypercube’s former name KMC Data LLC (“KMC Data”) to bill
7 DeltaCom. Hypercube has never had its price list voided, and, in fact, updated its
8 price list when its name changed (a change which was acknowledged and approved
9 by the Commission). A company has every right to pursue obligations owed to the
10 company, even when it had a different name. *See, e.g., Sealcell Corp. v. Berry*, 112
11 Fla. 342, 343, 150 So. 634, 634 (1933) (“The change in the name of a corporation has
12 no effect whatever upon its property, rights, or liabilities.”). Any suggestion
13 otherwise is contrary to law and common sense. DeltaCom itself has filed lawsuits
14 seeking to collect on obligations owed to it under a former name, yet it absurdly
15 argues that Hypercube cannot in this proceeding. DeltaCom’s excuses for
16 nonpayment are just that — and DeltaCom’s obligation to pay for the services it uses
17 remains.

18 **ISSUE 6**

19 **Q. Do the rates, terms, and conditions in Hypercube’s price list comply with**
20 **applicable law? Which rates, terms, and conditions, if any, apply to DeltaCom**
21 **and how do they apply?**

22 A. Yes, Hypercube’s price list has rates, terms, and conditions that fully comply with all
23 applicable laws. The rates, terms, and conditions as written in Hypercube’s price list

1 apply to DeltaCom. As I described earlier in my testimony, Hypercube provides and
2 has provided “Switched Access Service” to DeltaCom pursuant to Hypercube’s price
3 list. Hypercube Price List § 3.1. Switched Access Service includes the call type
4 “Originating 800 FG Access.” *Id.* § 3.2.3; 3.2.5. DeltaCom is a “Customer” and has
5 constructively ordered this service. *Id.* §§ 2.1.3.B; 2.1.3.E; 2.5.1. In sum, Hypercube
6 provided its customer DeltaCom services described in Hypercube’s price list, which
7 DeltaCom constructively ordered.

8 **Q. Who is responsible for paying Hypercube’s rates?**

9 A. As Hypercube’s price list makes clear, the Customer is responsible for paying the
10 charges that are outlined in Hypercube’s price list. Hypercube Price List § 2.3.1.A
11 (“The Customer shall be responsible for: the payment of all applicable charges
12 pursuant to this tariff.”). As noted elsewhere in this testimony, DeltaCom is a
13 Customer under Hypercube’s price list and, therefore, DeltaCom is responsible for
14 paying all applicable charges in Hypercube’s price list.

15 **Q. What rates apply to the services that Hypercube has provided DeltaCom?**

16 A. Section 4 of Hypercube’s price list details the rates that Hypercube may charge for
17 Switched Access Services, including the call type Originating 800 FG Access.
18 Section 4.4.1 of Hypercube’s price list makes expressly clear that Hypercube “bills
19 originating and terminating access per minute as a blended rate,” and that the rate for
20 all such access service was a blended rate of \$0.025 per minute. Hypercube Price
21 List § 4.4.1. The price list further makes clear that those are the only two “rate
22 categories” for Hypercube’s switched access service, regardless of which call type

1 was at issue (*i.e.*, Originating FG Access, Originating 800 FG Access, or Terminating
2 FG Access). *Id.*

3 The third and final rate category, 800 Data Base Access Service, is the
4 additional data base query charge (the “dip” in step 5 above) that “will apply for each
5 Toll-Free 8XX call query received at the Company’s ... Toll-Free 8XX data base.”
6 *Id.* § 4.2.2. Hypercube has charged the Basic query charge which is \$0.005 per
7 query. *Id.*

8 Thus, Hypercube is entitled to charge DeltaCom for Switched Access Service
9 provided to DeltaCom pursuant to Hypercube’s price list at a \$0.025 per minute rate,
10 along with \$0.005 per dip, for the work that Hypercube performs in routing 8YY
11 traffic to DeltaCom. Under the unambiguous terms of Hypercube’s price list,
12 Hypercube has been providing DeltaCom with Switched Access Service for
13 prescribed “call types” under the proper “rate categories.” It is important to note,
14 however, that Hypercube does not charge for any work that any other carrier
15 performs, whether it be the wireless carrier, the ILEC, or the IXC. Hypercube only
16 charges for steps 4, 5, and 6 described in my example. *Id.* § 3.2.5 (“The Company
17 will charge for all elements of service that it provides in routing such traffic.”)
18 (emphasis added). Nowhere does Hypercube’s price list purport to charge for
19 anything other than the work performed by Hypercube. Hypercube has never charged
20 any other carrier for work performed by the wireless carrier.

21 **Q. Does Hypercube’s blended rate change the analysis as to the services that**
22 **Hypercube has provided DeltaCom?**

1 A. No. Hypercube's blended rate is "based on aggregate traffic volumes from the
2 following cost categories:"

3 Switched Transport

4 The Switched Transport cost category establishes the charges related
5 to the transmission and tandem switching facilities between the
6 Customer designated premises and the end office switch(es) where the
7 Customer's traffic is switched to originate and terminate the
8 Customer's communications.
9

10 Switching – (End Office, Tandem or both)

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

16 Hypercube Price List § 4.2.1. Thus, Hypercube's blended rate incorporates all of the
17 elements of service that Hypercube provides DeltaCom related to Switched Access
18 Service.

19 The "Switched Transport" cost category includes the "transmission and
20 tandem switching" provided when Hypercube transports 8YY traffic between the
21 wireless carriers' switch and DeltaCom's designated premises. The "Switching –
22 (End Office, Tandem or both)" cost category includes the tandem switching functions
23 provided by Hypercube in routing the traffic to DeltaCom. Notably, the "Switching –
24 (End Office, Tandem or both)" cost category is made up of many elements, but is
25 expressed in the disjunctive "or" – those elements are not all being charged by the
26 blended rate. In sum, the blended rate takes many different elements of comparable
27 value that could be provided by Hypercube and combines them into one rate. But, the
28 blended rate does not purport to charge for every element every time. Hypercube
29 never charges for any work performed by any other carrier.

1 Thus, it is apparent that the blended rate combines appropriate cost categories,
2 but does not purport to include every possible element. There is no textual support in
3 Hypercube's price list for any notion that Hypercube charges for functionalities that
4 Hypercube has not actually provided. Like DeltaCom has in its own price list,
5 Hypercube has simply combined several elements into one rate, which is common
6 industry practice and has never been prohibited by the Commission.

7 **Q. Which rates, terms, and conditions, if any, apply to DeltaCom and how do they**
8 **apply?**

9 A. As described above, Hypercube's price list contains the rates that apply to the access
10 services DeltaCom has been receiving from Hypercube. Hypercube is entitled to
11 charge DeltaCom for Switched Access Service provided to DeltaCom pursuant to
12 Hypercube's price list at a \$0.025 per minute rate, along with \$0.005 per dip, for the
13 work that Hypercube performs in routing 8YY traffic to DeltaCom. Switched Access
14 Service includes an applicable call type (Originating 800 FG Access) to the service
15 that Hypercube performed and was billed at the proper rate categories (*viz.*, Blended
16 Carrier Switched Access Originating and 800 Data Base Access Service) described
17 above. Under the filed rate doctrine, Hypercube's price list should be enforced under
18 those circumstances. Again, DeltaCom has never claimed that Hypercube has billed
19 an inaccurate number of minutes or dips or that Hypercube billed at a rate not in the
20 tariff. DeltaCom should pay Hypercube pursuant to Hypercube's price list under the
21 filed rate doctrine.

ISSUE 7

1
2 **Q. Do the rates, terms, and conditions in DeltaCom’s price list comply with**
3 **applicable law? Which rates, terms, and conditions, if any, apply to Hypercube**
4 **and how do they apply?**

5 A. No, several parts of DeltaCom’s price list do not comply with applicable law. Thus,
6 DeltaCom’s price list does not apply to Hypercube. DeltaCom has purported to
7 provide to Hypercube and bill for a service in DeltaCom’s CLEC price list called
8 “Intermediate Provider Access Service.” DeltaCom Price List § 3.5. This service is
9 unlawful for a number of reasons described below. Soon after DeltaCom began
10 disputing Hypercube’s charges, DeltaCom added this purported “service” to its
11 intrastate CLEC tariffs and price lists, which was undoubtedly designed to “mirror”
12 Hypercube’s charges, including Hypercube’s rate of \$0.025, described above.
13 DeltaCom has also failed and refused to ever explain as a technical matter how it
14 provides its purported “Intermediate Provider Access Service.” There is no doubt
15 that DeltaCom has provided no service to Hypercube and has no basis to charge
16 Hypercube.

17 **Q. Does DeltaCom provide any service to Hypercube when Hypercube routes toll-**
18 **free 8YY calls from wireless networks to DeltaCom?**

19 A. No. DeltaCom provides no service, tariffed or otherwise, to Hypercube during the
20 call flow of its customers’ 8YY traffic. On the contrary, and as noted above,
21 Hypercube picks the 8YY calls up at the wireless carriers’ MTSSOs and transports the
22 calls at Hypercube’s own expense to Hypercube’s switch. Hypercube then queries
23 (or “dips”) a national database of 8YY numbers to determine the IXC that is

1 responsible for the toll-free call. Upon determining that DeltaCom is the responsible
2 IXC for a particular 8YY call, Hypercube then indirectly routes the call through the
3 ILEC because of DeltaCom's refusal to directly interconnect with Hypercube's
4 network. Nowhere in the ten steps in the example above, does DeltaCom as a CLEC
5 (or otherwise) provide any service to Hypercube.

6 At no point in the call flow does DeltaCom provide any service to Hypercube;
7 only the contrary is true: Hypercube performs the access services and database
8 queries necessary to complete DeltaCom's customers' 8YY traffic. DeltaCom's
9 attempt to impose tariffed charges on Hypercube for the work Hypercube performs in
10 the call flow is a transparent attempt to nullify – and even profit from – the valuable
11 services Hypercube provides to DeltaCom in furtherance of DeltaCom's for-profit
12 8YY product offering.

13 **Q. Can you please describe the so-called “Intermediate Provider Access Service”**
14 **and the related rates and charges contained in DeltaCom's price list?**

15 A. There are two relevant provisions in DeltaCom's price list that relate to DeltaCom's
16 unlawful attempt to impose charges on Hypercube for the services *Hypercube*
17 performs in completing DeltaCom's 8YY customers' calls. First, Section 3.5 –
18 Intermediate Provider Access Service – defines such “service” as “the origination or
19 termination by the Company of a call any portion of which has been associated with
20 the services provided by an Intermediate Provider.” “Intermediate Provider” is
21 defined as a provider that:

22 (A) is not the telecommunications carrier for the customer who is either
23 the originating end user or the terminating end user;

1 (B) does not have a direct connection with the Company or a written
2 agreement, executed by the Company, for the provision of such services;
3 and,
4 (C) seeks to levy any charge or fee, by tariff or otherwise, against the
5 Company.

6 DeltaCom Price List § 3.5.

7 Second, Section 3.7.9, which details the rates and charges for such “service,”
8 provides as follows:

9 Rates will be billed at the greater of:
10 (A) Per Minute Rate \$0.025
11 (B) Per Call Rate* \$0.005
12 *The Per Call Rate is in addition to the Per Minute Rate.
13 Or, the amount charged to the Company by the Intermediate Provider
14 plus an administrative fee equal to 10% of the total amount charged.

15 DeltaCom Price List § 3.7.9.

16 In other words, DeltaCom is attempting to charge Hypercube for the service
17 Hypercube is providing to DeltaCom, plus an additional 10%. Importantly,
18 DeltaCom concedes through its adopted language that “services [are] provided by an
19 Intermediate Provider.” This statement reveals two fatal concessions for DeltaCom.
20 First, it shows that DeltaCom is somehow attempting to charge for a service that it is
21 acknowledges is provided by Hypercube. Second, it belies DeltaCom’s assertions
22 throughout its Petition that Hypercube seeks to recover for the functionalities
23 performed by the wireless carrier in the call flow. Thus, it is clear that through these
24 two price list provisions, DeltaCom is unlawfully attempting to levy charges against
25 Hypercube to cancel out the charges Hypercube bills DeltaCom for the lawful
26 services Hypercube provides to it in the call flow, plus an additional 10%.

27 **Q. Is it unlawful for DeltaCom to charge Hypercube for the services Hypercube**
28 **performs in completing DeltaCom’s 8YY customers’ calls?**

1 A. Yes. It is common knowledge in the industry that for the purposes of toll free or
2 8YY calls, an IXC providing such service must recoup any fees for such calls *solely*
3 from its 8YY subscriber customer, *i.e.*, the called-party pays model. DeltaCom is
4 attempting to turn this regulatory structure on its head by imposing upon carriers like
5 Hypercube charges for the work they perform in the call flow.

6 The FCC's rules state that, with regard to toll free calling, "the toll charges
7 for completed calls are paid by the toll free subscriber." 47 C.F.R. § 52.101(f)
8 (emphasis added). Similarly, this Commission's rules provide that "[t]elephone
9 companies are prohibited from billing to or collecting from the originating caller any
10 charges for intrastate calls to toll free number (e.g., 800, 866, 877, and 888)." Rule
11 25-4.117 (emphasis added). DeltaCom's attempt to impose charges on Hypercube
12 for the work Hypercube performs in an 8YY call flow is thus a clear violation of
13 both federal and Florida law.

14 **Q. Do the rates, terms and conditions noted above nevertheless apply to Hypercube**
15 **because they are contained in DeltaCom's price list?**

16 A. No, it is a common-sense notion that a carrier cannot tariff a service that is at odds
17 with the rules and regulations governing that service. In other words, the filed rate
18 doctrine must give way to the regulatory regime in place when there is a conflict, and
19 the offending tariff provision is in effect a nullity.

20 The regulatory framework for toll free calls has always mandated that the
21 called party – and the called party's carrier – are responsible for all charges
22 associated with such traffic. It is unlawful for an IXC providing 8YY service to
23 charge the originating caller, the originating carrier or any intermediate carrier who

1 performs work in the call flow. Sections 3.5 and 3.7.9 of DeltaCom's price list are
2 simply illegal and lack legal force. This Commission should find that these rates,
3 terms and conditions in DeltaCom's price list are therefore unlawful and cannot be
4 applied against Hypercube.

5 **Q. Are there other grounds for finding that the rates, terms and conditions in**
6 **DeltaCom's price list are unlawful?**

7 A. Yes. Not only are Sections 3.5 and 3.7.9 of DeltaCom's price list substantively
8 unlawful, these provisions are discriminatory in practice. DeltaCom has admitted
9 that Hypercube is the only carrier which DeltaCom charges for this purported
10 "Intermediate Provider Access Service." The rates for DeltaCom's purported
11 "Intermediate Provider Access Service" mirror the rates in Hypercube's tariff for that
12 reason. Both are \$0.025.

13 Florida Statute § 364.01(4)(g) provides the Commission with the authority to
14 "[e]nsure that all providers of telecommunications services are treated fairly, by
15 preventing anticompetitive behavior...." Fla. Stat. § 364.01(4)(g). By singling out
16 Hypercube and attempting to assess patently unlawful charges solely against it,
17 DeltaCom is engaging in an anticompetitive and discriminatory practice in violation
18 of Florida law. Section 364.01(4)(g) therefore provides an independent basis for the
19 Commission to invalidate Sections 3.5 and 3.7.9 of DeltaCom's price list.

20 **ISSUE 8**

21 **Q. To what extent, if any, is enforcement of Hypercube's price list preempted by**
22 **federal law?**

1 A. Hypercube's price list can be enforced by this Commission without any concerns for
2 preemption by federal law. DeltaCom makes two arguments in this regard, both of
3 which may be rejected. First, DeltaCom argues that Hypercube's rates include
4 recovery for end office functionality provided by wireless carriers. DeltaCom Am.
5 Petition ¶ 30. This is discussed extensively above in Issue 6. As noted there,
6 Hypercube's blended rate does not cover functionalities provided by wireless carriers,
7 and Hypercube does not seek access charges for work performed by wireless carriers.
8 The Commission should reject this argument by DeltaCom.

9 Second, DeltaCom argues that Hypercube's price list makes no "carve-out"
10 for "intraMTA wireless traffic," and, therefore, federal law preempts the Commission
11 from enforcing the price list. *Id.* This issue is a red herring. The fact that the traffic
12 at issue is toll-free in nature means that Wireless MTA boundaries that differentiate
13 between "local" and "toll" traffic are completely irrelevant. In other words, the
14 traffic in question is always "toll" traffic regardless of MTA boundaries, and thus the
15 MTA boundaries and whether a call is intraMTA or not is irrelevant. All of the
16 traffic at issue is "toll" and will have switched access charges applied to it
17 irrespective of MTA boundaries. DeltaCom acknowledges that the traffic here is toll
18 traffic. DeltaCom Am. Petition ¶ 1. Thus, there is no need for an intraMTA "carve-
19 out" in Hypercube's price list as alleged by DeltaCom. The differentiation between
20 intrastate and interstate toll traffic is something that DeltaCom determines itself by
21 following the PIU provisions in Hypercube's price list and reporting the PIU to
22 Hypercube as explained above in Issue 3. There is simply no need for a mechanism

1 for an IXC to file a PIU to carve out “intra-MTA/Local” for 8YY traffic as DeltaCom
2 suggests.

3 Furthermore, intraMTA wireless boundaries only have relevance with regard
4 to traffic that is exchanged between a CMRS provider and a LEC, but have no
5 relevance to traffic exchanged between a LEC and an IXC or a CMRS provider and
6 an IXC. In this proceeding, Hypercube is a CLEC and DeltaCom is an IXC. Thus,
7 intraMTA boundaries are irrelevant in determining the access charges that DeltaCom
8 the IXC owes Hypercube the CLEC. DeltaCom’s attempt to inject this “issue” into
9 the proceedings is just another unsuccessful attempt by DeltaCom to find an excuse to
10 avoid paying the access charges that DeltaCom undoubtedly owes Hypercube.
11 DeltaCom’s irrelevant excuses should be rejected by the Commission.

12 **ISSUE 9**

13 **Q. Does the Commission have jurisdiction to address quantum meruit and, if so,**
14 **what action, if any, should the Commission take?**

15 A: Yes, the Commission has jurisdiction to address quantum meruit. The Commission
16 has jurisdiction to “[e]nsure that all providers of telecommunications services are
17 treated fairly, by preventing anticompetitive behavior and eliminating unnecessary
18 regulatory restraint.” Fla. Stat. § 364.01(4)(g). The Commission also has wide
19 latitude under Rule 25-4.114, Florida Administrative Code, to order refunds. *In re*
20 *TDS Telecom*, PSC-06-0776-FOF-TP, 2006 WL 2805432, *43 (Fl. P.S.C. 2006). The
21 Commission has recognized that a telecommunications provider is entitled to the
22 reasonable value of the services it has rendered. *Id.*

1 DeltaCom has been charging its 8YY subscribers for DeltaCom's 8YY
2 service, but has not paid Hypercube for the access services Hypercube has
3 undoubtedly provided DeltaCom in relation to DeltaCom's for-profit 8YY service.
4 DeltaCom has paid other carriers, like ILECs, when they provide similar access-
5 service inputs to DeltaCom's 8YY service. DeltaCom has therefore deprived
6 Hypercube of reasonable compensation for its services and not treated Hypercube
7 fairly. Further, DeltaCom received a windfall in the form of free service, "which is
8 neither fair nor equitable." *Id.* To the extent that the Commission determines that
9 Hypercube's price list does not apply to the access services that Hypercube has
10 provided DeltaCom, Hypercube should receive the reasonable value of the services it
11 has rendered to DeltaCom under a theory of quantum meruit. *Id.* The Commission
12 should ensure that all telecommunications providers are treated fairly by ensuring that
13 a telecommunications provider be paid for the services that it provided. Fla. Stat.
14 § 364.01(4)(g). The Commission should not condone a telecommunications provider
15 flouting any payment for the services rendered by another telecommunications
16 provider, particularly when that non-paying provider is selling a service that
17 knowingly recruits and depends on the service of potentially any and every carrier in
18 making that for-profit service possible in the first place.

19 **ISSUE 10**

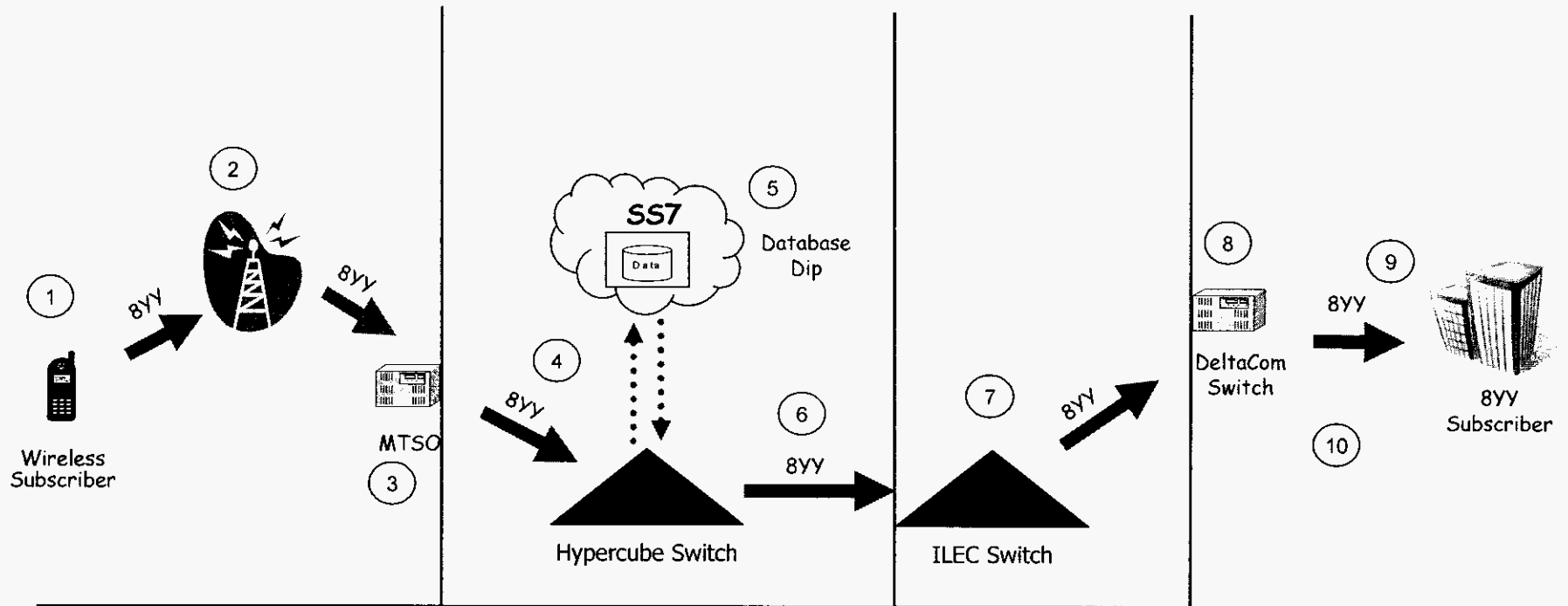
20 **Q. What relief does the Commission have authority to grant and should grant to**
21 **either party in this case (including, but not limited to, any finding of**
22 **responsibility for rates; late fees; attorney fees; cancellation of all or parts of a**
23 **price list; declaration that all or part of a price list was void ab initio)?**

1 A. The Commission should dismiss DeltaCom's Amended Petition in its entirety and
2 find that DeltaCom is required to pay Hypercube for the services that Hypercube has
3 provided DeltaCom pursuant to Hypercube's price list, which includes both past
4 charges and future charges. The Commission should also award Hypercube its
5 attorneys' fees pursuant to Hypercube's price list. Finally, the Commission should
6 either find that Hypercube is not required to pay DeltaCom for DeltaCom's
7 "Intermediate Provider Access Service" or that DeltaCom's price list is void to the
8 extent it seeks to levy charges for such alleged "service." The Commission has the
9 authority to grant all of this relief in favor of Hypercube pursuant to Florida Statutes
10 section 364.01.

11 **Q. Does this conclude your Direct Testimony?**

12 A. Yes.

Wireless-Initiated 8YY Call Flow



Provided by Wireless Carrier

Provided by Hypercube

Provided by ILEC

Provided by DeltaCom

- 1 Mobile 8YY call to CMRS tower
- 2 CMRS transports from wireless tower to MTSO
- 3 Switched in MTSO to Hypercube's facilities

- 4 Hypercube picks up call at MTSO and transports it to its switch
- 5 Hypercube performs database dip to learn responsible IXC and routing needs
- 6 Hypercube transports call to ILEC switch for final delivery to DeltaCom

- 7 ILEC switches and delivers call to DeltaCom

- 8 DeltaCom delivers call to its 8YY subscriber
- 9 DeltaCom bills 8YY subscriber
- 10 8YY subscriber pays DeltaCom

HyperCube

The Legal Relationships In An 8YY Call

CMRS/Hypercube Contract

Freedom of Contract:
 "In a detariffed, deregulated environment such as this one, carriers are free to arrange whatever compensation arrangement they like for the exchange of traffic."
Sprint PCS, 17 FCC Rcd 13192 ¶ 7 (2002)

Hypercube Access Price List

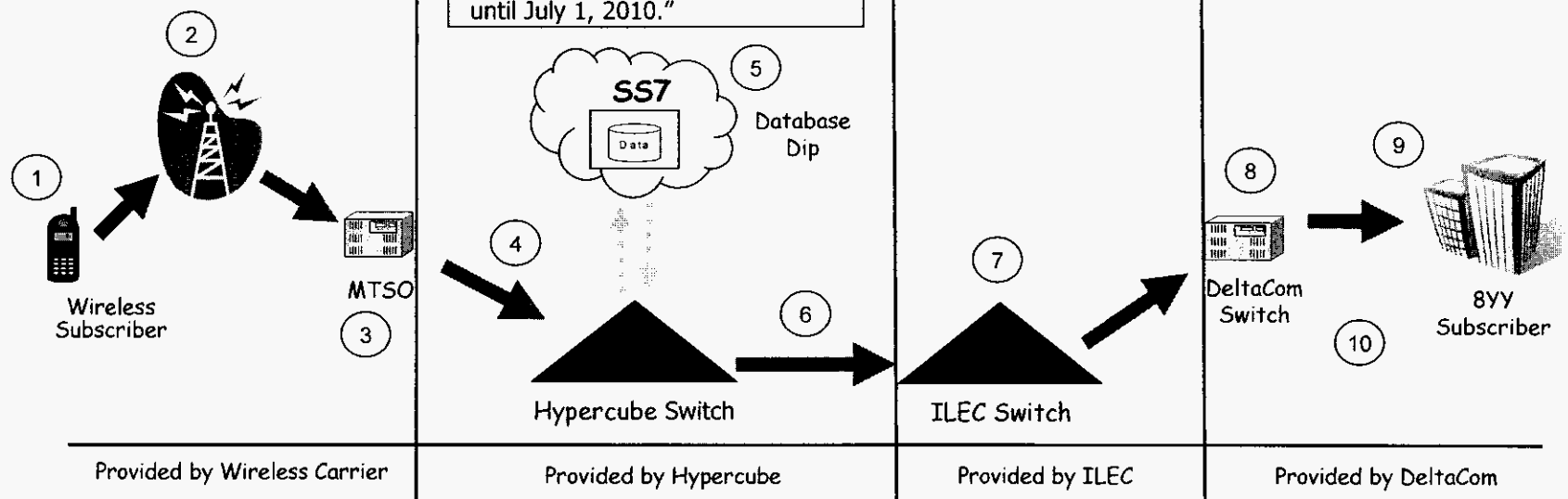
§ 364.163, F.S. & Rule 25-24.825:
 "Each local exchange telecommunications company ... shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its network access services."
 "The switched network service rates in effect immediately prior to July 1, 2007, shall be, and shall remain, capped at that level until July 1, 2010."

ILEC Access Tariff

IXCs purchase ILEC switched access services out of ILEC tariffs filed in accordance with § 364.163, F.S.

DeltaCom/8YY Customer Contract or Tariff

"...toll charges for completed calls are paid by the toll free subscriber."
 47 C.F.R. § 52.101(f)



HyperCube

The Undisputed Facts Regarding Who DeltaCom Pays – And Doesn't – For Its 8YY Calls

Free Service – CMRS Carriers Seek No Payment From DeltaCom

Hypercube Bills DeltaCom Its Commission-Filed Price List Rates, Which DeltaCom Does Not Pay

ILEC Bills DeltaCom Tariff Rates, Which DeltaCom Pays

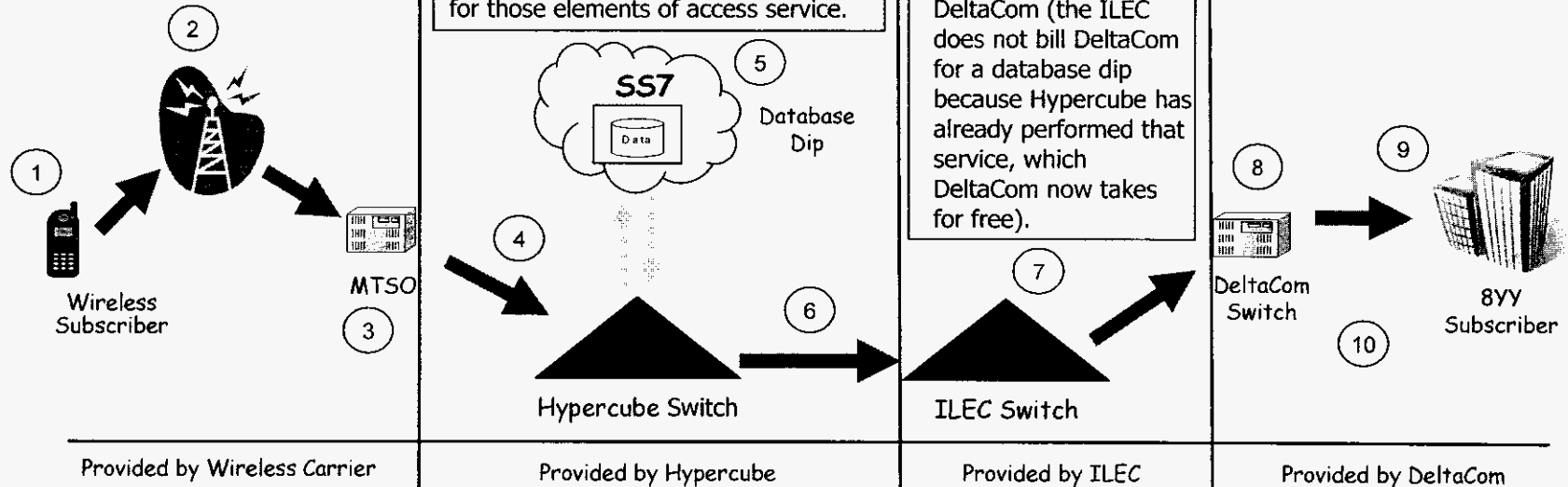
DeltaCom Bills Its 8YY Subscribers, And The 8YY Subscribers Pay

It is **undisputed** that no wireless carrier has ever received any compensation from DeltaCom for any of the call-initiation services here.

It is **undisputed** that Hypercube picks up the call at the MTSO, transports it to its switch, performs a database dip to learn that DeltaCom sold this 8YY number, transports it according to DeltaCom's instructions, and then bills DeltaCom Hypercube's price-list rates for those elements of access service.

It is **undisputed** that DeltaCom pays the ILEC its tariffed charges for its switching and transport of the Hypercube-handled calls to DeltaCom (the ILEC does not bill DeltaCom for a database dip because Hypercube has already performed that service, which DeltaCom now takes for free).

It is **undisputed** that DeltaCom collects its full 8YY service charges from its customers for calls handled by Hypercube, or any other LEC.



BeaconEquity.com
Market Alert for Neutral Tandem Inc. (TNDM)
December 10, 2009

Neutral Tandem Inc. (NASDAQ: TNDM)

Neutral Tandem Inc. (TNDM) provides tandem network interconnectivity between competitive carriers, including cable, broadband, wire-line and wireless enterprises within the United States. The Company provides these carriers a network without the need of switch-to-switch connections.

Founded in 2001, the Company is headquartered in Chicago, Illinois.

Share Statistics (8-Dec-09)		FY	FY	%	Q3	Q3	%	
		2007	2008	Chg	2008	2009	Chg	
Symbol	TNDM	Revenue, \$Mn	85.56	120.9	41.3%	31.2	44.7	43.5%
Current price	\$20.54	Gross marg.	64.9%	66.65%	45.1%	n/a	n/a	n/a
52wk Range:	34.56	Oper. margin	33.7%	41.0%	72.2%	28.3%	38.7%	96.6%
Avg Vol (3m):	786,066	Net margin	7.32%	20.0%	287%	19.8%	24.8%	80.0%
Market Cap.	689.10M							
Dil. Shares Outst.	33.55M	EPS, \$	0.240	0.730	204%	0.190	0.320	68.4%

Source: Reuters.com, SEC Filings.

Financial Summary

Financial Strength (8-Dec-2009)	Company	Industry	Sector	S&P 500
Quick Ratio (MRQ)	12.99	0.71	0.62	0.85
Current Ratio (MRQ)	12.99	0.77	0.65	1.00
Long-Term Debt to Equity MRQ)	to0.00	63.52	44.44	130.15
Total Debt to Equity (MRQ)	0.31	70.22	62.94	200.30

Source: Reuters.com, SEC Filings.

Analyst Consensus

The mean of 12 analysts polled by Thomson Reuters rate shares of TNDM a “Buy”

Analyst Recommendations and Revisions

1-5 Linear Scale	Current	1 Month Ago	2 Month Ago	3 Month Ago
(1) BUY	7	7	7	7
(2) OUTPERFORM	4	4	4	4
(3) HOLD	1	1	1	1
(4) UNDERPERFORM	0	0	0	0
(5) SELL	0	0	0	0
No Opinion	0	0	0	0
Mean Rating	1.50	1.50	1.50	1.50

Source: Reuters.com, SEC Filings.

Investment Highlights

TNDM provides tandem network interconnectivity between competitive carriers, including cable, broadband, wire-line and wireless providers within the United States. The Company provides these carriers a network without the need of switch-to-switch connections.

The underlying trend in telecommunications revenue has dropped, with expectations of lower sales of 25% for 2009. A modest rebound in economic activity will bode well for the industry in 2010. The Company, however, is expected to continue growing despite the overall decline and future softness in industry revenue.

The Company has reported increases in revenue, operating profits and earnings for the most recent three years. Revenue has grown at an annual rate of 50% for three years, as well as a growth rate of 54% in earnings per share. Analysts covering the Company expect earnings and revenue to grow at an average of 44% and 30%, respectively, for the next two years.

Competition from AT&T, Verizon and Qwest appear to be the main threat to the Company’s future performance, with migration to an IP model and industry consolidations due to regulation as two other concerns. Direct competition comes from Level 3 Communications LLC, Hypercube and Peerless Networks.

With margins large and capital requirements low, competition will increase rapidly. At some point, the Company will need to play one-up marketing to maintain market share, and will most likely result in squeezed margins in the process in a three to 10-year time horizon. As more competitors enter the sector, low prices and greater demand will play

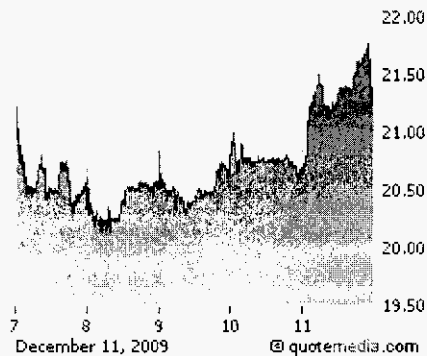
tug-o-war with revenue and earnings, according to Oppenheimer Investment Management. Page 3 of 5

According to Oppenheimer, the Company can maintain market share through offensive initiatives including, bundling services, discounted prices in new areas, long-term discount contracts, nationwide availability and advantages generated from the potential SIP.

The Company has a pending lawsuit against Peerless Networks for patent infringement, and expects a ruling in coming months.

Investors believe that the Company is well-run and plays the low-expectations game very well, citing consistent earnings surprises and somewhat quiet expansion. Moreover, the insider holdings disclosures reveal a healthy 6% ownership among management.

Technical Analysis



TNDM trades below its 13-day moving average. This bearish sign is significant because the 13-day moving average is downwardly sloped.

The MACD for TNDM currently indicates a bearish signal. The MACD is below the signal line, a 9-day moving average of the MACD. The MACD is below the critical level of 0, which implies the past price action had been negative. Overall, the chart is bearish.

Comparative Analysis

Company Name	Ticker symbol	Price/Share, \$	Mrkt. Cap. \$ Mn	P/E		P/S	
				2009	2010	2009	2010
AT&T Inc.	T	27.97	165,050	13.88	12.43	1.34	n/a
Qwest Communications Inter.	Q	4.11	7,100	9.28	12.84	0.56	n/a
Verizon	VZ	33.25	94,450	17.05	13.30	0.90	n/a

Communications Inc.							
Wireless Comm. Median				15.08	n/a	1.32	n/a
Neutral Tandem Inc.	TNDM	20.54	689.1	17.77	13.79	4.33	n/a

Source: [Thomson Financial](#)

Insider Trading Activity

NET SHARES PURCHASE ACTIVITY

Inside Purchases - Last 6 Months

	Shares	Transaction
Purchases	n/a	0
Sales	1,712,810	34
Net Shares Purchased (Sold)	(1,712,810)	34
Total Insider Shares Held	2.18M	n/a
% Net Shares Purchased (Sold)	(44.0%)	n/a

Net Institutional Purchases - Prior Qtr to Latest Qtr

	Shares
Net Shares Purchased (Sold)	(477,691)
% Change in Institutional Shares Held	(1.4%)

Source: [Yahoo Finance](#)

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