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July 9, 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. Rebuttal Testimony of Robert W. McCausland; and
2. Rebuttal 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,

[Handwritten signature of Floyd R. Self]

Floyd R. Self

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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 9th day of July, 2010.

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Floyd R. Self

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY

OF

ROBERT W. McCAUSLAND

DOCKET NO. 090327-TP

1

SECTION I – INTRODUCTION

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

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

7 **Q. Are you the same Robert W. McCausland that presented direct testimony on**
8 **behalf of Hypercube on June 15, 2010?**

9 A. Yes, I am.

10 **Q. What is the purpose of your rebuttal testimony?**

11 A. The purpose of my rebuttal testimony is to respond to the direct testimony of
12 DeltaCom, Inc. witness Don Wood regarding the issues he addressed in his direct
13 testimony. Although Mr. Wood has not organized his testimony according to the
14 Commission’s April 20, 2010 issues list, I will attempt to address his assertions as
15 they relate to each of the identified issues.

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SECTION II – REBUTTAL ON DOCKET ISSUES

ISSUE 1

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

- a. Do such services fit into the regulatory framework in Florida? If so, how?
- b. Is it appropriate or lawful to include such services in Hypercube’s price list?

Q. Do you agree with Mr. Wood’s assertion that Hypercube has not provided any services to DeltaCom?

A. No. Mr. Wood’s arguments in this regard are contrary to common practices in the telecommunications industry, applicable law and DeltaCom’s own price list. Mr. Wood seems to believe that only the initial carrier in the call flow can seek access charges from IXCs like DeltaCom. *See* Wood Dir. Test. pages 14-17. Mr. Wood implies that because Hypercube seeks access charges for the work that Hypercube performs as an intermediate carrier providing tandem services that Hypercube is then somehow also seeking access charges for work performed by other carriers in the call flow. It is unclear what Mr. Wood bases this conclusion on because he cites no factual bases, law, or other authority for any of the legal arguments he makes in his testimony. His testimony in this regard also is contrary to DeltaCom’s own price list, which has provisions for seeking access charges when DeltaCom acts as an intermediate carrier providing tandem services, and in which DeltaCom charges rates that are higher than Hypercube’s for similar functionality. *DeltaCom Price List § 3.1.3* (describing DeltaCom’s “Tandem Connect Access” service which “applies when the customer has no direct facilities to the End Office Switch”). Thus, Mr. Wood’s unsupported suggestion that Hypercube cannot recover access charges for the access services it provides as an

1 intermediate carrier is flatly contradicted by Hypercube's price list and common
2 industry practice, including DeltaCom's.

3 Mr. Wood never explains why DeltaCom can collect in this manner, and at
4 higher rates, but Hypercube cannot. Mr. Wood's basic assertion appears to be
5 that Hypercube is seeking access charges on behalf of the wireless carrier. This is
6 false. Mr. Wood never points to anything in Hypercube's practices or price list
7 that would support this assertion. To be clear, and as stated throughout this
8 proceeding, Hypercube only seeks access charges for the work performed by
9 Hypercube. Hypercube does not collect or attempt to collect access charges for
10 any work performed by any other carrier and never has.

11 **Q. Do you agree with Mr. Wood's assertion about the circumstances under**
12 **which a carrier can collect intrastate access charges from an IXC?**

13 A. No. On pages 9-10 of his testimony, Mr. Wood asserts that *no* intrastate access
14 charges can be collected unless "[t]he carrier that originates the call and provides
15 originating access functions has the authority to impose access charges." In other
16 words, Mr. Wood appears to state that only the first carrier in the call can collect
17 intrastate access charges, and if that carrier cannot collect intrastate access
18 charges under a price list, no other carrier may collect intrastate access charges for
19 work performed. Again, Mr. Wood provides no authority for that proposition,
20 and it is contrary to DeltaCom's own practice of paying ILECs intrastate access
21 charges for wireless-initiated 8YY traffic, including the database query charge,
22 when the ILEC acts as an intermediate carrier handling DeltaCom's 8YY calls. It
23 is unclear why Mr. Wood contends DeltaCom is not responsible for intrastate

1 access charges with regard to Hypercube, yet DeltaCom pays those same charges
2 to the intermediate ILEC. As noted above, this statement is also contrary to
3 DeltaCom's CLEC own price list and its "Tandem Connect Access" service in
4 that price list.

5 An intermediate carrier is fully authorized to seek access charges for the
6 work it does in routing traffic to the responsible IXC, here DeltaCom. While
7 Hypercube cannot (and does not) charge for work performed by the wireless
8 carrier (or any other carrier), Hypercube is entitled to charge for the work
9 Hypercube performs. This is the basis of the filed rate doctrine, which is followed
10 and enforced in Florida as I explained in my direct testimony. At the federal
11 level, this was made clear in the *Eighth Report and Order* as I also discussed in
12 my direct testimony. Although carriers cannot charge for any functionalities
13 performed by a wireless carrier, a carrier like Hypercube can charge for the
14 functionalities it performs. *Eighth Report and Order* ¶ 16-17. And to be clear,
15 Hypercube does not and has not charged for any functionality or service that a
16 wireless carrier or any other carrier has performed. Certain wireless carriers have
17 simply decided that they would prefer to route 8YY traffic to Hypercube rather
18 than the ILEC. No authority prohibits them from doing so. And, as explained by
19 Professor Sidak in his direct and rebuttal testimony, wireless carriers are able to
20 take advantage of the economic efficiencies offered by Hypercube to benefit their
21 own customers.

22 Essentially, Mr. Wood appears to suggest that DeltaCom is entitled to tell
23 other carriers where and how they must send DeltaCom's for-profit 8YY traffic.

1 In other words, unless DeltaCom approves the routing of the 8YY traffic,
2 DeltaCom will not pay for its own 8YY traffic. Such contentions have no support
3 in common telecommunications industry practice or the law, as demonstrated by
4 the lack of any authority identified in Mr. Wood's testimony. It is also belied by
5 DeltaCom's admitted practice of paying ILECs for like services. In short, it is
6 DeltaCom's own refusal to directly connect with Hypercube (or the wireless
7 carrier) that causes the unsupported and unspecified "complications" in the
8 telecommunications network alleged by Mr. Wood. Wireless carriers have every
9 right to send their traffic to Hypercube if they so choose, and Hypercube is forced
10 to send that traffic to the ILEC because of DeltaCom's refusal to directly
11 interconnect its network with Hypercube's. DeltaCom has caused the very
12 "complications" about which it complains.

13 **Q. Is Mr. Wood correct that DeltaCom cannot verify that Hypercube has**
14 **provided it services?**

15 A. No. Without knowing DeltaCom's technological capabilities, it is hard to say
16 with exact certainty whether DeltaCom is currently able to verify Hypercube's
17 presence in the call flow. But, in my experience most telecommunication
18 companies would have the technical ability to verify whether other
19 telecommunications carriers are in the call flow, contrary to Mr. Wood's
20 suggestion. In other words, DeltaCom's claimed inability could be based on
21 DeltaCom's own unwillingness to investigate the origins of its own 8YY traffic or
22 lack of expertise, and not on any lack of technical ability.

1 At any rate, there are several methods that DeltaCom could use to verify
2 Hypercube's presence in the call flow. First, DeltaCom can examine the call
3 detail records ("CDRs"). Hypercube has provided CDRs on multiple occasions to
4 DeltaCom at DeltaCom's request. DeltaCom can take the CDRs from Hypercube
5 and compare them to DeltaCom's own data on the calls DeltaCom has terminated
6 to its 8YY subscribers to determine if they match. Second, DeltaCom can
7 examine Meet Point Billing ("MPB") records from the ILEC which would show
8 the calls coming from the "2-6" trunk group codes of Hypercube's network.
9 Third, DeltaCom could examine the SS7 signaling information that shows "TNS
10 codes" that may be used to identify Hypercube's network in the call flow.
11 Finally, DeltaCom could obtain the ILEC SS7 signaling information and traffic
12 data, which will show Hypercube's presence in the call flow. In short, Mr. Wood
13 is wrong. There are many common ways for DeltaCom to verify Hypercube's
14 presence in the call flow. Hypercube's own possession of the confidential call-
15 specific records alone demonstrates that Hypercube is in the call flow since such
16 information would not be available to Hypercube if Hypercube were not.

17 Finally, during February 2009 to April 2009, Hypercube worked closely
18 with Florida Commission Telecommunications Staff and DeltaCom engineers to
19 resolve an issue that DeltaCom was having with its network capacity. While
20 Hypercube assisted in this endeavor, there was never any doubt that Hypercube
21 was in the call flow as a technical matter for calls that Hypercube routed to
22 DeltaCom. Hypercube even provided data to DeltaCom and the Commission to
23 help resolve DeltaCom's issue. For DeltaCom to now claim it cannot tell if

1 Hypercube is present is contrary to DeltaCom's own prior actions and interactions
2 with the Commission and Hypercube.

3 By implying that DeltaCom cannot verify Hypercube's presence in the call
4 flow, Mr. Wood appears to suggest that Hypercube is not performing any service
5 or is submitting inaccurate invoices. The absurdity of this suggestion is revealed
6 by the contracts Hypercube has with wireless carriers and IXCs to take their
7 traffic to and from their networks in volumes vastly higher than DeltaCom's. For
8 approximately 90% of the 8YY traffic that Hypercube handles, Hypercube sends
9 it directly to an IXC that has recognized the service that Hypercube provides and
10 the efficiencies that can be achieved by directly connecting. It is absurd for Mr.
11 Wood to suggest that for the small percentage of traffic that belongs to DeltaCom,
12 Hypercube submits inaccurate bills or charges for a service it doesn't provide.
13 These other carriers have obviously recognized that Hypercube provides a
14 valuable service and that Hypercube's bills are accurate. Mr. Wood's complaint
15 here is just another makeweight, speculative attempt to find any excuse not to pay
16 Hypercube for transporting and switching calls from which DeltaCom derives
17 revenue through the sale of toll free service to its 8YY subscribers.

18 **Q. Does Hypercube add value to the telecommunications network?**

19 A. Definitely. Hypercube provides value in multiple ways on both sides of the call
20 flow. It is obvious that wireless carriers see value in Hypercube services, because
21 Hypercube picks up the call at the wireless carrier's MTSO, which relieves them
22 of having to maintain additional capacity on expensive special-access circuits
23 provided by ILECs. And, the Hypercube facilities provide a separate call-routing

1 option, enhancing network diversity in a manner consistent with good network-
2 management principles, good public policy, and national security. Hypercube's
3 presence is evidence that there is some competition; that the days of monopoly
4 providers throughout the call flow are gone.

5 For some of those same reasons and others, it is obvious that many IXC's
6 see value in Hypercube's services. Numerous IXC's have entered into agreements
7 with Hypercube to directly connect their networks to Hypercube's network, while
8 still others pay for the indirect service provided through Hypercube's price lists
9 and tariffs. In fact, approximately 90% of the 8YY traffic that Hypercube handles
10 is transported to IXC's that have voluntarily contracted with Hypercube for its
11 services, demonstrating the value that Hypercube provides to the
12 telecommunications network. It is only a small handful of IXC's, including
13 DeltaCom, that have decided that they would rather engage in litigation and play
14 "rate" games, such as DeltaCom's purported "Intermediate Provider Access
15 Service," than pay charges for which they are responsible. IXC's like DeltaCom
16 have determined that it is potentially more profitable to not pay Hypercube and
17 disparage Hypercube by claiming Hypercube is charging for things that it cannot
18 charge for, even though these IXC's have the same services included in their own
19 CLEC price lists and tariffs. Rather than pay Hypercube's legitimate charges,
20 DeltaCom has apparently decided it is better to damage a competing carrier
21 through litigation.

22 The Commission should reject DeltaCom's excuses and enforce
23 Hypercube's price list.

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ISSUE 2

Does the filed rate doctrine apply to this case and if so, how should it be applied?

Q. Do you agree with Mr. Wood’s arguments about the filed rate doctrine?

A. No. Hypercube’s services are consistent with applicable law and industry custom (including DeltaCom’s), and are, therefore, lawful and properly included in Hypercube’s price list. Hypercube’s price list must be enforced. Hypercube has provided a service outlined in Hypercube’s price list, and Hypercube only charges DeltaCom the rates in that price list. The filed rate doctrine requires enforcement of a carrier’s price list under those circumstances.

As to DeltaCom’s purported service, Mr. Wood’s testimony demonstrates that DeltaCom cannot explain or justify as a technical matter what service it is actually providing to Hypercube. *See Wood Dir. Test.*, pages 63-65. DeltaCom provides no service to Hypercube and DeltaCom doesn’t even attempt to argue that it does. Instead, Mr. Wood simply repeats the mantra that if Hypercube’s price list is enforced, then DeltaCom’s must be enforced. Mr. Wood cites no authority for the proposition of reciprocal filed rate enforcement, and in fact, I explained that the filed rate doctrine only enforces legitimate, lawful price lists covering services that are actually provided and services that the applicable regulatory regime allows to be tariffed in the first place. Contrary to Mr. Wood’s apparent assertion, just because something is in a price list doesn’t mean that it is enforceable. DeltaCom’s service is no service at all and is further discriminatory and unlawful because Hypercube is the only carrier DeltaCom has ever charged for its illusory service.

1 In short, Hypercube's price list should be enforced under the filed rate
2 doctrine and DeltaCom's price list voided to the extent it attempts to charge for a
3 non-existent, unlawful service.

4 **ISSUE 3**

5 What are the proper procedures regarding Percent Interstate Usage under
6 Hypercube's price list and were those procedures followed? Which Percent
7 Interstate Usage should have been applied?
8

9 **Q. Do you agree with Mr. Wood's arguments on pages 58-63 about the invalid**

10 **Percent Interstate Usage ("PIU") reported by DeltaCom to Hypercube?**

11 A. No. As I explained in my direct testimony, PIUs are based on actual call-flow
12 data and are used to approximate the amount of traffic exchanged between two
13 carriers that is interstate and intrastate. Contrary to Mr. Wood's testimony, PIUs
14 are not based on non-existent settlement agreements, legal argument or theories
15 about how traffic should be treated, or supposed "regulatory uncertainty," as
16 DeltaCom admittedly based its reported PIU upon. DeltaCom Am. Petition, Ex.
17 C. DeltaCom has never provided Hypercube a valid PIU, and DeltaCom has
18 never provided any data to support the implausible 100% PIU that it reported,
19 claiming that 100% of DeltaCom's traffic is jurisdictionally interstate. Even after
20 Hypercube asked for data from DeltaCom to support its reported 100% PIU,
21 DeltaCom never provided such data. Contrary to Mr. Wood's suggestion,
22 Hypercube is not required to give effect to an invalid PIU just because it is
23 reported to Hypercube. Essentially, DeltaCom is demanding that Hypercube
24 accept a facially invalid PIU just because it is reported, a result out of touch with
25 Hypercube's price list and common telecommunications industry practices.

1 Moreover, Hypercube's price list allows Hypercube to reject false information
2 provided by a Customer, here DeltaCom. Hypercube Price List § 2.5.3.F.1(b).
3 Since DeltaCom did not provide a PIU, Hypercube was justified in using its
4 default PIU procedures.

5 Moreover, Mr. Wood even acknowledges that DeltaCom's 100% PIU is
6 not plausible when he is addressing another point. In discussing DeltaCom's
7 makeweight "intraMTA" issues, Mr. Wood acknowledges on page 48 of his
8 testimony that it is "reasonable to expect" that a "significant" number of calls
9 were generated intrastate. This is a fatal admission by DeltaCom's only witness
10 that belies DeltaCom's unsupported effort to claim a 100% PIU for its 8YY
11 traffic.

12 Finally, DeltaCom purports to charge Hypercube for its "Intermediate
13 Provider Access Service" out of DeltaCom's intrastate tariff, while
14 simultaneously claiming that all of Hypercube's traffic is interstate. Again, this is
15 not to give any credence to DeltaCom's "service," which is nonexistent, unlawful
16 and discriminatory, but to demonstrate that DeltaCom's arguments about the PIU
17 that Hypercube applies are like all of DeltaCom's arguments – self-contradictory
18 and contrary to DeltaCom's own practices. DeltaCom makes contradictory
19 claims throughout this proceeding, trying to find some means to avoid paying for
20 the services it uses from Hypercube. Simply put, however, DeltaCom cannot
21 have it both ways by asserting that it need not pay Hypercube's charges because
22 all of the traffic is purportedly interstate while simultaneously claiming all of the
23 *same traffic* is jurisdictionally intrastate under its price list.

1 DeltaCom's reported 100% is not only implausible, as Mr. Wood
2 confirms, but it is admittedly not based on any data or analysis by DeltaCom.
3 Hypercube is entitled to rely on the default PIU procedures in its price list unless
4 and until DeltaCom submits a good faith PIU factor.

5 **ISSUE 5**

6 Did the bills rendered to DeltaCom comply with applicable law? If not, what
7 action, if any, should the Commission take?
8

9 **Q. Has DeltaCom ever expressed any confusion about the bills sent by
10 Hypercube under its current name or former name?**

11 A. No, the bills rendered to DeltaCom contained sufficient information for DeltaCom
12 to determine the identity of the company billing DeltaCom. DeltaCom has never
13 questioned what entity was sending bills to DeltaCom. DeltaCom has always
14 understood that Hypercube, whether under its current or former name, was the
15 entity billing DeltaCom. Various documents produced by DeltaCom in this action
16 show that it knew that KMC Data changed its name to Hypercube Telecom after it
17 was acquired by Hypercube, and that Hypercube, LLC was Hypercube Telecom's
18 parent company. Moreover, as I noted previously, Hypercube has provided
19 DeltaCom with CDRs documenting Hypercube's presence in the call flow.

20 **Q. Has DeltaCom sought access charges under a prior name?**

21 A. Upon information and belief, after going through name changes of its own,
22 DeltaCom has sought access charges from other carriers for services rendered
23 under DeltaCom's prior name.

1 **Q. Should DeltaCom get completely free service because the invoices allegedly**
2 **contained a different name from the price list, when DeltaCom knew what**
3 **company was providing services and sending bills to DeltaCom?**

4 A. No, that would not be a fair result. Moreover, like most of DeltaCom's positions,
5 this claim is similarly unsupported by any legal authority, and contradicted by
6 DeltaCom's own actions. DeltaCom has never paid any of Hypercube's invoices,
7 and all sums remain due and owing by DeltaCom. DeltaCom is just making
8 excuses.

9 **ISSUE 6**

10 Do the rates, terms, and conditions in Hypercube's price list comply with
11 applicable law? Which rates, terms, and conditions, if any, apply to DeltaCom
12 and how do they apply?
13

14 **Q. Do you agree with Mr. Wood's interpretation of Hypercube's price list on**
15 **pages 33-40 about the switched access services Hypercube is providing**
16 **DeltaCom?**

17 A. No. Mr. Wood takes an unreasonably narrow view of Hypercube's price list in an
18 effort to create ambiguity where there is none. As I explained in my direct
19 testimony, Hypercube provides switched access service as defined in its price list
20 when it transports a wireless subscriber's call from a wireless carrier's MTSO to
21 DeltaCom, even when that call must go through the ILEC because of DeltaCom's
22 decision not to directly connect with Hypercube. This is affirmed by the
23 definition of switched access service in Hypercube's price list, which states that
24 Hypercube's switched access service "provides the ability to originate calls from
25 an End User [wireless subscriber] to a Customer [DeltaCom] and to terminate

1 calls from a Customer to an End User.” Hypercube Price List § 3.1. Mr. Wood
2 claims this definition is not applicable because Hypercube would need a direct
3 connection between the end user and then to DeltaCom, but that additional
4 requirement is simply created by Mr. Wood. There is no authority for it. As I
5 explained in my direct testimony, this definition is directly applicable and
6 Hypercube provides switched access service when Hypercube transports a call
7 initiated by a wireless subscriber to DeltaCom. The notion that DeltaCom can
8 avoid paying access charges by simply refusing to interconnect with other LECs
9 defies common industry practice, common sense and fairness, and Hypercube’s
10 own price list.

11 Further, Hypercube’s price list makes clear that it provides the call type
12 “Originating 800 FG Access.” Hypercube Price List § 3.2.5. Mr. Wood’s only
13 possible complaint about this section is that Hypercube does not “deliver” calls to
14 DeltaCom. But, that is not true. Hypercube has delivered and DeltaCom has
15 accepted the calls that Hypercube has sent over FGD trunks as provided for in
16 Hypercube’s price list to DeltaCom. DeltaCom has never complained that a call
17 destined to its 8YY subscriber has not reached DeltaCom. The calls have
18 unquestionably made it from the wireless subscriber to DeltaCom’s 8YY
19 subscriber, through the result of Hypercube’s services. Hypercube has delivered
20 to DeltaCom every call for which it has charged DeltaCom, and DeltaCom has
21 accepted every call.

22 “Delivery” under Hypercube’s price list (or telecommunications law) does
23 not depend on a direct route as Mr. Wood argues. As described in Hypercube’s

1 price list, the delivery and acceptance of those calls also makes DeltaCom a
2 “Customer” under Hypercube’s price list. Mr. Wood’s arguments about whether
3 Hypercube delivered the calls or whether DeltaCom accepted them are arguments
4 about semantics that ignore the reality that the calls were in fact delivered to
5 DeltaCom’s 8YY subscribers. As Professor Sidak explains in his rebuttal
6 testimony, wireless carriers would not send calls to Hypercube if those calls did
7 not make it to DeltaCom’s 8YY subscribers. Sidak Rebuttal Test., pages 15-16.
8 There is no doubt that the calls at issue are delivered to DeltaCom and accepted
9 by DeltaCom (and then billed for by DeltaCom to the 8YY subscriber that
10 received the call which relied on Hypercube’s service as a necessary input).
11 Finally, DeltaCom has similar provisions in its own price list that contemplate
12 access charges being owed for the indirect delivery of traffic to other IXCs.

13 In short, it is clear that Hypercube provides switched access services to
14 DeltaCom as defined and outlined in Hypercube’s price list. Mr. Wood basically
15 creates new requirements of telecommunications law in order to justify
16 DeltaCom’s refusal to pay Hypercube, requirements that, if applied equally,
17 would make DeltaCom’s own CLEC price list invalid. The Commission should
18 not accept those efforts to change the law and long-standing industry practice
19 retroactively.

20 **Q. Do Mr. Wood’s arguments about the rate Hypercube charges DeltaCom**
21 **have any merit?**

22 A. No. Mr. Wood argues on pages 40-42 that Hypercube has no rate in its price list
23 for switched access service. That is patently false. As Mr. Wood notes,

1 Hypercube has blended rates for call types “Originating FG Access” and
2 “Terminating FG Access,” with the former rate being the operative rate in this
3 proceeding. In Hypercube’s price list, “originating” means the direction the call
4 is traveling over Hypercube’s network. Thus, for switched access services that
5 are provided in the originating direction, Hypercube charges the call type
6 “Originating FG Access” rate. That is exactly what Hypercube has charged
7 DeltaCom for the calls destined to DeltaCom’s 8YY subscribers.

8 Moreover, Mr. Wood notes that Hypercube has an express rate for the
9 database dip service on page 41 of his testimony. Inexplicably, DeltaCom also
10 refuses to pay this rate, even when Mr. Wood acknowledges that it is in
11 Hypercube’s price list and necessary to complete any 8YY call. Moreover,
12 DeltaCom admits that it pays this rate when an ILEC performs the identical
13 function, which belies Mr. Wood’s false claims on pages 45-46 that the
14 originating carrier is responsible for this function. Mr. Wood again never
15 explains what the difference is between Hypercube performing this function or an
16 ILEC performing this function, other than DeltaCom’s desire to avoid paying for
17 the services it uses.

18 In short, Mr. Wood cannot read ambiguity into Hypercube’s price list
19 through artful omission or misinterpretation. Hypercube’s price list accurately
20 describes the service Hypercube provides to DeltaCom and the applicable rate
21 charges, and, therefore, should be enforced.

ISSUE 7

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

Q. Do you agree with Mr. Wood’s arguments that DeltaCom’s “Intermediate Provider Access Service” in its price list complies with applicable law?

A. No. Mr. Wood provides no authority for his arguments that an 8YY provider, such as DeltaCom here, can charge other carriers for carrying the 8YY provider’s own traffic for which the 8YY provider already generates revenue. The absence of any authority and Mr. Wood’s cursory explanation of DeltaCom’s purported service demonstrates that this service is illusory. DeltaCom’s purported service was added to its price list solely to harass Hypercube, as evidenced by the fact that DeltaCom has admitted in discovery that Hypercube is the only carrier that DeltaCom has ever charged for this “service.” Rather than connect its network in the most efficient manner and pay for its own 8YY traffic, DeltaCom would rather play “rate” games through its “Intermediate Provider Access Service.”

Q. Do you agree with Mr. Wood that DeltaCom’s purported service may be enforced under the filed rate doctrine?

A. No. As I explained on pages 41 through 45 of my direct testimony, DeltaCom’s purported service is not a network access service, is contrary to the law, and therefore cannot be enforced under the filed rate doctrine. *In re TDS Telecom*, PSC-06-0776-FOF-TP, 2006 WL 2805432, at *8 (Fla. P.S.C. Sept. 18, 2006) (holding that the Commission has the authority to invalidate a tariff contrary to Florida law). There is no support for Mr. Wood’s suggestion that if Hypercube’s

1 price list is enforced, then DeltaCom's must be enforced. As explained,
2 Hypercube has a lawful service in its price list. The filed rate doctrine enforces
3 lawful rates.

4 **Q. Is there anything else about DeltaCom's service that is contrary to law?**

5 A. Yes. Mr. Wood makes various claims about Hypercube not providing service and
6 Hypercube charging for intraMTA traffic. DeltaCom's service as applied by Mr.
7 Wood, however, acknowledges that Hypercube has provided services to
8 DeltaCom. Moreover, DeltaCom's service has no carve-out for intraMTA traffic.
9 These points are not meant to give any credence to Mr. Wood's arguments, but
10 simply to show that DeltaCom has asserted a host of excuses for not paying
11 Hypercube that quickly collapse under any serious examination.

12 Finally, for all of Mr. Wood's complaints about Hypercube's invoices,
13 Mr. Wood asks this Commission to enforce DeltaCom's invoices to Hypercube
14 which described its service as "Intermediate Provided Service," a phrase found
15 nowhere in DeltaCom's price list. Again, this is not to give any credence to
16 DeltaCom's and Mr. Wood's arguments or that DeltaCom has actually provided
17 any such service (which it has not), but to simply show that DeltaCom and Mr.
18 Wood will disparage Hypercube for one thing or another, all the while having
19 engaged in the exact same practices.

ISSUE 8

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To what extent, if any, is enforcement of Hypercube's price list preempted by federal law?

Q. Do Mr. Wood's arguments about intraMTA boundaries hold any relevance to this proceeding?

A. No. As I explained in my direct testimony, intraMTA boundaries are irrelevant to this dispute because the traffic at issue here is "toll" traffic, *i.e.*, access traffic. Further, MTA boundaries only apply to traffic that is exchanged between a CMRS provider and a LEC; MTA boundaries have no relevance to traffic involving an IXC. Again, traffic exchanged by a CMRS provider or a LEC with an IXC is access traffic. In this proceeding, DeltaCom is an IXC, and, therefore, the traffic is access traffic for which intraMTA boundaries have no relevance. Indeed, the FCC has consistently held since the market-opening provisions of the 1996 Act that LECs, whether incumbent or competitive, should bill IXCs for the work they perform in an interexchange call-flow pursuant to the LECs' access tariffs, and not rely on other forms of intercarrier compensation, such as reciprocal compensation.

DeltaCom appears to concede this point at least with respect to ILECs, as it does not dispute that it pays ILECs for intermediate tandem services pursuant to their interstate or intrastate access tariffs for intraMTA traffic. Mr. Wood, however, never explains why there should be any contrary result when a CLEC provides functionally-equivalent services to an IXC such as DeltaCom. The important fact is that when an IXC is responsible for the traffic, it is access traffic. MTA boundaries do not matter. DeltaCom's focus on MTA boundaries therefore

1 is simply another red herring excuse for refusing to pay Hypercube and belied by
2 its practice of paying tariffed switched access charges when an ILEC handles
3 intraMTA traffic destined for DeltaCom's 8YY subscribers.

4 **ISSUE 9**

5 Does the Commission have jurisdiction to address quantum meruit and, if so,
6 what action, if any, should the Commission take?

7
8 **Q. If the Commission declines to enforce Hypercube's price list, has Hypercube**
9 **provided DeltaCom valuable services for which Hypercube should be**
10 **compensated?**

11 A. Yes. It would be neither fair, nor equitable for DeltaCom to receive free services
12 from Hypercube. DeltaCom should have to at least pay the reasonable value of
13 Hypercube's services which can be approximated by the rates in Hypercube's
14 price list or other rates. If for some reason the Commission finds that
15 Hypercube's price list does not apply – which it should not – then Hypercube asks
16 for quantum meruit in this proceeding as an alternative claim. At a minimum,
17 Hypercube should be compensated for the database dip charges that had to occur
18 for DeltaCom's 8YY calls to be completed, and which only Hypercube provided.
19 Because it provided the other switching, transport, and related access services for
20 which it has billed DeltaCom, it should be awarded its full price list rates.

21 **Q. Can you summarize your rebuttal testimony?**

22 A. Yes. Mr. Wood's testimony attempts to find any reason to justify DeltaCom's
23 failure to pay Hypercube, even making up requirements of telecommunication
24 law that even DeltaCom doesn't follow itself. What is clear is that DeltaCom
25 would rather avoid paying for the services it has used, even if it means initiating

1 this proceeding or engaging in “rate” games like its “Intermediate Provider
2 Access Service.” DeltaCom should pay for the services it uses under the filed rate
3 doctrine. Hypercube’s price list describes the services provided to DeltaCom and
4 Hypercube has only charged the rates in its price list. Under those circumstances,
5 Hypercube’s price list should be enforced under the filed rate doctrine.

6 **Q. Does this conclude your Rebuttal Testimony?**

7 A. Yes.