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July 9, 2010

VIA HAND DELIVERY

Ms. Ann Cole
 Commission Clerk
 Florida Public Service Commission
 2540 Shumard Oak Boulevard
 Tallahassee, FL 32399-0850

Re: Docket No. 090327-TP - Petition of DeltaCom, Inc. for Order Determining DeltaCom, Inc. Not Liable for Access Charges of KMC Data, LLC and Hypercube Telecom, LLC

Dear Ms. Cole:

Please find attached for filing in the above-referenced docket on behalf of DeltaCom, Inc., an original and fifteen (15) copies of the Rebuttal Testimony of Don J. Wood and Jerry Watts. A CD containing PDF versions of the testimony is also enclosed.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew Feil

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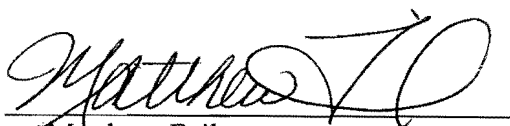
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Prefiled Rebuttal Testimony of Don J. Wood and Jerry Watts was served upon the following by Electronic Mail and/or U.S. Mail this 9th day of July, 2010.

| | |
|--|--|
| Charles Murphy, Esq. Timisha Brooks, Esq. Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 cmurphy@psc.state.fl.us tbrooks@psc.state.fl.us | Kevin Bloom Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 kbloom@psc.state.fl.us |
| D. Anthony Mastando, Esq. Regulatory Vice President Jean Houck DeltaCom, Inc 7037 Old Madison Pike, Suite 400 Huntsville, AL 35806 (256) 382-5900 tony.mastando@deltacom.com jean.houck@deltacom.com | Mr. James Mertz Hypercube Telecom LLC Building 300 5300 Oakbrook Parkway Suite 330 Norcross, GA 30093-6210 james.mertz@hypercube-llc.com |
| Floyd R. Self, Esq. Messer, Caparello & Self, P.A. P.O. Box 15579 Tallahassee, FL 32317 (850) 425-5213 fself@lawfla.com | Michael B. Hazzard, Esq. Jason Koslofsky, Esq. Arent Fox LLP 1050 Connecticut Avenue, NW Washington, D.C. 20036-5339 (202) 857-6029 hazzard.michael@arentfox.com koslofsky.jason@arentfox.com |

By: 
Matthew Feil

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **REBUTTAL TESTIMONY**
3 **OF**
4 **DON J. WOOD**
5 **DOCKET NO. 090327-TP**
6
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1 **I. Introduction and Purpose**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Don J. Wood. My business address is 914 Stream Valley Trail,
4 Alpharetta, Georgia 30022.

5

6 Q. ARE YOU THE SAME DON J. WOOD WHO PREFILED DIRECT
7 TESTIMONY ON BEHALF OF DELTACOM ON JUNE 15, 2010 IN THIS
8 PROCEEDING?

9 A. Yes.

10

11 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

12 A. I have been asked by DeltaCom, Inc. ("DeltaCom") to respond to the prefiled
13 direct testimony of Robert W. McCausland and J. Gregory Sidak on behalf of
14 Hypercube Telecom LLC ("Hypercube").

15 My testimony is structured as follows: Section II of my testimony
16 addresses several basic factual issues raised by Mr. McCausland in his
17 testimony. Section III responds to the testimony of Mr. McCausland and Mr.
18 Sidak in response to each of the issues set forth in Attachment A to the
19 Commission's April 20, 2010 *Order Establishing Procedure*.¹ Section IV

¹ Many of the issues on the Commission's Issues List call for a legal conclusion. DeltaCom will be responding to the legal issues in its prehearing statements and post-hearing brief. The objective of my testimony is to respond to the factual assertions

1 responds to topics discussed by Mr. Sidak that are – at best – only tangentially
2 related to the questions before the Commission in this case. To the extent that
3 the Commission is interested in a discussion of these topics, I provide my
4 response.

5

6 **II. Response to Certain Factual Assertions of Mr. McCausland**

7 Q. AT P. 5 OF HIS TESTIMONY, MR. MCCAUSLAND ASSERTS THAT
8 DELTACOM DOES NOT DISPUTE THAT HYPERCUBE IS PROVIDING
9 SWITCHED ACCESS SERVICE TO DELTACOM. IS HIS CLAIM
10 ACCURATE?

11 A. No. As an initial matter, DeltaCom does not agree that Hypercube is providing
12 *any* service to DeltaCom. DeltaCom has never ordered any service from
13 Hypercube, Hypercube has never delivered a single call to DeltaCom's
14 network, and DeltaCom has never accepted a single call from Hypercube's
15 network. While Hypercube claims to have somehow participated in the
16 routing of certain calls that have been delivered to DeltaCom by other carriers,
17 DeltaCom has no indication whatsoever of Hypercube's alleged involvement at
18 the time a call is delivered to its network² – the only way that DeltaCom
19 becomes aware that Hypercube *claims* to have participated in the routing of a

made by Hypercube witness in their testimony addressing these issues; it is not my
intention to provide a legal conclusion regarding any of these issues.

² The calls at issue are delivered to DeltaCom via an intermediate ILEC tandem – the
same way that they would be delivered if Hypercube did not claim any involvement in
routing the call.

1 call is when it receives a bill from Hypercube for a “service” DeltaCom never
2 ordered. And as Hypercube’s own call routing diagrams show,³ there are
3 multiple ways for the calls at issue to be delivered to DeltaCom without any
4 participation by Hypercube whatsoever – whatever Hypercube claims to be
5 doing, by its own admission its performance of these functions is not *required*
6 for the calls at issue to be successfully completed.

7 In addition, DeltaCom has never agreed that Hypercube is capable of
8 providing “switched access services” for the calls at issue as that term is
9 defined in Hypercube’s tariff. Hypercube cannot “provide a communications
10 path between a Customer and an End User,” cannot provide “terminating
11 facilities,” or provide “the ability to originate calls from an End User to a
12 Customer,” because Hypercube does not have the network facilities required to
13 perform these functions – yet each of these functions is an integral part of
14 Hypercube’s own definition of “switched access service” in Section 3.1 of its
15 tariff.

16
17 Q. DOES MR. SIDAK ALSO CLAIM THAT HYPERCUBE IS PROVIDING
18 SWITCHED ACCESS SERVICE TO DELTACOM?

³ These diagrams were attached as Exhibit A to Hypercube’s November 23, 2009
*Answer to Amended Petition of DeltaCom, Inc. and Amended Counterclaim of
Hypercube Telecom, LLC f/k/a KMC Data, LLC* (“Hypercube Answer”) and to my
direct testimony as Exhibit DJW-2.

1 A. Among other things, yes. At pp. 8-9,⁴ Mr. Sidak claims that “by allowing
2 DeltaCom to access Hypercube’s switched network for the purpose of
3 originating a toll-free call from a wireless end user to one of DeltaCom’s 8YY
4 subscribers, Hypercube is providing switched access service to DeltaCom.”
5 Mr. Sidak just gets the facts wrong here: DeltaCom does not “access”
6 Hypercube’s network (at no time does DeltaCom deliver a call to Hypercube
7 or receive a call from Hypercube), and DeltaCom does not “originate a toll-
8 free call from a wireless end user.” In reality, it is the wireless (CMRS) carrier
9 that originates the call placed by its end user customer on its network, and by
10 routing a call from its end office switch to Hypercube, it is the wireless carrier
11 that “accesses” Hypercube’s network. DeltaCom does not originate the 8YY
12 calls at issue and does not route calls of any kind to Hypercube’s network.

13

14 Q. HOW DOES MR. SIDAK DESCRIBE THE KIND OF ACCESS THAT HE
15 ASSERTS IS BEING PROVIDED BY HYPERCUBE?

16 A. At pp. 9-10, Mr. Sidak states that Hypercube imposes a rate for “the
17 origination of tandem access.” While I understand that Mr. Sidak wants to find
18 a way to work in the words “origination” and “access” when describing what
19 Hypercube does, neither actually applies here and the result is a nonsensical
20 statement. It doesn’t really make sense to talk about the act of “originating” an

⁴ The substance of Mr. Sidak’s testimony is contained in Exhibit JGS-2. My citations to his testimony are to the numbered pages of JGS-2.

1 access function; it is the call that is “originated” and the 8YY calls at issue are
2 not “originated” by a Hypercube end user customer and are not “originated” on
3 the Hypercube network. And while it makes sense to talk about “tandem
4 switching” functions, “tandem access” is not a form of originating access and
5 is not a term that is defined in the Hypercube tariff.⁵

6

7 Q. DOES MR. MCCAUSLAND SIMILARLY HAVE TROUBLE DEFINING
8 HYPERCUBE’S AND DELTACOM’S ROLES IN PROCESSING THE
9 CALLS AT ISSUE?

10 A. Yes. At pp. 4-5, Mr. McCausland summarizes the dispute as follows:

11 A terminating carrier like DeltaCom has always been
12 required to pay the switching carrier for the use of the
13 switching carrier’s facilities and services. Were such
14 not the case, the switching carrier, having no
15 relationship with the ultimate customer, would have no
16 means of recovering charges for the use of its facilities,
17 and therefore no reason to permit the use of its facilities.
18 The compensation mechanism for switched access
19 services has always been tariffs or price lists.
20

21 Unfortunately, Mr. McCausland’s statement contains at least four
22 fundamental errors.

⁵ As I noted in my direct testimony, Section 3.2.3 of the Hypercube tariff defines three distinct forms of “switched access service”: “Originating FG Access,” “Originating 800 FG Access,” and “Terminating FG Access,” and Section 4.4.1 sets forth rates for two of the three forms: “Originating FG Access” and “Terminating FG Access.” There is no definition of “Tandem Access” and no rate for “Tandem Access” in the tariff.

1 **1. Mr. McCausland tries to finesse terms by using the term**
2 **“switching carrier” in his argument; what he really means is “originating**
3 **carrier.”** “Switching carrier” is simply not a term of art in the industry,⁶ and
4 not a defined role in the processing of any call type. Switched access functions
5 are performed by “originating” and “terminating” carriers, and Hypercube –
6 regardless of whether or not it actually performs the functions that it claims to
7 perform – is neither the originating nor the terminating carrier for the calls at
8 issue.

9 **2. Mr. McCausland’s suggestion that the “terminating carrier” has**
10 **“always been required” to compensate the “originating carrier” for the**
11 **use of the originating carrier’s network facilities is simply incorrect.** I do
12 not know of any call type for which this statement would hold. The general
13 industry principle of “calling party pays” requires just the opposite, in
14 recognition of the fact that it is the originating carrier’s end user customer who
15 initiates the call and who “causes” each carrier to incur costs. For a call that is
16 local (if wireline originated) or intraMTA (if wireless originated), it is the
17 originating carrier that would pay the terminating carrier for the use of the
18 terminating carrier’s facilities. If the call is a wireline-originated,
19 interexchange call, the interexchange carrier – not the terminating carrier –

⁶ In my 23 years in the industry, I have never heard the term. To be certain, I checked *Newton’s Telecom Dictionary* (no entry for “switching carrier”) and conducted a search on both the Commission’s and the FCC’s websites (no entries were returned for a search on the term “switching carrier”). I have also been unable to locate the term in Hypercube’s tariff.

1 would typically compensate both the originating and terminating carrier. If the
2 call is a wireless-originated, interMTA call, the FCC has concluded that the
3 originating (or terminating) wireless carrier can only seek compensation if an
4 agreement has been reached with the interexchange carrier.⁷ In the end, it is
5 just not accurate to say that terminating carriers are, or “have always been,”
6 required to compensate originating carriers.

7 **3. Mr. McCausland’s suggestion that, absent the receipt of access**
8 **charges, an originating carrier “would have no reason to permit the use of**
9 **its facilities” is also incorrect.** An originating carrier “permits the use of its
10 facilities” for the origination of all call types (including but not limited to 8YY
11 calls) because it is that originating carrier’s end user customer that is initiating
12 the call, and the end user customer receives value by being able to make the
13 kinds of calls that he or she wishes to make. That is why the end user
14 customer subscribes to the originating carrier’s service.

15 **4. Mr. McCausland’s statement that “the compensation mechanism**
16 **for switched access services has always been tariffs or price lists” is overly**
17 **broad and therefore inaccurate.** For wireline-originated calls, it is accurate
18 to state that the originating carrier usually seeks compensation via tariffed rates
19 for switched access services. But for wireless-originated calls, the FCC has
20 been clear that the originating carrier cannot impose access charges via a tariff,

⁷ The decisions of the FCC and other state regulators regarding this issue are discussed at pp. 12-17 and 28-29 of my direct testimony.

1 but can only do so via a contractual agreement (see pp. 12-17 of my direct
2 testimony for a more complete discussion of this issue). For the wireless-
3 originated 8YY calls at issue here, Mr. McCausland's statement is incorrect:
4 the compensation mechanism for the originating carrier of these calls cannot be
5 "tariffs or price lists."

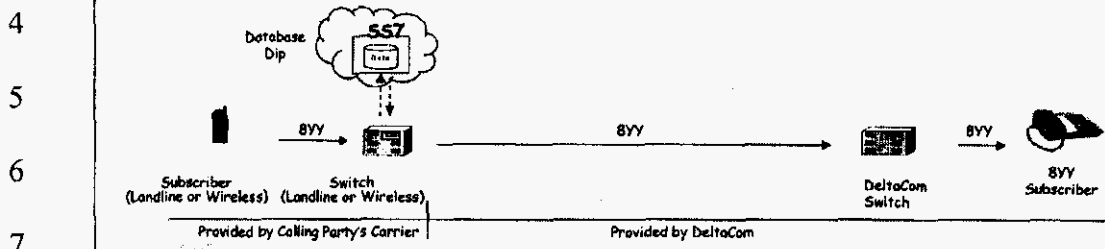
6
7 Q. MR. MCCAUSLAND ARGUES THAT DELTACOM DOES NOT DISPUTE
8 THAT HYPERCUBE PROVIDES DELTACOM WITH ESSENTIAL
9 SERVICES. IS HE RIGHT?

10 A. No. DeltaCom absolutely disputes such a claim. Mr. McCausland claims (p.
11 5) that "DeltaCom does not dispute that Hypercube provided (and continues to
12 provide) DeltaCom with services which *permitted* (and continue to *permit*)
13 DeltaCom to serve and bill DeltaCom's 8YY subscribers" (emphasis added).
14 Mr. McCausland's use of the word "permit" makes it sound as if the functions
15 that Hypercube claims to provide are essential and that these functions add
16 value for DeltaCom. Mr. Sidak goes a step further, and directly asserts (p. 84)
17 that the services that Hypercube claims to provide to DeltaCom are "an
18 essential input to DeltaCom's provision of 8YY service to its own customers."

19 Yet the claims of Mr. McCausland and Mr. Sidak are undermined by
20 Hypercube's call flow diagrams. The following two call flows – illustrated in

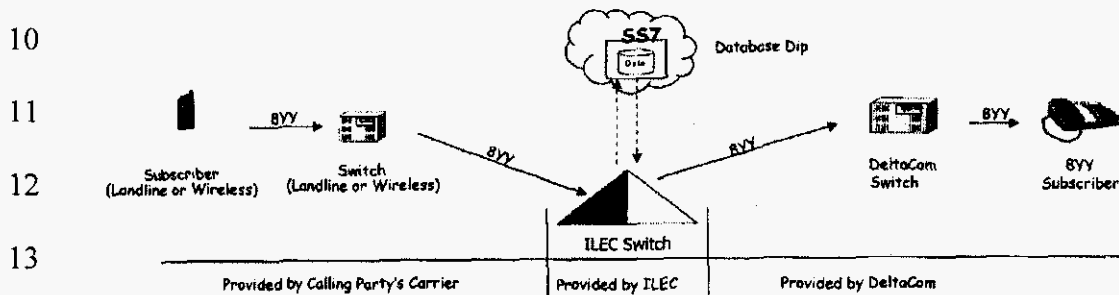
1 Hypercube's own diagrams – show successfully completed "8YY" calls from a
2 wireless carrier's end user to a DeltaCom customer:⁸

3 **Direct Interconnection Between DeltaCom and Calling Party's Carrier**



8 **Diagram 1.**

9 **Direct Interconnection Between DeltaCom and ILEC**



14 **Diagram 2.**

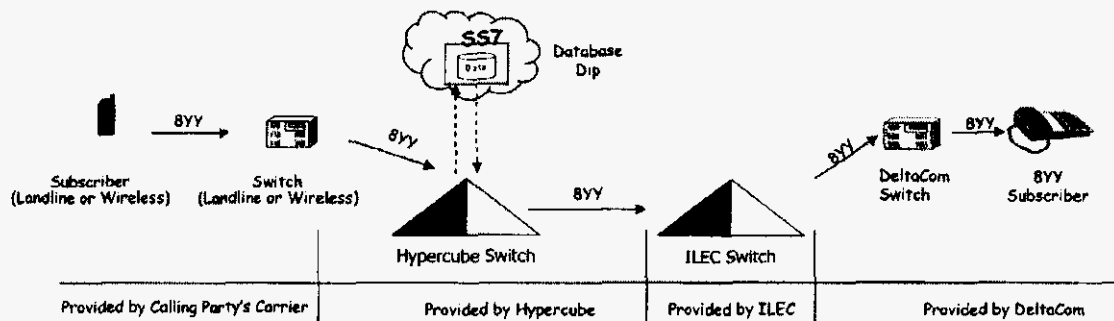
15 Diagram 1 shows how all of the essential call functions are performed
16 when DeltaCom is directly interconnected with the originating wireless
17 carrier's end office switch, or MTSO. Diagram 2 shows one option for how all
18 of the essential call functions might be performed when DeltaCom is not
19 directly interconnected with the originating wireless carrier's MTSO, but

⁸ These diagrams are contained in the November 23, 2009 *Answer to Amended Petition of DeltaCom, Inc. and Amended Counterclaim of Hypercube Telecom, LLC f/k/a KMC Data, LLC* ("Hypercube Answer"), Exhibit A, Pages 1 and 2, and were reproduced in my direct testimony as Diagram 1 and Diagram 2.

1 instead interconnects through an ILEC tandem (another option would be for
2 the SS7 “database dip” to be performed from a location on the wireless
3 carrier’s network, just as it is in Diagram 1). While all of the essential
4 functions are performed – and the calls are successfully completed – in each of
5 these call flows, Hypercube is not present in either of them. It is difficult to
6 conclude that Hypercube is essential to the completion of these 8YY calls if,
7 by its own admission, it doesn’t actually need to be there at all.

8 Even in the call flow diagram where Hypercube does appear, it is clear
9 that its presence is in no way “essential.” The following diagram shows an
10 example of how Hypercube inserts itself into call flow:

11 Indirect Interconnection Between DeltaCom and Hypercube



17 **Diagram 3.**

18 As explained at pp. 24-26 of my direct testimony, the call flow is the same as
19 the one shown in Diagram 2, except that Hypercube has (1) replaced the
20 transport link between the wireless MTSO and ILEC tandem with its own
21 tandem switch and transport links, and (2) replaced the 800 database query
22 previously performed either by the wireless carrier, or for the wireless carrier

1 by the ILEC, with a query performed for the wireless carrier by Hypercube.
2 No functions are being provided in Diagram 3 (with Hypercube present) that
3 were not already being provided in Diagram 2 (where Hypercube was not
4 present), and each of the functions that Hypercube claims to perform in
5 Diagram 3 was “provided by the calling party’s carrier” in Diagram 1 or
6 Diagram 2. In the end, Hypercube concedes that it is not providing any new
7 functions, and is not providing any functions that the originating carrier cannot
8 otherwise provide.

9
10 Q. TO THE EXTENT THAT HYPERCUBE IS PROVIDING SERVICES OF
11 VALUE, WHO IS THE CUSTOMER OF THOSE SERVICES?

12 A. It is clearly the wireless carrier. Mr. Sidak’s testimony is instructive on this
13 point. At p. 70, he points out that “because a wireless carrier is a common
14 carrier, it has the legal obligation to transport 8YY calls originating on its
15 network to the proper IXC’s switch. Wireless carriers have no right to opt out
16 of common carrier requirements with respect to the transmission and delivery
17 of 8YY calls.”

18
19 Q. WHAT NETWORK FUNCTIONS NEED TO BE PERFORMED BY A
20 WIRELESS CARRIER IN ORDER TO “TRANSPORT 8YY CALLS
21 ORIGINATING ON ITS NETWORK TO THE PROPER IXC’S SWITCH”?

1 A. In order to complete an 8YY call dialed by one of its end user customers, a
2 wireless carrier needs to perform three functions. First, it must determine the
3 identity of the IXC assigned to the 8YY number. It can do this by accessing its
4 own 800 database or by accessing an 800 database maintained by another
5 entity. Second, it must switch the call onto a facility that connects to the IXC's
6 point of presence, or "POP" (either to a location at the MTSO if the IXC is
7 directly interconnected, or onto an interoffice trunk if the IXC is not directly
8 interconnected). Third, if the IXC is not directly interconnected at the MTSO,
9 the wireless carrier must transport the call to the IXC POP.

10 The wireless carrier has the option of performing these functions itself
11 or of engaging the services of another carrier to provide these functions.

12
13 Q. DO DIAGRAMS 1 AND 2 – THOSE THAT SHOW THE SUCCESSFUL
14 COMPLETION OF 8YY CALLS WITHOUT THE INTERVENTION OF
15 HYPERCUBE – SHOW THE ORIGINATING WIRELESS CARRIER
16 PERFORMING THESE FUNCTIONS?

17 A. Yes. In Diagram 1, the originating wireless carrier determines the identity of
18 the IXC to whom the 8YY number is assigned, and switches the call to a
19 facility that connects to the IXC (in that case, a directly interconnected IXC).
20 Hypercube's diagram correctly identifies each of these functions as "provided
21 by the calling party's carrier."

1 In Diagram 2, the originating carrier switches the call to a connecting
2 facility and transports the call to the IXC POP. In this diagram, the wireless
3 carrier has another carrier perform the SS7 “database dip” (needed to
4 determine the identity of the IXC to whom the 8YY number is assigned),
5 although it could have performed this function itself, just as on Diagram 1.
6

7 Q. WHAT FUNCTIONS DOES HYPERCUBE CLAIM TO BE PROVIDING?

8 A. Hypercube claims to be performing the same three functions: (1) the “database
9 dip” needed to determine the identity of the IXC to whom the 8YY number is
10 assigned, (2) switching of the call to a facility that connects to the IXC, and (3)
11 transport of the call to the IXC POP. Hypercube is performing the three
12 network functions that the originating wireless carrier must perform in order to
13 meet what Mr. Sidak describes as the wireless carrier’s “legal obligation to
14 transport 8YY calls originating on its network to the proper IXC’s switch.”
15

16 Q. WHAT CARRIER DETERMINES WHETHER A WIRELESS-
17 ORIGINATED 8YY CALL WILL BE ROUTED TO HYPERCUBE?

18 A. The originating wireless carrier makes this determination. DeltaCom has
19 absolutely no role in this decision.
20

21 Q. IF THE ORIGINATING WIRELESS CARRIER IS MAKING THE
22 DECISION TO ROUTE THE CALLS AT ISSUE TO HYPERCUBE, AND

1 HYPERCUBE IS PERFORMING FUNCTIONS – AT THE REQUEST OF
2 THE WIRELESS CARRIER – THAT THE WIRELESS CARRIER HAS A
3 “LEGAL OBLIGATION” TO ENSURE ARE PERFORMED, WHO IS THE
4 CUSTOMER OF HYPERCUBE’S “SERVICES”?

5 A. The originating wireless carrier is the customer of Hypercube’s services.

6

7 Q. WHAT CARRIER RECEIVES VALUE IF HYPERCUBE PERFORMS
8 THESE FUNCTIONS?

9 A. The originating wireless carrier that elects to have Hypercube performs these
10 functions on its behalf receives value by not having to itself perform functions
11 that, according to Mr. Sidak, it has a “legal obligation” to provide.

12

13 Q. TO THE EXTENT THAT HYPERCUBE IS PERFORMING FUNCTIONS
14 ON BEHALF OF ANOTHER CARRIER AND SHOULD BE
15 COMPENSATED FOR DOING SO, WHAT CARRIER SHOULD
16 COMPENSATE HYPERCUBE?

17 A. The originating wireless carrier is Hypercube’s customer for these functions,
18 receives value when Hypercube performs these functions, and should be
19 responsible for compensating Hypercube for performing these functions.

20

21 Q. AT P. 7, MR. MCCAUSLAND ASSERTS THAT “DELTACOM DOES NOT
22 DISPUTE THAT IT IS HYPERCUBE AND ONLY HYPERCUBE THAT

1 PERFORMS THE DATABASE INQUIRY ESSENTIAL TO GETTING THE
2 CALL TO DELTACOM,” AND THAT DELTACOM *ASKS* TO RECEIVE
3 THIS “DIP” SERVICE, AMONG OTHER HYPERCUBE SERVICES, FOR
4 FREE.” DO YOU AGREE?

5 A. No; I disagree with both assertions. First, DeltaCom does not agree that
6 “Hypercube and only Hypercube performs the database inquiry.” The wireless
7 carrier may perform this function for itself (as Hypercube illustrates in
8 Diagram 1), it may have a carrier other than Hypercube perform the function
9 (as Hypercube illustrates in Diagram 2), and presumably it may have
10 Hypercube perform this function (as Hypercube illustrates in Diagram 3),
11 although DeltaCom has no way to independently verify that it is Hypercube
12 that is performing this function when it claims to have done so. In the end, it is
13 undisputed that carriers other than Hypercube perform this function, and there
14 has been no demonstration that Hypercube does in fact do so.

15 Mr. McCausland’s second assertion is also false; DeltaCom has never
16 *asked* Hypercube to perform the “dip” service *or to provide any other service*
17 *that Hypercube claims to provide to DeltaCom (at any price, including but not*
18 *limited to “for free”). To the extent that another carrier has asked Hypercube*
19 *to perform a “dip” or other service, Hypercube should go to that carrier – its*
20 *customer – for compensation.*

21

1 Q. BOTH MR. MCCAUSLAND AND MR. SIDAK CLAIM THAT
2 HYPERCUBE BILLS DELTACOM ONLY FOR FUNCTIONS THAT
3 HYPERCUBE ACTUALLY PERFORMS. DO YOU AGREE?

4 A. No. At pp. 6-7 of his testimony, Mr. McCausland lists ten steps that he argues
5 must be performed for a wireless-originated 8YY call to be completed. He
6 then claims (p. 8) that Hypercube bills only for the “steps” that it performs, and
7 not for the “steps” performed by the originating wireless carrier. Mr. Sidak
8 makes a similar claim that “the charges that attend each individual call are
9 based on *the specific functions that Hypercube performs* in the course of its
10 transport of the call” (emphasis added, p. 5).

11

12 Q. IS THERE A SPECIFIC NETWORK FUNCTION THAT ALL PARTIES
13 AGREE HYPERCUBE DOES *NOT* PROVIDE?

14 A. Yes. In his listing of the ten steps to complete a wireless-originated 8YY call,
15 Mr. McCausland identifies step 3 as follows: “at the MTSO, the wireless
16 carrier determines that the call is an 8YY call and routes it to a port on the
17 MTSO designated for Hypercube.” Whether the wireless carrier routes the call
18 to Hypercube, to an ILEC tandem where DeltaCom has a POP, or directly to
19 DeltaCom, it has performed the essential function of end office switching.
20 Hypercube does not, and cannot, perform this function (and does not claim in
21 testimony that it does).

22

1 Q. DOES HYPERCUBE IN FACT BILL DELTACOM FOR EACH
2 "INDIVIDUAL CALL" BASED ONLY ON "THE SPECIFIC FUNCTIONS"
3 THAT HYPERCUBE ACTUALLY PERFORMS "IN THE COURSE OF ITS
4 TRANSPORT OF THE CALL"?

5 A. No. According to the Hypercube tariff, Hypercube charges a "blended rate"
6 that includes multiple network functions.

7 Section 4.2.1 states that Hypercube provides originating switched
8 access "through a single blended rate based on aggregate traffic volumes and
9 the following cost categories." Any suggestion that Hypercube bills based on
10 the characteristics of any "individual call" is clearly false: Hypercube
11 explicitly states that it is billing based on some broad average (or "aggregate")
12 of call characteristics and functions performed.

13
14 Q. WHAT "COST CATEGORIES" DOES HYPERCUBE CLAIM TO HAVE
15 BEEN INCLUDED IN ITS BLENDED RATE FOR SWITCHED ACCESS
16 SERVICE?

17 A. Hypercube's tariff (Section 4.2.1) lists two specific cost categories as a part of
18 the "aggregate" determination of functions performed:

19 Switched Transport

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

21 Switching - (End Office, Tandem or both)

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

1 The tariff is clear that the “switched transport” cost category (that
2 represents a part of the aggregate blending process used to create the blended
3 rate) includes both the tandem switching and transport functions that
4 Hypercube claims to be providing for the calls at issue. The second cost
5 category (that also represents a part of the aggregate blending process used to
6 create the blended rate) is “Switching (End Office, Tandem, or Both),” and
7 explicitly includes end office switch equipment.

8

9 Q. IS THERE ANY DOUBT THAT HYPERCUBE’S BLENDED RATE
10 CONTAINS COSTS FOR END OFFICE SWITCHING – A FUNCTION
11 THAT IT DOES NOT ACTUALLY PROVIDE?

12 A. No. At least on this point, Hypercube’s tariff language is clear: its “blended
13 rate” is based on “aggregate traffic volumes” from two cost categories, one of
14 which explicitly includes end office switching.⁹ As a result, Mr.
15 McCausland’s claim (p. 8) that “Hypercube does not bill for the services
16 described” in steps 1, 2 and 3 – step 3 being end office switching – is
17 inaccurate.

18 Not only is Hypercube seeking to bill DeltaCom for services requested
19 by another carrier and performed for the benefit of the other carrier, Hypercube
20 is billing DeltaCom for services actually performed *by* the other carrier. Here,

⁹ To remove any doubt, Section 4.4.1 states that “the blended rate includes Switching and Transport.” “Switching” is defined in Section 4.2.1 as including end office switching.

1 the other carrier is a wireless carrier; a carrier that the FCC has concluded may
2 not impose access charges on an IXC without a contractual agreement to do so.

3

4 Q. MR. MCCAUSLAND CLAIMS THAT “ANY FINANCIAL
5 ARRANGEMENTS BETWEEN HYPERCUBE AND THE WIRELESS
6 CARRIER ON WHOSE NETWORK THESE CALLS BEGAN IS
7 IRRELEVANT.” DO YOU AGREE?

8 A. In this context, no. Here, Hypercube is seeking to bill DeltaCom for switched
9 access services that Hypercube claims to provide, based on a blended rate that
10 “aggregates” multiple cost categories, including end office switching. Even
11 Mr. McCausland concedes (p. 6) that it is the originating wireless carrier, and
12 not Hypercube, that provides the end office switching function for these calls.
13 The FCC has made it clear that, absent a contractual agreement, these wireless
14 carriers cannot themselves impose access charges on IXCs. Hypercube is
15 seeking to impose the blended rate, and to then remit a portion of what it
16 collects back to the originating wireless carrier.

17 As I noted at p. 25 of my direct testimony, the direction of this payment
18 is odd. The wireless carrier is requesting that Hypercube provide a service, is
19 receiving value from Hypercube’s service, and yet is it Hypercube that is
20 making a payment *to* the originating wireless carrier.

21

1 Q. IS THERE ANY ARRANGEMENT THAT WOULD EXPLAIN THIS
2 “BACKWARD” PAYMENT FROM HYPERCUBE TO THE ORIGINATING
3 WIRELESS CARRIER?

4 A. The only scenario that reconciles all of this conflicting information is one in
5 which Hypercube has essentially inserted itself into the call flow as a “billing
6 agent” for the originating wireless carrier. Because the wireless carrier cannot
7 impose access charges directly, Hypercube bills a blended rate from its price
8 list (that includes the end office functions performed by the wireless carrier),
9 and then sends a portion of any amount collected to the wireless carrier –
10 thereby allowing the wireless carrier to do indirectly what the FCC has
11 concluded that it may not do directly.

12

13 **II. Response to Hypercube’s Testimony Addressing the Commission’s Issue List**

14 *Issue 1: What services, if any, are being provided by Hypercube to DeltaCom (or to*
15 *other carriers in the call flow) and how?*
16

17 Q. WHAT SERVICES, IF ANY, ARE BEING PROVIDED BY HYPERCUBE
18 TO DELTACOM?

19 A. For the reasons set forth in the previous section of my testimony, Hypercube is
20 not providing any services to DeltaCom.

21

22 Q. WHAT SERVICES, IF ANY, IS HYPERCUBE PROVIDING TO OTHER
23 CARRIERS IN THE CALL FLOW?

1 A. To the extent that Hypercube is providing any services in the context of the
2 wireless-originated 8YY calls at issue in this case, it is doing so at the request
3 of, and for the benefit of, the originating wireless carrier. Based on the
4 description in Mr. McCausland's testimony (pp. 10-11), it appears that
5 Hypercube may be providing transport from the wireless end office switch
6 (MTSO) to Hypercube, an 800 database query, and routing of the call to an
7 ILEC tandem where DeltaCom has a POP. As noted in the previous sections,
8 each of these functions must be performed by, or for, the originating carrier in
9 order for that carrier to (according to Mr. Sidak) meet its "legal obligation to
10 transport 8YY calls originating on its network to the proper IXC's switch."

11

12 Q. WHAT SERVICES DOES MR. MCCAUSLAND CLAIM HYPERCUBE IS
13 PROVIDING TO DELTACOM?

14 A. After previously claiming that Hypercube is providing originating switch
15 access service, Mr. McCausland claims (p. 9) that "Hypercube provides
16 competitive tandem services to DeltaCom." He then addresses this apparent
17 incongruity by claiming that "competitive tandem services" are merely a form
18 of "switched access service," as "switched access" is described in the
19 Hypercube price list.

20

21 Q. DOES THE HYPERCUBE TARIFF MAKE ANY REFERENCE TO
22 "COMPETITIVE TANDEM SERVICES"?

1 A. No. The Hypercube tariff (Section 1) defines the terms “access service” and
2 “switched access service,” but makes no mention of “competitive tandem
3 services.” The tariff provides an additional description of “switched access
4 service” (Section 3.1) and forms of “Feature Group Access” (Section 3.2).
5 None of these sections define, describe, or make a reference to “competitive
6 tandem services.”

7

8 Q. BOTH MR. MCCAUSLAND AND MR. SIDAK PROVIDE TESTIMONY
9 TOUTING THE BENEFITS OF “COMPETITIVE TANDEM SERVICES.”
10 ARE THE MERITS OF “COMPETITIVE TANDEM SERVICES” AT ISSUE
11 IN THIS CASE?

12 A. No. The question here is not whether competitive tandem services ought to be
13 available, or whether Hypercube makes such services available through its
14 Florida tariff or price list. The issue is whether DeltaCom has ordered from
15 Hypercube, and Hypercube has provided to DeltaCom, services contained in
16 Hypercube’s Florida tariff.

17 It is interesting to note, however, that each of the various claims of
18 value raised by Mr. McCausland and Mr. Sidak relate to value of “competitive
19 tandem access” for the originating carrier, not for DeltaCom.

20

21 Q. WHAT DOES MR. MCCAUSLAND CLAIM IS THE VALUE OF
22 “COMPETITIVE TANDEM SERVICES”?

1 A. Mr. McCausland only makes one claim (at p. 10), and it is fairly high level: “a
2 carrier may choose to use Hypercube’s tandem services so that it can get its
3 traffic to a variety of carriers without having to worry about technology
4 issues.”

5 The language “get its traffic *to* a variety of carriers” is telling – the
6 value, to the extent Mr. McCausland is right about Hypercube’s ability to
7 “connect different network architectures and protocols,” is to an originating
8 carrier seeking to have its customers’ calls completed. And there is no
9 evidence that any such “architecture” or “protocol” problems exist for the
10 wireless-originated calls at issue here; the calls were successfully completed
11 before Hypercube’s claimed participation, and other kinds of wireless-
12 originated calls destined for DeltaCom’s network are delivered without
13 Hypercube and without incident.

14
15 Q. WHAT CLAIMS DOES MR. SIDAK MAKE ABOUT THE VALUE OF
16 “COMPETITIVE TANDEM SERVICES”?

17 A. Mr. Sidak makes a variety of claims. Some are clearly incorrect: at p. 34, Mr.
18 Sidak claims that Hypercube performs a “legitimate service” to DeltaCom by
19 “increasing the efficiency of transport” of these calls. But Hypercube’s own
20 call flow diagrams show that without Hypercube (Diagram 2), the call would
21 travel from the wireless end office switch to the DeltaCom POP via a single
22 transport link and one incidence of tandem switching. With Hypercube

1 (Diagram 3), at least two transport links and two incidences of tandem
2 switching are required. A suggestion that efficiency is enhanced when by
3 doubling the facilities required for call completion cannot have merit.

4 Other claims by Mr. Sidak are merely over the top; for example, he
5 claims (p. 75) that the presence of Hypercube as a competitive tandem provider
6 somehow enhances the goal of universal service, even though a tandem service
7 – by definition – is provided to carriers and does not increase the number of
8 customers who subscribe to telephone service.

9 But the largest category of claims by Mr. Sidak consists of those
10 illustrating that the benefits of the services that Hypercube claims to provide
11 accrue to the originating wireless carrier, and not to DeltaCom. For example,
12 he asserts (p. 59) that “a contract between a CLEC such as Hypercube and a
13 wireless carrier will become *all the more valuable to a wireless carrier* as a
14 means to avoid the cost of transporting calls beyond its own switch” (emphasis
15 added). The problem, of course, is that (as Mr. Sidak points out at p. 70 of his
16 testimony) as a common carrier the originating wireless carrier has an
17 obligation to deliver the call beyond its own switch. As a result, the stated
18 value of Hypercube’s scheme to a wireless carrier is the opportunity to foist its
19 costs onto IXCs like Deltacom through the artifice of Hypercube’s price list.

20 Mr. Sidak goes on to claim (p. 73) that Hypercube “is both precluded
21 from charging the calling party for making 8YY calls and required to connect
22 those calls. Thus, Hypercube must provide a service for which it cannot

1 charge the calling party.” This is nonsense. Hypercube is not the originating
2 carrier of the 8YY calls at issue here; it is in no way “required to connect those
3 calls.” Hypercube only receives these calls because it has an arrangement with
4 the originating wireless carrier such that Hypercube transports the call,
5 attempts to impose switched access charges on DeltaCom, and sends the
6 wireless carrier a portion of the proceeds if it is successful. To suggest that
7 when carrying these calls, “Hypercube must provide a service for which it
8 cannot charge the calling party” is disingenuous; Hypercube “must” do nothing
9 here. It is *not* providing a service because it is required to, it is providing a
10 service voluntarily in response to the request of a wireless carrier with whom it
11 has a certain contractual arrangement that might make Hypercube’s
12 involvement in the call processing, however *unnecessary*, *financial beneficial*
13 to both Hypercube and the wireless carrier.

14 Mr. Sidak makes a similar argument at p. 77: a requirement for
15 “network seamlessness” is that “service providers continue to have the
16 incentive to engage in voluntary exchange. For that incentive to exist, a
17 service provider must expect to receive acceptable compensation *for the*
18 *network access that it is obligated to supply*” (emphasis added). Once again,
19 for the calls at issue in this case Hypercube is not the originating carrier, and it
20 is obligated to supply nothing for the completion of these calls. To the extent
21 it is contributing to the completion of these calls, Hypercube is voluntarily
22 supplying functions at the request of the originating wireless carrier.

1 At pp. 79-80, Mr. Sidak argues that Hypercube's service provides value
2 to an IXC such as DeltaCom, because it allows the IXC to avoid the "cost
3 associated with carrying an 8YY call from a wireless carrier's MTSO to the
4 IXC's point of presence." If the rate charged by Hypercube to perform this
5 transport is less than the cost avoided by the IXC, Mr. Sidak argues, "the IXC
6 benefits by using Hypercube's service as opposed to supplying its own
7 comparable services." Mr. Sidak's example is based on the false premise that
8 it is the IXC that must transport the call from the wireless carrier's MTSO to
9 the IXC POP – as Mr. Sidak points out at p. 70 of his testimony, as a common
10 carrier it is the responsibility of the wireless carrier to transport the call from
11 its switch to the IXC POP. To the extent any carrier avoids a cost by using
12 Hypercube's transport service, that carrier is the originating wireless carrier.

13

14 Q. DOES MR. SIDAK'S TESTIMONY MAKE IT CLEAR WHETHER
15 HYPERCUBE IS "PROVIDING SERVICES TO DELTACOM" OR
16 "PROVIDING SERVICES TO OTHER CARRIERS IN THE CALL FLOW"?

17 A. Yes, I believe that it does. In each example provided by Mr. Sidak of a
18 potentially legitimate benefit that could be created by the services Hypercube
19 claims to provide, that benefit accrues to the originating wireless carrier. If
20 Hypercube is indeed providing services, it is the originating wireless carrier
21 that is the recipient of those services.

22

1 *Issue 1a. Do such services fit into the regulatory framework in Florida? If so, how?*
2

3 Q. HOW ARE THE SERVICES PROVIDED TO WIRELESS CARRIERS BY
4 HYPERCUBE TYPICALLY HANDLED?

5 A. The kinds of services that Hypercube is providing to wireless carriers (800
6 database query, interoffice transport) are typically handled through contractual
7 arrangements between the carriers. It is my understanding that these kinds of
8 voluntary carrier-to-carrier services are not regulated, and therefore would not
9 fall within any regulatory framework.

10

11 Q. MR. MCCAUSLAND ARGUES (PP. 13-14) THAT THIS CASE IS
12 “SIMPLE” AND ITS RESOLUTION SHOULD BE BASED PURELY ON
13 THE FACT THAT HYPERCUBE HAS A “PRICE LIST ON FILE WITH
14 THE COMMISSION.” DO YOU AGREE?

15 A. No. After accusing DeltaCom of trying to “obfuscate the facts and issues,”
16 Mr. McCausland states that the “this case is really that simple: Hypercube has
17 a valid price list on file with the Commission and has billed DeltaCom solely
18 for the services provided by Hypercube – and Hypercube alone – to DeltaCom
19 under that price list.”

20 While I agree that Hypercube has a price list on file with the
21 Commission, the validity of that price list is ultimately moot: Hypercube has
22 never provided services to DeltaCom, pursuant to its Florida price list or any
23 other arrangement. DeltaCom has never ordered or otherwise requested

1 service from Hypercube, has never delivered a call to Hypercube's network,
2 and has never had a call delivered to its network by Hypercube. Hypercube
3 does not have the facilities to provide "switched access service" as it is defined
4 in its price list, and the price list does not contain a rate for the service
5 (Originating 800 FG Access) that Hypercube claims to be providing. The rate
6 that has been billed by Hypercube includes, according to the language of
7 Hypercube's price list, the end office switching function that Hypercube does
8 not provide.

9
10 ***Issue 1b. It is appropriate or lawful to include such services in Hypercube's price***
11 ***list?***
12

13 Q. ARE THESE KINDS OF VOLUNTARY CARRIER-TO CARRIER
14 SERVICES TYPICALLY PROVIDED VIA A FILED PRICE LIST?

15 A. No. As noted above, it is my understanding that these kinds of functions are
16 not regulated, and are provided pursuant to a contract between carriers. While
17 a carrier might maintain a published price list in order to make other carriers
18 aware of its offerings, it would certainly be inappropriate for a carrier to seek
19 to impose the charges from such a price list on a carrier that did not request the
20 service.

21

1 Q. BOTH MR. MCCAUSLAND AND MR. SIDAK SUGGEST THAT THE
2 PROBLEM HERE IS DELTACOM'S REFUSAL TO DIRECTLY
3 INTERCONNECT WITH HYPERCUBE. DO YOU AGREE?

4 A. Absolutely not. There is no requirement for DeltaCom to directly interconnect
5 with Hypercube. In essence, Mr. McCausland and Mr. Sidak are arguing that
6 the problem is not that Hypercube is seeking to bill for a service not ordered,
7 but rather the problem is DeltaCom's lack of interest in ordering Hypercube's
8 service – if DeltaCom would just order the service, the fact that Hypercube is
9 billing for the service would no longer be a problem.

10 Such a view turns the issue on its head. Hypercube is free to offer
11 “competitive tandem service,” “switched access service,” or whatever it wants
12 to call the network functionality that it can provide. Hypercube is also free to
13 reach a contractual arrangement with originating wireless carriers in which
14 Hypercube agrees to accept 8YY calls or to provide any other network
15 function. What Hypercube cannot do is force DeltaCom to buy a service that it
16 does not want and does not need. The fact remains that DeltaCom has chosen
17 to obtain tandem switching services for the calls at issue from a carrier other
18 than Hypercube. Hypercube may want DeltaCom to purchase its service, but it
19 cannot complete the sale by simply sending a bill and demanding payment for
20 a service never ordered (while arguing that the only way for DeltaCom to
21 avoid being billed for a service never ordered is to order the service).

22

1 ***Issue 2. Does the filed rate doctrine apply to this case and if so, how should it be***
2 ***applied?***
3

4 Q. AT P. 19 OF HIS TESTIMONY, MR. MCCAUSLAND ARGUES THAT
5 THE CASE IS A “SIMPLE” APPLICATION OF THE FILED RATE
6 DOCTRINE. DO YOU AGREE?

7 A. No. While I will leave the legal issues regarding the application of the filed
8 rate doctrine for DeltaCom’s brief, I do want to respond to Mr. McCausland’s
9 factual assertions.

10 Specifically, he argues (p. 19) that “the only document that matters for
11 purposes of the filed rate doctrine is the price list. The only determination
12 necessary is whether the carrier performed the services in the price list and
13 charged the rates in the price list. Neither of those two essential elements can
14 be disputed here.”

15 As an initial matter, Mr. McCausland has omitted some “essential
16 elements.” It is not enough to determine that a carrier has “performed the
17 services in the price list;” it is first necessary to determine if the billed carrier
18 has actually ordered any of the services in the price list. It is not my
19 understanding that the filed rate doctrine gives a carrier the ability to charge for
20 a service that was never ordered. It is also not enough to simply determine
21 whether a carrier “charged the rates in the price list,” it is also necessary to
22 determine when such rates are lawful, and, if the service claimed to be
23 provided is provided by more than one carrier, whether each carrier has the

1 right to charge for the portion of the service that it provides. It is also
2 necessary to ensure that the rates charged by each carrier include only the
3 functions that carrier actually provides. Finally, the rates and terms of the
4 price list must be clear and unambiguous.

5 If any of the essential elements are not met, a “filed rate doctrine”
6 claim must fail.

7

8 Q. HAS DELTACOM EVER ORDERED FROM HYPERCUBE ANY OF THE
9 SERVICES IN THE HYPERCUBE PRICE LIST?

10 A. No. As explained in detail at pp. 49-55 of my direct testimony, DeltaCom is
11 not a customer of Hypercube. Pursuant to the definitions in Hypercube’s tariff,
12 DeltaCom has never directly ordered service (it has never issued a written
13 request or Access Service Request to Hypercube), and has never
14 “constructively” order service (it has never delivered calls to a Hypercube
15 location or accepted calls from a Hypercube location).

16

17 Q. HAS HYPERCUBE “PERFORMED THE SERVICES IN THE PRICE
18 LIST”?

19 A. No. For the reasons set forth at pp. 33-40 of my direct testimony, Hypercube
20 has not provided the services in its price list to DeltaCom. Hypercube does not
21 provide “switched access service” and does not provide “Originating 800 FG
22 Access” (the specific type of access that it claims to have provided to

1 DeltaCom). To the extent Hypercube has provided any services at all related
2 to the calls at issue, it has provided those services to the originating wireless
3 carrier.

4

5 Q. HAS HYPERCUBE “CHARGED THE RATES IN THE PRICE LIST”?

6 A. No. For the specific type of access that Hypercube claims to be providing to
7 DeltaCom (Originating 800 FG Access), there is no rate in the Hypercube price
8 list. The rate element that appears on Hypercube’s invoices to DeltaCom
9 (transport blended access) does not appear in the Hypercube price list.

10

11 Q. DO THE RATES IN THE HYPERCUBE PRICE LIST INCLUDE ONLY
12 THOSE FUNCTIONS PROVIDED BY HYPERCUBE?

13 A. No. The “blended rate” that Hypercube seeks to impose is, according to the
14 price list, an aggregation of call types and cost categories, and includes end
15 office switching functions. Hypercube does not provide end office switching
16 for the wireless-originated 8YY calls at issue.

17

18 Q. DOES THE ORIGINATING WIRELESS CARRIER HAVE THE RIGHT TO
19 IMPOSE SWITCHED ACCESS CHARGES, OR JUST THE PORTION OF
20 SWITCHED ACCESS CHARGES ASSOCIATED WITH END OFFICE
21 SWITCHING, ON DELTACOM THROUGH A TARIFF OR PRICE LIST?

22 A. No.

1

2 Q. CAN HYPERCUBE RELY ON THE FILED RATE DOCTRINE TO
3 JUSTIFY IMPOSING ACCESS CHARGES ON BEHALF OF A CARRIER
4 THAT DOES NOT OTHERWISE HAVE THE RIGHT TO IMPOSE
5 ACCESS CHARGES DIRECTLY THROUGH A TARIFF OR PRICE LIST?

6 A. No.

7

8 Q. ARE ANY OF THESE REASONS SUFFICIENT FOR HYPERCUBE'S
9 FILED RATE DOCTRINE CLAIM TO FAIL?

10 A. Yes; a failure of any one of these "essential elements" means that Hypercube's
11 filed rate doctrine claim must fail in its entirety. While any one failure would
12 have been fatal, Hypercube's claim actually meets none of the essential
13 elements.

14

15 ***Issue 3: What are the proper procedures regarding Percent Interstate Usage under***
16 ***Hypercube's price list and were those procedures followed? Which Percent***
17 ***Interstate Usage should have been applied?***

18

19 Q. DOES THE HYPERCUBE TARIFF SPELL OUT A PROCESS FOR THE
20 REPORTING OF A PERCENT INTERSTATE USAGE, OR "PIU"?

21 A. Yes; Sections 2.3.3 and 2.3.4 set forth these requirements. The language in
22 these sections is actually some of the least ambiguous in Hypercube's tariff.

23

24 Q. DID DELTACOM REPORT A PIU TO HYPERCUBE?

1 A. Yes. While DeltaCom disagrees that it has ever been a customer of Hypercube
2 or has otherwise received any services from Hypercube, it did report a PIU in
3 October 2007.

4

5 Q. DID HYPERCUBE APPLY THE PIU SUBMITTED BY DELTACOM?

6 A. No.

7

8 Q. WHAT PIU FACTOR HAS HYPERCUBE APPLIED IN ITS INVOICES TO
9 DELTACOM?

10 A. Instead of applying the PIU submitted by DeltaCom, Hypercube has applied
11 the “default” PIU (apparently from Section 2.3.3 C of its tariff) of 50%.

12

13 Q. IS THE APPLICATION OF THIS “DEFAULT” PIU CONSISTENT WITH
14 THE TERMS OF HYPERCUBE’S TARIFF?

15 A. No. Section 2.3.3 C of Hypercube’s tariff states that “the projected PIU will be
16 set on a default basis of 50 percent interstate and 50 percent intrastate traffic” *if*
17 “no projected PIU factor is submitted by the customer.” Section 2.3.3 E also
18 states that the default PIU will apply, if a PIU report has never been received
19 from the customer.”

20 The Hypercube tariff does not describe any other scenario in which the
21 “default PIU” would apply.

22

1 Q. HOW DOES HYPERCUBE ATTEMPT TO JUSTIFY THE APPLICATION
2 OF THE DEFAULT PIU IN ITS BILLS TO DELTACOM?

3 A. Hypercube's rationale is provided by Mr. McCausland at pp. 31-32. While he
4 admits that "DeltaCom submitted a letter to Hypercube" on October 11, 2007
5 containing a reported PIU, he claims that DeltaCom never *really* submitted a
6 PIU to Hypercube.

7 It is clear that Mr. McCausland does not agree with DeltaCom's
8 reported PIU, or with DeltaCom's basis for the reported PIU. But the
9 Hypercube tariff contains no language that permits Hypercube to pretend that a
10 PIU was never reported simply because it does not agree with the percentage
11 or basis for that percentage. Instead, the Hypercube tariff contains a specific
12 remedy to Hypercube in the form of a "jurisdictional audit." While I agree
13 with Mr. McCausland's claim (p. 31) that such an audit "is not required – it is
14 discretionary," the fact that an audit is discretionary does not mean that
15 Hypercube can simply adopt a different remedy that does not appear in the
16 tariff. There is no language in Hypercube's tariff that permits it to unilaterally
17 reject a reported PIU for any reason, or to apply a default PIU in the event that
18 disagrees with a carrier's reported PIU.

19
20 Q. MR. SIDAK PROVIDES TESTIMONY EXPLAINING WHY HE BELIEVES
21 THAT DELTACOM'S REPORTED PIU IS INCORRECT. IS HIS
22 TESTIMONY RELEVANT TO THIS ISSUE?

1 A. No. I will respond to Mr. Sidak's claims in the next section of my testimony,
2 and explain why his conclusions are invalid. But his claims don't address this
3 issue, which is specific to the "proper procedures" for (1) the reporting of a
4 PIU by another carrier and (2) the contesting of a reported PIU by Hypercube.
5 The question of "which PIU should have been applied?" can be answered
6 solely by a review of Section 2.3.3: DeltaCom reported a PIU, and according
7 to Hypercube's tariff that PIU should have been applied by Hypercube. Once
8 a PIU is submitted, Hypercube's tariff contains no provision that would permit
9 it to apply a "default PIU."

10

11 ***Issue 4. Do payments by Hypercube to wireless carriers violate any state or federal***
12 ***law? What action, if any, should the Commission take with respect to such***
13 ***payment?***

14

15 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S TESTIMONY ON THIS
16 ISSUE?

17 A. In part, yes. At p. 35, he points to a conclusion by the FCC: "in a detariffed,
18 deregulated environment such as this one, carriers are free to arrange whatever
19 compensation arrangement they like for the exchange of traffic." Of course,
20 the FCC did not say that carriers can "arrange whatever compensation
21 arrangement" they like if such an arrangement would permit one of the carriers
22 to do indirectly what the FCC has concluded it cannot do directly.

23 As noted above, to the extent Hypercube is providing services, it is
24 providing those services at the request of, and for the benefit of, the originating

1 wireless carrier. For these kinds of voluntary carrier-to-carrier services,
2 carriers typically establish a contractual agreement. I agree that there is
3 nothing inherently wrong with Hypercube and wireless carriers reaching such
4 an agreement regarding the services that Hypercube may provide to the
5 wireless carriers related to the processing of wireless-originated 8YY calls.

6 Setting aside the question of whether the payments from Hypercube to
7 wireless carriers violate state or federal law, it is certainly reasonable to view
8 such payments as instructive in this case. The wireless carrier is requesting
9 that Hypercube provide a service, is receiving value from Hypercube's service,
10 and yet it is Hypercube that is making a payment *to* the originating wireless
11 carrier. As described in the previous section of my testimony, the only
12 scenario that reconciles this incongruity is one in which Hypercube has
13 essentially inserted itself into the call flow as a "billing agent" for the
14 originating wireless carrier. Because the wireless carrier cannot impose access
15 charges directly, Hypercube bills "access charges" from its price list, and then
16 sends a portion of any amount collected to the wireless carrier – thereby
17 allowing the wireless carrier to do indirectly what the FCC has concluded that
18 it may not do directly. While payments from Hypercube to the wireless
19 carriers – taken in isolation – may not be improper, the overall scheme in
20 which they play a key role clearly is.

21

1 ***Issue 5. Did the bills rendered to DeltaCom comply with applicable law? If not,***
2 ***what action, if any, should the Commission take?***
3

4 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S TESTIMONY ON THIS
5 ISSUE?

6 A. No. Setting aside the legal issues to be addressed in briefing, I disagree with
7 two factual assertions made by Mr. McCausland.

8 First, he claims that "Hypercube's invoices have always reflected the
9 correct ... rate in Hypercube's price list." I disagree. Hypercube claims to be
10 providing to DeltaCom something called "Originating 800 FG Access," but
11 there is no rate in the Hypercube price list for "Originating 800 FG Access."
12 The rate element that appears on Hypercube's invoices to DeltaCom is listed as
13 "transport blended access," but there is no service described in the Hypercube
14 tariff called "transport blended access" (and I have been unable to locate the
15 term anywhere in the Hypercube price list). Within the four corners of
16 Hypercube's Florida price list (what Mr. McCausland claims (p. 35) is "the
17 only document that matters" in this case), there is no "correct rate" for the
18 service that Hypercube claims to be providing; and no description of, or
19 "correct rate" for, the service for which Hypercube is actually billing
20 DeltaCom. In order to prevail pursuant to the filed rate doctrine, Hypercube
21 must – at an absolute minimum – be billing for a service that is clearly and
22 unambiguously described in its tariff, and that service must have a clearly

1 identified and lawful “filed rate” set forth in the tariff. Here, neither of these
2 conditions have been met.

3 Second, Mr. McCausland argues that the name on Hypercube’s tariff
4 doesn’t matter, because “a company has every right to pursue obligations owed
5 to the company, even when it had a different name.” But the problem here is
6 not one of a company seeking to collect an amount owed “when it had a
7 different name,” the problem is the ongoing mismatch between the name of the
8 company on the price list and the name of the company on the invoices
9 submitted to DeltaCom. Prior to October 2008, the name of the filed price list
10 upon which Hypercube seeks to rely was “KMC Data, LLC.” Beginning in
11 October 2008, the name on the price list has been “Hypercube Telecom, LLC.”
12 Yet based on my review of the invoices received by DeltaCom, neither of these
13 entities – the only ones with any plausible claim to having a “filed rate” in
14 Florida – has ever submitted an invoice to DeltaCom.

15
16 ***Issue 6. Do the rates, terms, and conditions in Hypercube’s price list comply with***
17 ***applicable law? Which rates, terms, and conditions apply to DeltaCom and how do***
18 ***they apply?***
19

20 Q. AT P. 38, MR. MCCAUSLAND ASSERTS THAT “UNDER THE
21 UNAMBIGUOUS TERMS OF HYPERCUBE’S PRICE LIST, HYPERCUBE
22 HAS BEEN PROVIDING DELTACOM WITH SWITCHED ACCESS
23 SERVICE.” DO YOU AGREE?

1 A. No. Setting aside the issue of whether any of the rates, terms, and condition in
2 the Hypercube price list comply with applicable law, I certainly disagree
3 factually with Mr. McCausland regarding “which rates, terms, and conditions
4 apply to DeltaCom.”

5 For all of the reasons described above and in my direct testimony, none
6 of the rates, terms, and conditions in the Hypercube price list apply to
7 DeltaCom. To the extent that it is providing services associated with the
8 completion of the wireless-originated 8YY calls at issue, Hypercube is
9 providing those services to the originating wireless carrier. DeltaCom is not a
10 customer of Hypercube, has never requested service from Hypercube, has
11 never delivered a call to Hypercube’s network, and has never received a call
12 from Hypercube’s network. Pursuant to its own tariff definitions, Hypercube
13 does not provide switched access service. The form of access that Hypercube
14 claims to provide to DeltaCom has no associated rate in the Hypercube price
15 list, and the service for which Hypercube actually bills DeltaCom does not
16 appear in the Hypercube price list (though to be clear, none of the entities with
17 a price list on file with this Commission has submitted an invoice to
18 DeltaCom). The rate that Hypercube seeks to impose includes functions not
19 provided by Hypercube; at least one of these functions is provided by a type of
20 carrier that cannot impose access charges via tariff (and perhaps not
21 coincidentally, Hypercube has a contract to essentially bill on behalf of that
22 carrier and then to remit a portion of what it collects back to that carrier).

1

2 ***Issue 7. Do the rates, terms, and conditions in DeltaCom's price list comply with***
3 ***applicable law? Which rates, terms, and conditions apply to Hypercube and how do***
4 ***they apply?***
5

6 Q. AT P. 41, MR. MCCAUSLAND ASSERTS THAT DELTACOM "FAILED
7 AND REFUSED TO EXPLAIN AS A TECHNICAL MATTER HOW IT
8 PROVIDES" IPAS. IS HE CORRECT?

9 A. No. Hypercube asked for such an explanation in its discovery requests
10 (Request No. 22) and DeltaCom provided one by referring Hypercube to the
11 appropriate service description in DeltaCom's Florida Price List (this
12 description can be found in section 3.5 of that price list). In response to a
13 similar interrogatory posed by Hypercube in Alabama, DeltaCom further stated
14 that IPAS is provisioned by DeltaCom when it provides call termination
15 functionality required to complete calls associated with an Intermediate
16 Provider (defined in section 3.5 of the tariff). This includes the wireless-
17 originated 8YY calls that Hypercube claims to process.

18

19 Q. MR. MCCAUSLAND ALSO ASSERTS (P. 41) THAT DELTACOM "HAS
20 PROVIDED NO SERVICE TO HYPERCUBE AND HAS NO BASIS TO
21 CHARGE HYPERCUBE". DO YOU AGREE?

22 A. Once again, no. DeltaCom has provided the service described in section 3.5 of
23 its tariff to Hypercube and charged Hypercube the rates set forth in section
24 3.7.9 of the tariff. The tariff provides an adequate basis for the charges.

1

2 Q. IS MR. MCCAUSLAND CORRECT IN HIS ASSERTION (P. 42) THAT
3 DELTACOM'S IPAS INVOLVES DELTACOM IMPOSING "TARIFFED
4 CHARGES ON HYPERCUBE FOR THE WORK HYPERCUBE
5 PERFORMS"?

6 A. No. Mr. McCausland is correct in that IPAS involves DeltaCom imposing
7 tariffed charges on Hypercube. However, his assertion that DeltaCom's
8 charges are for services performed by Hypercube is not correct. DeltaCom has
9 been forthcoming that its IPAS is designed to nullify what it perceives as an
10 arbitrage scheme that Hypercube has attempted to perpetrate, but it does not
11 involve DeltaCom billing for services that Hypercube provides.

12

13 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S ASSERTION (P. 43)
14 THAT DELTACOM'S TARIFF LANGUAGE INCLUDES 'TWO FATAL
15 CONCESSIONS'?

16 A. No. Mr. McCausland's assertion is based on his own re-writing of the tariffed
17 language. Section 3.5 includes the clause "services provided by an
18 Intermediate Provider". Mr. McCausland's insertion of the word "are" in this
19 clause so that it reads "services [are] provided by an Intermediate Provider"
20 turns the language into something other than what is in the DeltaCom Price
21 List. Mr. McCausland's creation is neither the language in DeltaCom's Price
22 List nor a DeltaCom concession of any kind.

1 Nowhere in the tariffed language (section 3.5 or section 3.7.9) does it
2 say that DeltaCom is “somehow attempting to charge for a service that it is
3 [sic] acknowledges is provided by Hypercube”, as Mr. McCausland asserts. In
4 fact, Section 3.5 defines the service as “origination or termination *by the*
5 *Company*” (emphasis added). Section 2.1 of the DeltaCom Price List makes
6 clear that “the Company” refers to DeltaCom and not to Hypercube.

7 Regarding the second of the so-called “fatal concessions,” I’m not
8 certain that I fully understand Mr. McCausland’s claim when he states “it
9 belies DeltaCom’s assertions throughout its Petition that Hypercube seeks to
10 recover for the functionalities performed by the wireless carrier in the call
11 flow.” The basis of this contention appears to be the demonstrably false
12 assertion that DeltaCom is charging for services performed by Hypercube. In
13 contrast to Hypercube’s Price List, through which it attempts to recover for end
14 office switching functionality performed by a wireless carrier, DeltaCom’s
15 IPAS involves recovery only for a service provided by DeltaCom.

16
17 Q. DO YOU AGREE WITH MR. MCCAUSLAND’S ASSERTION (PP. 43-44)
18 THAT IT IS UNLAWFUL FOR DELTACOM TO CHARGE HYPERCUBE
19 FOR THE SERVICES HYPERCUBE PROVIDES?

20 A. No. Setting aside the legal question, Mr. McCausland’s assertion is based on a
21 false factual premise: DeltaCom is not charging Hypercube for service
22 Hypercube provides.

1

2 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S ANALYSIS (P. 44) OF
3 FCC LAW AND FLORIDA LAW REGARDING TOLL-FREE CALLING?

4 A. No. While I will not address the legal issues involved, it appears that Mr.
5 McCausland has taken a clause from an FCC rule that does not apply to this
6 case. The clause Mr. McCausland relies on is part of the FCC's definition of
7 "Toll Free Number". It is not a statement by the FCC regarding who pays
8 whom what on intrastate (or even interstate) toll free calls. Even if we were to
9 look at Mr. McCausland's clause in isolation, it refers to "toll charges". There
10 are no toll charges involved with the wireless-originated calls at issue.

11 Mr. McCausland's reference to the Commission's rules appears to be
12 similarly off the mark. The clause that Mr. McCausland selects from
13 Commission rule 25-4.117 prohibits telephone companies from "billing or
14 collecting *from the originating caller* any charges for intrastate calls to a toll
15 free number (*e.g.*, 800, 866, 877, and 888)". Hypercube is not an "originating
16 caller"; it is not even the *originating carrier* of any of the wireless-originated
17 calls at issue here.

18

19 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S VIEW (P. 44) OF HOW
20 THE FILED RATE DOCTRINE APPLIES?

21 A. Only in part. I share Mr. McCausland's understanding that the filed rate
22 doctrine will not serve to protect a filed rate or tariffed service that is at odds

1 with the governing regulatory regime. That, however, appears to be the extent
2 of our agreement.

3

4 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S VIEW (P. 45) THAT
5 SECTIONS 3.5 AND 3.7.9 OF DELTACOM'S PRICE LIST ARE
6 "DISCRIMINATORY IN PRACTICE?"

7 A. No. These sections of the price list are not discriminatory in fact or practice.
8 Hypercube is the only carrier that has been billed for IPAS simply because it is
9 the only carrier that DeltaCom has identified as ordering it pursuant to the
10 terms of the tariff.

11

12 ***Issue 8. To what extent, if any, is enforcement of Hypercube's price list preempted***
13 ***by federal law?***

14

15 Q. DO YOU AGREE WITH MR. MCCAUSLAND'S FACTUAL ASSERTIONS
16 REGARDING THIS ISSUE?

17 A. No. Again setting aside the legal question that is the focus of this issue, Mr.
18 McCausland makes two factual claims that are clearly incorrect.

19 First, he asserts that "Hypercube's blended rate does not cover
20 functionalities provided by wireless carriers, and Hypercube does not seek
21 access charges for work performed by wireless carriers." Mr. McCausland is
22 incorrect: in reality, Hypercube is seeking to charge DeltaCom for (1) end
23 office switching performed by wireless carriers, and (2) other functions

1 (including transport, routing, and 800 database queries) performed by
2 Hypercube at the request of, on behalf of, and for the benefit of, the originating
3 wireless carrier. For both categories of functions, Hypercube is seeking to
4 impose access charges on behalf of a carrier that cannot itself impose such
5 access charges via tariff. There is no other explanation for a contract in which
6 Hypercube performs services *for* a wireless carrier associated with a given call,
7 but then makes payments *to* that wireless carrier for the same call.

8 Second, Mr. McCausland makes a frankly bizarre argument in an effort
9 to support Hypercube's efforts to impose access charges for intra-MTA calls.
10 He argues (p. 46) that "the traffic question is always 'toll' traffic regardless of
11 MTA boundaries, and thus the MTA boundaries and whether the calls is
12 intraMTA or not is irrelevant." In other words, Mr. McCausland is suggesting
13 that it is the dialing pattern used to originate the call, and not the location of the
14 originating and terminating callers, that determines whether access charges can
15 be imposed. Such a claim is (1) unique in my experience, (2) clearly at odds
16 with the language of the FCC on this issue, and (3) inconsistent with Mr.
17 McCausland's previous testimony.

18 The FCC has consistently concluded that "traffic to or from a CMRS
19 network that originates and terminates within the same MTA is subject to
20 transport and termination rates under section 251(b)(5) (i.e., reciprocal

1 compensation), rather than interstate and intrastate access charges.”¹⁰ The
2 FCC, to my knowledge, has never suggested that a call that “originates and
3 terminates within the same MTA” might be subject to access charges,
4 depending on how it is dialed.

5 Even Mr. McCausland got this right earlier in his testimony. At p. 28,
6 he correctly notes that “the manner in which a call is routed through the
7 telecommunications network does not affect the jurisdiction of a call ... the
8 Commission has also found that *the jurisdiction and compensation of a call*
9 *shall be based on its end points* (emphasis added). The compensation
10 mechanism for a wireless call that originates and terminates within an MTA is
11 reciprocal compensation, not access charges, regardless of the dialing pattern
12 used to initiate the call or “the manner in which the call is routed.”

13

14 ***Issue 9. Does the Commission have jurisdiction to address quantum meruit and, if***
15 ***so, what action, if any, should the Commission take?***
16

17 Q. SETTING ASIDE THE LEGAL ISSUE OF THE COMMISSION’S
18 JURISDICTION, DO YOU AGREE WITH THE FACTUAL ASSERTIONS
19 MADE BY MR. MCCAUSLAND REGARDING THIS ISSUE?

¹⁰ See *Implementation of the Local Competition provisions of the telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499 (1996) (“*First Report and Order*”) ¶1036, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685 (2005) (“*Intercarrier Compensation NPRM*”), ¶1034.

1 A. No. For example, Mr. McCausland asserts (p. 48) that “DeltaCom has not paid
2 Hypercube for the access services Hypercube has undoubtedly provided
3 DeltaCom.” I must disagree; if not else, there is certainly *doubt* regarding
4 whether Hypercube has provided access services to DeltaCom. For the reasons
5 described previously in my testimony, it does not appear that Hypercube has
6 provided any services to DeltaCom at all. It does not appear that Hypercube
7 can provide “access services” (as that term, and related terms, are defined in
8 Hypercube’s price list) for the calls at issue. The services (if any) provided by
9 Hypercube were in fact services performed for the originating wireless carrier.

10

11 ***Issue 10. What relief does the Commission have authority to grant and should grant***
12 ***to either party in this case (including, but not limited to, any finding of responsibility***
13 ***for rates; late fees; attorney fees; cancellation of all or parts of a price list;***
14 ***declaration that all or part of a price list was void ab initio)?***
15

16 Q. WHAT RELIEF IS DELTACOM SEEKING?

17 A. The relief DeltaCom is seeking is set forth in the “Judgment and Relief
18 Sought” section of its Amended Petition. The particulars, including whether
19 the Commission has authority to grant such relief, will be addressed in
20 briefing. In sum, the facts of this case support Commission grant of the relief
21 requested by DeltaCom.

22

1 **IV: Response to Additional Issues Raised by Mr. Sidak**

2 Q. DO THE ISSUES RAISED BY MR. SIDAK NEED TO BE CONSIDERED
3 BY THE COMMISSION IN ORDER TO ADDRESS THE QUESTIONS ON
4 THE COMMISSION'S ISSUES LIST?

5 A. No. Mr. Sidak devotes the 87 pages of Exhibit JGS-2 largely to a broad
6 discussion of what he believes is currently right and wrong in the
7 telecommunications industry. In particular, he seems disgruntled with the
8 FCC's regulation of wireless carriers. Some of his discussions and analyses
9 are related in some way to the issues before *this* Commission, others have no
10 discernable bearing whatsoever, but none of them *need* to be addressed in
11 order to resolve the issues identified in this case. To the extent the
12 Commission is nevertheless interested in these issues, I have provided a
13 response in this section of my testimony.

14

15 Q. AT P. 5, MR. SIDAK STATES THAT "DIRECT CONNECTIONS ARE
16 MORE COST EFFECTIVE THAN INDIRECT CONNECTIONS." DO YOU
17 AGREE?

18 A. No. The relative cost effectiveness of direct and indirect interconnection is
19 primarily a function of the amount of traffic being exchanged between the
20 customers of two carriers. In order to conduct the cost-benefit analysis, a
21 carrier must consider the up-front and non traffic-sensitive ("NTS") costs
22 associated with establishing and maintaining the direct interconnection, any

1 reduction in the cost per unit of traffic that may be realized by the direct
2 interconnection, and the number of units of traffic projected.

3 Mr. Sidak makes this claim as a part of Hypercube's broader argument
4 that if DeltaCom would just choose to order service from Hypercube, the fact
5 that Hypercube is billing for the service would no longer be a problem. But
6 this argument misses (or carefully avoids) the relevant point: DeltaCom is not
7 required to order any service from Hypercube. DeltaCom has chosen other
8 carriers to provide any tandem switching services that it needs, and has located
9 its points of presence ("POPs") at those locations.

10 For the wireless-originated 8YY calls at issue here, it is the originating
11 wireless carrier that has requested services from Hypercube and that has
12 caused the calls to be routed via Hypercube's network facilities. But as Mr.
13 Sidak points out (p. 70) "because the wireless carrier is a common carrier, it
14 has the legal obligation to transport 8YY calls originating on its network to the
15 proper IXC's switch." For calls destined for DeltaCom's switch, the wireless
16 carrier's decision to begin to use Hypercube results in an inefficient routing
17 that essentially doubles the amount of transport links and tandem switching
18 elements required. DeltaCom did not *cause* these additional costs to be
19 incurred; its POP locations remain unchanged, 8YY calls originated by the
20 customers of the same wireless carriers were being successfully completed
21 prior to wireless carrier's decision to include Hypercube, and other call types
22 originated by the customers of the same wireless carriers continue to be

1 successfully completed (and are transported from the same MTSO to the same
2 DeltaCom POP) without the use of any Hypercube facilities.

3 Mr. Sidak also devotes a portion of his testimony (pp. 80-83) to an
4 argument that goes something like this: (1) other carriers have chosen to
5 directly interconnect and purchase services from Hypercube, *therefore* (2)
6 these other carriers must be realizing some benefit from the service they are
7 buying, *therefore* (3) DeltaCom would also realize some benefit from
8 Hypercube services, *therefore* (4) DeltaCom should be required to purchase
9 services from Hypercube. But the benefits that other carriers may or may not
10 be receiving from services that they have chosen to purchase from Hypercube
11 – based on their own volume of customers, customer locations, mixture of call
12 types, and other factors – are not the same as what DeltaCom might
13 experience, given its customer, traffic, and network characteristics.

14 Mr. Sidak continues to miss (or avoid) the point: the question “do
15 services offered by Hypercube provide value to the carriers who elect to
16 purchase them?” is not on the Issues List. Whatever other carriers may or may
17 not have done, DeltaCom has not elected to purchase services from Hypercube.
18 It has instead chosen to obtain tandem switching services from other carriers.

19

20 Q. AT PP. 46-63, MR. SIDAK PROVIDES AN ANALYSIS OF THE GROWTH
21 IN DEMAND FOR WIRELESS SERVICES. IS THE GROWTH IN
22 DEMAND FOR WIRELESS SERVICES AN ISSUE IN THIS CASE?

1 A. No. The only apparent reason for this extended discussion is to support Mr.
2 Sidak's conclusion (p. 63) that this growth may cause some costs incurred by
3 wireless carriers to increase: "as wireless spectrum becomes scarcer, the
4 opportunity cost of delivering an 8YY call for which a CMRS (i.e.
5 Commercial Mobile Radio Service or wireless) carrier cannot recover the cost
6 of delivery will continue to increase as the demand for wireless increases." As
7 an initial matter, wireless carriers do not use "spectrum" to "deliver" 8YY or
8 any other type of calls: backhaul from cell sites to the MTSO, and transport
9 from the MTSO to the IXC POP, is provisioned using fiber or microwave
10 facilities (and available spectrum, whether or not it is "scarce," plays no part in
11 the cost to deliver these calls). Mr. Sidak also fails to address the fact that for
12 all other inter-MTA call types, the wireless carrier will also be unable to
13 recover these costs via tariff-imposed access charges; at the end of the day, a
14 wireless (or CMRS) carrier's incentive to invest in network facilities is
15 unlikely to be influenced much either way by an ability, or inability, to
16 indirectly impose access charges for 8YY calls.

17 More importantly, Mr. Sidak fails to consider other impacts that
18 increasing demand will have on the costs incurred by CMRS carriers. Wireless
19 network capacity is fixed in relatively large increments, and increased
20 utilization of these investments will allow the CMRS carrier to experience a
21 reduction in unit costs. My work with wireless carriers strongly suggests that
22 wireless carriers see growth in demand as a positive cost factor. Unit costs at

1 heavily-utilized cell sites are significantly lower than unit costs experienced at
2 cell sites with light usage. The unit costs associated with backhaul and
3 transport facilities are likewise expected to decrease as a result of increasing
4 traffic volumes.

5 Most importantly, Mr. Sidak ignores that fact that the costs incurred by
6 wireless carriers are in no way at issue in this proceeding. Whether wireless
7 carriers are expected to experience a net increase or net decrease in unit costs
8 over time has absolutely nothing to do with whether Hypercube is providing
9 services to DeltaCom for wireless-originated 8YY calls, or with any of the
10 other issues identified by the Commission.

11

12 Q. AT PP. 64-66, MR. SIDAK ARGUES THAT THE PRESENCE OF
13 HYPERCUBE RESULTS IN "IMPROVED QUALITY OF 8YY CALLS."
14 DO YOU AGREE?

15 A. Not at all. Specifically, Mr. Sidak suggests that Hypercube's insertion into the
16 call flow will result in "reduced connection times" or create a "reduced risk of
17 service interruption." This, he maintains, will allow end users to enjoy a "faster
18 and more reliable call connection."

19 A review of Diagrams 2 and 3 is perhaps instructive here.

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Direct Interconnection Between DeltaCom and ILEC

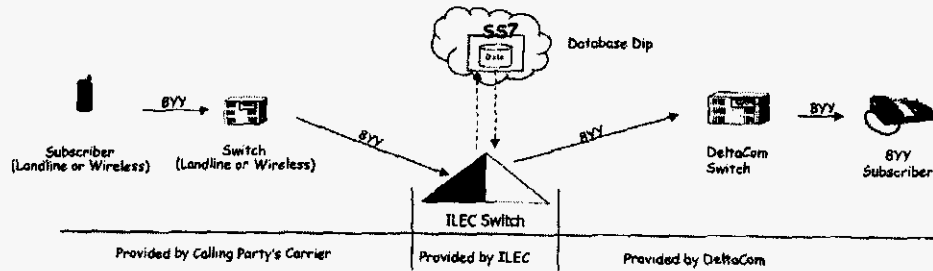


Diagram 2.

Indirect Interconnection Between DeltaCom and Hypercube

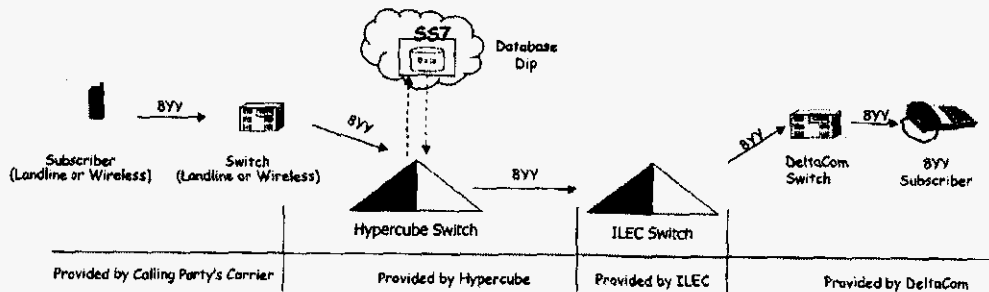


Diagram 3.

In Diagram 2 (where Hypercube *is not* present), a wireless-originated 8YY call can be delivered from the MTSO to DeltaCom's POP with one transport facility, two transport terminations (one at each end of the facility), and one incidence of tandem switching (at the ILEC tandem where DeltaCom maintains its POP). In Diagram 3 (where Hypercube *is* present), delivery of the same call from the MTSO to DeltaCom's POP requires two transport facilities, four transport terminations (one at each end of two transport facilities), and two incidences of tandem switching (one allegedly by Hypercube, and the other at the ILEC tandem where DeltaCom maintains its POP).

1 While neither Mr. Sidak nor I are network engineers, it is reasonable to
2 conclude that adding two transport terminations, one transport facility, and one
3 incidence of tandem switching to the call flow will *not* result in “reduced
4 connection times” for these calls. Similarly, having doubled the number of
5 failure points, the insertion of Hypercube has in no way “reduced the risk of
6 service interruption.” A more likely outcome is that the insertion of
7 Hypercube into the call flow will reduce call quality, increase connection
8 times, and increase the risk of call failure.

9
10 Q. AT PP. 27-32, MR. SIDAK PRESENTS AN ANALYSIS OF DELTACOM
11 CUSTOMERS IN AN EFFORT TO EVALUATE THE ACCURACY OF
12 DELTACOM’S REPORTED PIU. DOES HIS ANALYSIS ADDRESS ANY
13 ISSUE IN THIS CASE?

14 A. No. Issue 3 relates specifically to the terms of Hypercube’s price list:
15 *What are the proper procedures regarding Percent Interstate Usage under*
16 *Hypercube’s price list and were those procedures followed?*
17
18 *Which Percent Interstate Usage should have been applied?*
19

20 As explained in the previous section of my testimony (and at pp. 58-63
21 of my direct testimony), Hypercube’s price list language is fairly straight-
22 forward on this issue. Even though DeltaCom has never ordered service from
23 Hypercube (and therefore is not subject to the Section 2.3.3 requirement that a
24 carrier must provide a PIU when it orders access services from Hypercube),

1 DeltaCom provided a PIU to Hypercube in 2008. According to the terms and
2 conditions of the Hypercube tariff, this PIU must be used until (1) it is
3 superseded by a new reported PIU, or (2) Hypercube conducts an audit
4 pursuant to Section 2.3.4. Neither of these has happened. Pursuant to the
5 terms of the Hypercube price list, the PIU that must be applied is the one
6 reported by DeltaCom.

7 Relevance notwithstanding, Mr. Sidak's analysis is just plain wrong.
8 For example, at p. 31 he concludes that over the "period from April 2005 to
9 December 2009, the minimum monthly intrastate minutes of use for DeltaCom
10 in Florida" ranged from "9 percent to 63 percent." His description of how he
11 performed his analysis, however, indicates that these values cannot be correct.

12

13 Q. HOW SHOULD MR. SIDAK HAVE PERFORMED HIS IRRELEVANT PIU
14 ANALYSIS?

15 A. As Mr. McCausland correctly points out in his testimony, "the jurisdiction and
16 compensation of a call" must be "based on its end points." For the calls at
17 issue to be included in Mr. Sidak's reported percentages, the call *must* be both
18 intrastate and inter-MTA. In order to perform the analysis that Mr. Sidak
19 claims to have performed, it is necessary to first identify the originating and
20 terminating "end points" of each call.

21

1 Q. DID MR. SIDAK ACTUALLY IDENTIFY THE ORIGINATING AND
2 TERMINATING END POINTS OF ANY OF THE CALLS IN HIS
3 ANALYSIS?

4 A. No. Mr. Sidak assumed that each call terminated in Florida, based on the
5 identity of the organization associated with the 8YY numbers he analyzed.
6 Such an approach may, or may not, produce accurate results. He also made no
7 effort to identify where any of the calls originated. This is problematic for two
8 reasons. First, it is quite possible (due to the mobile nature of wireless
9 handsets and practices which allow wireless subscribers to keep their wireless
10 number even if they move out of state) that the wireless-originated calls
11 delivered by the CMRS carrier to Hypercube were not originated in Florida.
12 Second, it is possible, and in many cases likely, that the wireless 8YY calls
13 actually originated from within Florida (and delivered to an 8YY customer
14 actually in Florida) had “end points” within the same MTA. These calls are
15 not subject to access charges, and are *not* properly included in Mr. Sidak’s
16 reported “percentage of monthly intrastate minutes of use for DeltaCom in
17 Florida.”

18
19 Q. MR. SIDAK ALSO DEVOTES A SIGNIFICANT PORTION OF HIS
20 TESTIMONY TO AN ARGUMENT THAT BECAUSE IT HAS NOT PAID
21 HYPERCUBE’S INVOICES, DELTACOM HAS HAD – AND ACTED ON –

1 AN INCENTIVE TO “OVERCONSUME” HYPERCUBE’S SERVICES.

2 DOES THIS ARGUMENT MAKE SENSE?

3 A. No. Mr. Sidak addresses this topic at pp. 15-27 (and returns to it at p. 74). As I
4 understand his testimony, Mr. Sidak would like to support an argument for the
5 existence of a negative externality that is caused by DeltaCom. He argues (p.
6 15) that “the current regime of access charges for 8YY calls originating on
7 wireless networks creates a classic opportunity, as DeltaCom’s behavior
8 illustrates, for a negative externality to arise.” The negative consequence, as
9 explained by Mr. Sidak (p. 74), is that “if an IXC does not pay for a service,” it
10 will elect to “use more of that service than is economically efficient.”
11 Specifically, Mr. Sidak claims that refusal to pay for the services that
12 Hypercube alleges to have provided caused DeltaCom to consume more of
13 Hypercube’s services than it would have otherwise.

14 The fundamental problem with Mr. Sidak’s analysis is that DeltaCom
15 cannot elect to consume “more of Hypercube’s service.” It is the originating
16 wireless carrier that makes the choice to route a call through Hypercube.
17 Neither DeltaCom (nor the end user customer who originates the call) has any
18 say about this whatsoever. DeltaCom cannot make an affirmative decision to
19 consume more Hypercube services; DeltaCom does not even know at the time
20 a call is delivered to it that Hypercube alleges to have been involved in the
21 processing of the call (and in fact has no indication until it receives a
22 Hypercube invoice). The only way for “DeltaCom’s behavior” to illustrate the

1 presence of a negative externality is for DeltaCom to somehow control whether
2 the wireless carrier routes a call to Hypercube. As Mr. Sidak is surely aware,
3 this does not happen.

4

5 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

6 A. Yes.