

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **REBUTTAL TESTIMONY**

3   **OF**

4   **JERRY WATTS**

5   **DOCKET NO. 090327-TP**

6  
7   **I. Introduction and Qualifications**

8   Q.    PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

9   A.    My name is Jerry Watts. I am Vice President of Government and Industry  
10        Affairs for DeltaCom, Inc. ("DeltaCom"). My business address is 7037 Old  
11        Madison Pike Huntsville, Alabama, 35806.

12  
13   Q.    PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

14   A.    I am a graduate of Auburn University with a B.S. in Accounting. I have over  
15        thirty years experience in the telecommunications industry including positions  
16        with Southern Bell, South Central Bell, BellSouth, AT&T, and DeltaCom.  
17        Most of my career has been in the area of Government Affairs with  
18        responsibility for both regulatory and legislative matters at the state and federal  
19        level.

20                I have served as an officer or board member for several industry  
21        associations including the Alabama Mississippi Telephone Association, The  
22        Georgia Telephone Association, The Alabama Inter-Exchange Carriers  
23        Association, The Southeastern Competitive Carriers Association and The

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1 Georgia Center for Advanced Telecommunications Technology. I am a past  
2 President of The Competitive Carriers of the South, (“CompSouth”), a non-  
3 profit association of 11 competitive telecommunications companies operating  
4 in the Southeast. I also serve as a board member of CompTel. CompTel is the  
5 leading industry association representing dozens of competitive facilities-based  
6 telecommunications service providers, emerging VoIP providers, integrated  
7 communications companies, and their supplier partners. CompTel members  
8 are building and deploying packet and IP-based networks to provide  
9 competitive voice, data and video services in the U.S. and around the world.  
10 The association, based in Washington, D.C., includes companies of all sizes  
11 and profiles, from the largest next-generation network operators to small,  
12 entrepreneurial companies.

13

14 Q. WHAT ARE YOUR RESPONSIBILITIES AT DELTACOM?

15 A. I am responsible for DeltaCom’s relationship with state and federal  
16 government entities, including state public utility commissions, state  
17 legislatures, the FCC and the US Congress. I am also responsible for  
18 facilitating the working relationship of DeltaCom with other  
19 telecommunications companies including incumbent local exchange  
20 companies, competitive local exchange companies and other providers.

21

1 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE  
2 REGULATORS?

3 A. Yes. I have testified on telecommunications issues before the regulatory  
4 commissions in the states of Alabama, Florida, Georgia, Louisiana, North  
5 Carolina, and Tennessee.

6

7 **II. Purpose of Testimony**

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9 A. The purpose of my testimony is to respond to some of the factual assertions  
10 made by Hypercube Telecom, LLC and KMC Data, LLC (collectively,  
11 “Hypercube”) witnesses, largely by corroborating various factual assertions  
12 made by DeltaCom’s witness Don Wood, who is serving both as a fact witness  
13 and expert witness for DeltaCom.

14

15 **III. Amounts in Dispute**

16 Q. WHAT ARE THE CURRENT AMOUNTS IN DISPUTE?

17 A. While Don Wood testified as to the amounts in dispute in this proceeding,  
18 those amounts have increased since Mr. Wood’s Direct Testimony was  
19 submitted. From April 2006 to June 2010, Hypercube charged DeltaCom  
20 approximately \$2,944,197.62 in intrastate access and related charges. Of this  
21 amount, \$1,159,640.34 purportedly has been for “8YY Originating Access

1 Service” charges, \$101,027.05 has been for “800 Data Base Query” charges  
2 and approximately \$377,383.68 has been for related late fees.  
3

4 Q. IS HYPERCUBE WITNESS MCCAUSLAND CORRECT WHEN HE  
5 STATES THAT DELTACOM NEVER DISPUTED THE NUMBER OF  
6 MINUTES BILLED OR DIPS PERFORMED OR CLAIMED THAT THE  
7 RATE BILLED WAS NOT IN THE PRICE LIST? (McCausland Direct, at p.  
8 40)

9 A. No. DeltaCom timely and appropriately disputed Hypercube’s billing of these  
10 intrastate access and related charges after becoming aware that they resulted  
11 from calls originated by wireless carrier customers. In these disputes,  
12 DeltaCom explicitly stated that it disputed “all the invoiced charges” or used  
13 other similar language. Nothing in those disputes excluded disputes of the  
14 number of dips and minutes billed and the applicability of the rate applied.  
15

16 Q. DID HYPERCUBE WITNESS MCCAUSLAND OMIT ANY IMPORTANT  
17 FACTS IN CONNECTION WITH HIS TESTIMONY REGARDING THE  
18 INVOICES ISSUED BY DELTACOM TO HYPERCUBE THAT ARE AT  
19 ISSUE IN THIS PROCEEDING? (McCausland Direct, at pp. 41-45)

20 A. Yes. DeltaCom issued invoices to Hypercube under DeltaCom’s Price List for  
21 its Intermediate Provider Access Service (“IPAS”) for the time period from  
22 September 2008 to now in the amount of \$2,944,197.62. Hypercube’s failure

1 to pay these invoices was not included in Mr. McCausland's testimony. This  
2 is not the only fact that Mr. McCausland omitted, but it is the only omission  
3 addressed in my testimony today.  
4

5 **IV. The Traffic In Dispute**

6 Q. IN ITS DIRECT TESTIMONY DOES HYPERCUBE RELY ON ANY  
7 CONTRACTS IT HAS WITH DELTACOM THAT APPLY TO OR  
8 GOVERN THE TRAFFIC AT ISSUE IN THIS PROCEEDING?

9 A. No. In its testimony, Hypercube relies solely on its price list as the basis for its  
10 charges to DeltaCom. DeltaCom and Hypercube do not have any contracts  
11 relating to the traffic at issue in this proceeding. Nor does DeltaCom have any  
12 contracts with any of the wireless carriers covering access and database dip  
13 charges.  
14

15 Q. IS HYPERCUBE CORRECT IN TESTIFYING THAT DELTACOM  
16 ORDERED ANY SERVICES FROM HYPERCUBE? (McCausland Direct, at  
17 p 23-24)

18 A. No. Hypercube does not claim – and it could not – that DeltaCom expressly  
19 ordered services from Hypercube. Hypercube does, however, claim that  
20 DeltaCom constructively ordered services. While Mr. Wood will address the  
21 issue of constructive ordering more thoroughly, I will address the primary  
22 assertion upon which Mr. McCausland relies in claiming that DeltaCom

1           constructively ordered services: that DeltaCom accepts the calls and has never  
2           blocked or rejected calls from Hypercube. (McCausland Direct, at p. 24)  
3           Because DeltaCom is unable to identify or reject these calls in real-time, Mr.  
4           McCausland's assertion cannot form the basis for claiming that DeltaCom  
5           constructively ordered any services.

6

7    Q.    MR. MCCAUSLAND ASSERTS THAT DELTACOM DOES NOT  
8           DISPUTE WHETHER HYPERCUBE PROVIDED IT WITH SWITCHED  
9           ACCESS SERVICES. IS HE RIGHT? (McCausland Direct, at p. 5)

10   A.    No, he is wrong for a number of reasons, most of which will be addressed by  
11           Don Wood. What I'd like to point out here is that for each call that is  
12           delivered to its network, DeltaCom receives certain electronic information  
13           relating to that call and its routing. This information, however, does not show  
14           whether the traffic traveled on Hypercube's network before being delivered to  
15           DeltaCom.

16

17   Q.    SO, IS THERE A REAL-TIME WAY FOR DELTACOM TO DETERMINE  
18           WHETHER TRAFFIC DELIVERED TO DELTACOM'S NETWORK  
19           TRAVELED ON HYPERCUBE'S NETWORK PRIOR TO ITS DELIVERY  
20           TO DELTACOM?

21   A.    No. At the time that the traffic is delivered to DeltaCom's network, DeltaCom  
22           has no way of determining whether that the traffic ever traveled on

1           Hypercube's network or through its facilities. Thus, at the time that it receives  
2           a call, DeltaCom cannot determine which calls were routed over Hypercube's  
3           network, DeltaCom can neither refuse nor affirmatively accept any of the 8YY  
4           wireless originated calls that are at issue in this proceeding. In fact, DeltaCom  
5           was completely unaware of Hypercube's alleged involvement in the call flow  
6           of these 8YY wireless originated calls until Hypercube began invoicing  
7           DeltaCom.

8

9    Q.    DID DELTACOM EVER ATTEMPT TO OBTAIN MORE DETAILED  
10    INFORMATION REGARDING THE 8YY WIRELESS ORIGINATED  
11    TRAFFIC FOR WHICH HYPERCUBE WAS ISSUING INVOICES?

12   A.    Yes. Because DeltaCom had no information about Hypercube's alleged  
13    services when Hypercube began invoicing DeltaCom, DeltaCom requested call  
14    detail records from Hypercube for the invoiced wireless originated 8YY traffic.  
15    DeltaCom requested the records to obtain more information about the traffic  
16    that Hypercube was invoicing to DeltaCom and to determine Hypercube's  
17    function in the call flow.

18

19   Q.    DID HYPERCUBE PROVIDE ALL OF THE REQUESTED CALL DETAIL  
20    RECORDS?

21   A.    No. Hypercube provided a sample from the May 2007 and March 2009 usage  
22    periods for selected dates but denied DeltaCom's additional requests.

1 Q. WAS DELTACOM ABLE TO VERIFY HYPERCUBE'S ROLE WITH  
2 RESPECT TO THE 8YY WIRELESS TRAFFIC AT ISSUE BY LOOKING  
3 AT THE SAMPLE OF CALL DETAILS RECORDS THAT HYPERCUBE  
4 PROVIDED?

5 A. No. DeltaCom's review of those call records revealed no indication of  
6 Hypercube's involvement in the call flow. Even after a thorough review of  
7 these Hypercube-supplied call records, DeltaCom was unable to verify that  
8 Hypercube is performing any functions related to the wireless originated 8YY  
9 calls at issue. These call detail records did demonstrate, however, that  
10 Hypercube was not the originating carrier for any of the calls at issue here.  
11 Consequently, Hypercube could not have been providing end office switching,  
12 which would have been performed by the originating wireless carrier.

13  
14 Q. CAN DELTACOM REFUSE OR REJECT THE 8YY WIRELESS  
15 ORIGINATED CALLS THAT HYPERCUBE IS BILLING TO  
16 DELTACOM?

17 A. No. Because, at the time that it receives a call, DeltaCom cannot determine  
18 which calls were routed over Hypercube's network, DeltaCom can neither  
19 refuse nor affirmatively accept any of the 8YY wireless originated calls that  
20 are at issue in this proceeding.

21

1 Q. HOW DOES DELTACOM RECEIVE THE CALLS AT ISSUE IN THIS  
2 PROCEEDING?

3 A. The calls are delivered to DeltaCom's network by Incumbent Local Exchange  
4 Carriers with whom DeltaCom is directly interconnected. DeltaCom and  
5 Hypercube do not directly interconnect anywhere in Florida (or anywhere  
6 else). Therefore, Hypercube has never delivered traffic of any type directly to  
7 DeltaCom. Hypercube has -- and only can -- deliver traffic to DeltaCom by  
8 routing the traffic to another carrier first. The calls in question are delivered to  
9 DeltaCom through an incumbent local exchange company tandem switch that  
10 is direct connected to the DeltaCom network.

11

12 **V. PIU Factors**

13 Q. IS HYPERCUBE'S WITNESS MCCAUSLAND CORRECT IN HIS  
14 STATEMENT THAT "DELTACOM HAS NEVER PROVIDED A PIU TO  
15 HYPERCUBE" IN CONNECTION WITH THE 8YY WIRELESS  
16 ORIGINATED TRAFFIC AT ISSUE IN THIS PROCEEDING? (McCausland  
17 Direct, at p. 34)

18 A. No. In 2007, DeltaCom reported a projected PIU to Hypercube. Hypercube  
19 claims that it was insufficient because it did not submit a PIU based on data.  
20 DeltaCom, however, has never received any information that would enable it  
21 to know the origination points for the calls, so DeltaCom has maintained its

1           100% PIU based on its inability to determine that any of the calls were  
2           intrastate inter-MTA calls.

3

4    Q.    DID HYPERCUBE LEAVE OUT ANY IMPORTANT DETAILS IN ITS  
5           TESTIMONY REGARDING HYPERCUBE'S REJECTION OF  
6           DELTACOM'S REPORTED PIU FOR THE 8YY WIRELESS  
7           ORIGINATED TRAFFIC AT ISSUE IN THIS PROCEEDING?  
8           (McCausland Direct, at p. 31-34)

9    A.    Yes. Hypercube Witness McCausland asserts that it was not required to  
10           request a PIU audit under its price list. I will defer DeltaCom Witness Don  
11           Wood to address whether Hypercube was required to request an audit under  
12           the price list, but the fact of the matter is that Hypercube never requested or  
13           conducted an audit of DeltaCom's reported PIU. Instead, in May 2008  
14           Hypercube simply declared DeltaCom's reported PIU invalid and began  
15           imposing a PIU of 50% on the traffic at issue in this proceeding.

16

17   Q.    DID DELTACOM EVER UPDATE ITS PROJECTED PIU REPORTED TO  
18           HYPERCUBE?

19   A.    No. We have never received any data that would enable us to know the  
20           origination points for the calls, so we have maintained our 100% PIU based on  
21           our inability – based on the data we have – to determine that any of the calls  
22           were intrastate inter-MTA calls.

1 Q. IS HYPERCUBE DISTINGUISHING BETWEEN INTRA- AND INTER-  
2 MTA TRAFFIC IN ASSESSING THE ACCESS CHARGES AT ISSUE  
3 HERE?

4 A. No. While Hypercube asserts that it is not imposing access charges for intra-  
5 MTA wireless traffic, based on the invoices, Hypercube appears to be making  
6 no distinction between intra- and inter-MTA traffic. As a result, Hypercube is  
7 assessing access charges for intra-MTA calls.

8

9 Q. DID HYPERCUBE EVER REPORT A PIU TO DELTACOM WITH  
10 RESPECT TO DELTACOM'S IPAS?

11 A. No. Hypercube has never provided a PIU to DeltaCom for IPAS, resulting in  
12 DeltaCom's use of the default PIU as provided for in DeltaCom's Price List.

13

14 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

15 A. Yes.

16