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October 23, 2009

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, Hypercube LLC and Hypercube Telecom, LLC

Dear Ms. Cole:

Please find enclosed for filing an original and seven (7) copies of the above-captioned DeltaCom, Inc., First Amended Petition along with a diskette containing an electronic version of the filing. The First Amended Petition contains five Exhibits, identified as Exhibits A through E.

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

Sincerely,

Matthew Feil

COM _____
ECR _____
GCL _____
OPG _____
RCP (10) _____
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Enclosures

DOCUMENT NUMBER-DATE

10828 OCT 23 8

FPSC-COMMISSION CLERK

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In re:

DeltaCom, Inc.

Plaintiff,

-v.-

KMC Data LLC and
Hypercube Telecom, LLC,

Defendant.

Docket No.: 090327-TP

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

DeltaCom, Inc. (“DeltaCom”), pursuant to Florida Administrative Code Rules 28-106.201 and 25-22.036, and through its undersigned counsel, hereby files this Petition seeking entry of a Commission order against Respondents KMC Data LLC (“KMC”) and Hypercube Telecom, LLC (collectively, “Hypercube”). Specifically, DeltaCom requests that the Florida Public Service Commission (the “Commission”), pursuant to its authority under Florida Statutes, sections 364.01(4)(g), and, where applicable, sections 364.03 and 364.04, issue an order finding that Hypercube’s attempt to impose charges for intrastate access services it alleges to have provided to DeltaCom is unfair, anticompetitive and otherwise unlawful, barring Hypercube from engaging in such conduct in the future, and requiring Hypercube to refund to DeltaCom any amounts previously remitted with respect to the charges in dispute. Because DeltaCom claims Hypercube has unlawfully billed DeltaCom for what Hypercube claims are intrastate services

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pursuant to price lists on file with this Commission, DeltaCom's substantial interests are affected in this proceeding and the Commission is the proper venue for this matter.

INTRODUCTION

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

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

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

that it appears that Hypercube often delivers such calls to an ILEC tandem outside the LATA in which the calls originate. To induce wireless carriers to participate in this scheme, Hypercube offers those wireless carriers a “kick-back” of access charges in the form of substantial percentage of any amounts collected.

4. With this Complaint, DeltaCom seeks entry of a Commission order proscribing Hypercube’s conduct.¹ DeltaCom seeks an order that Hypercube’s imposition of intrastate access charges and related kick-back payments to wireless providers is unfair, unjust and otherwise violates state law.

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

6. DeltaCom also seeks an order that Hypercube was not authorized to provide any intrastate services in Florida and was not permitted to impose charges filed by another entity (namely, KMC), at least with respect to the time prior to which it obtained competitive local exchange carrier (“CLEC”) authority and posted a price list for telecommunications services.²

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

² It is not clear that Hypercube provides any two-way services such that it qualifies as a “telecommunications company” under Florida law. See section 364.02(14), Florida Statutes. Nor is it clear that Hypercube is providing “local exchange telecommunications service” or qualifies as a CLEC under Florida law. See sections 364.02(5) and 364.337(1), Florida Statutes. As asserted in the body of this Petition, Hypercube’s activities in the context of the instant dispute do not involve two-way telecommunications services or local exchange telecommunications services, and pricing/terms for the supposed intrastate services for which Hypercube has billed DeltaCom should not be an enforceable part of a CLEC price list in Florida.

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

8. To the extent that it is somehow found that there are any intrastate services at issue, DeltaCom also seeks an order that DeltaCom has not ordered and Hypercube has not provided any of the services set forth in the intrastate price lists at issue. DeltaCom also seeks an order that KMC's and Hypercube's rates and charges are unfair, anticompetitive and otherwise unlawful because the charges imposed include charges for interstate and intraMTA traffic and services not provided and are based upon price list provisions which fail to describe the services and charges with reasonable clarity. DeltaCom seeks a Commission order requiring Hypercube to cease such unfair, anticompetitive and otherwise unlawful conduct and to return any amounts previously remitted by DeltaCom for amounts unlawfully billed.

9. Finally, to the extent that the Commission finds Hypercube to have provided any intrastate services per its price list to DeltaCom, DeltaCom seeks an order finding Hypercube liable for corresponding charges imposed pursuant to DeltaCom's intrastate access price list.

PARTIES AND JURISDICTION

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

11. Upon information and belief, Hypercube Telecom, LLC is a Delaware limited liability company with its principal place of business at 3200 West Pleasant Run Road, Suite 260, Lancaster, Texas 75146. It appears that, by virtue of a name change filing Hypercube Telecom, LLC became or at least purports to be a CLEC certificated to provide local telecommunications exchange services or access services in Florida. Hypercube provided the Commission with adhesive labels so that the KMC intrastate access services price list became the Hypercube intrastate access services price list, per a name change order effective October 13, 2008.

12. Upon information and belief, KMC Data LLC ("KMC") was (but has not been since October 2008) a certificated CLEC whose Florida intrastate access services price list is at issue in this complaint. The relationship between KMC and Hypercube, LLC and Hypercube Telecom, LLC is not entirely known. Hypercube maintains that KMC is or was at some point in time affiliated with Hypercube, LLC.

13. The Commission has jurisdiction over this Complaint pursuant to Florida Statutes, sections 364.01(4)(g), 364.03 and 364.04³ and its inherent powers to interpret and apply statutes within its authority.

FACTUAL BACKGROUND

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

³ Section 364.01(4)(g) applies to "all providers of telecommunications services." Sections 364.03 and 364.04 apply to every "telecommunications company," but section 364.03 does not apply to CLECs per section 364.337(2).

exchange carrier (“CLEC”), or they may be customers of a commercial mobile radio service (“CMRS”) or “wireless” carrier.

15. When the calling parties are customers of a carrier other than DeltaCom, the calls typically are routed to DeltaCom through the ILEC, which in most cases is BellSouth Telecommunications, Inc. dba AT&T Florida. When the calling parties are customers of a wireless carrier, the wireless carrier traditionally has routed the calls to DeltaCom through the ILEC tandem. Wireless carriers and DeltaCom typically do not pay each other compensation for traffic exchanged between them in either direction. Federal law provides that such charges by wireless carriers may be imposed pursuant to contract only (not tariff),⁴ and DeltaCom has reached no such contractual arrangements with wireless carriers. Thus, traffic between wireless carriers and carriers like DeltaCom typically is exchanged on a “bill-and-keep” basis. The typical call flow described here is depicted in the diagram appended hereto as **Exhibit A**.

16. Upon information and belief, Hypercube furnishes a transport and routing service to wireless carriers for the 8XX traffic originated on the wireless carriers’ networks for calls placed by the wireless carriers’ customers.⁵ With Hypercube inserted into the call flow, the wireless carrier evidently passes the traffic to Hypercube – instead of to the ILEC to which it already is directly connected – and then Hypercube delivers the traffic to the ILEC.

Hypercube does not deliver the traffic to DeltaCom. Upon information and belief, when

⁴ In 2002, the Federal Communications Commission (“FCC”) issued a Declaratory Ruling prohibiting wireless carriers from charging originating access charges to IXCs for the mobile carrier’s role in originating long distance calls, including 8XX calls, unless the IXC agrees in a contract with the wireless carrier to pay such charges. *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd. 13192, ¶¶ 8-9, 12 (2002) (“*Sprint PCS*”). This Declaratory Ruling further implemented the FCC’s deregulatory policies with respect to wireless carriers, which include exempting wireless carriers from the process of filing tariffs, granting wireless carriers broad exemptions from many categories of regulation, and encouraging wireless carriers to earn their revenues from their own end user customers and not through access charges collected from other telecommunications carriers.

⁵ Hypercube, LLC’s website promotes tandem services only. See <http://www/hypercube-llc.com/corporate/markets.html>

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

17. Upon information and belief, Hypercube typically contracts to pay a substantial portion of any such revenues collected to the wireless carriers who originate the traffic and route it first through Hypercube, instead of routing it directly to the ILEC for through routing to DeltaCom. Thus, wireless carriers route traffic through Hypercube to accomplish indirectly that which the FCC says they cannot do directly. The FCC rejected as unfair, anticompetitive and otherwise unlawful the arbitrage scheme created by Hypercube: “We reject the argument made by Verizon Wireless that the *Sprint/AT&T Declaratory Ruling* does not limit the ability of a CMRS provider to collect access charges from an IXC if the CMRS provider has a contract with an intermediate competitive LEC. *We will not interpret our rules or prior orders in a manner that allows CMRS carriers to do indirectly that which we have held they may not do directly.*”⁶ The FCC also has prohibited the tariffing of access charges for functionalities performed by wireless carriers.⁷

⁶ *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report & Order & Firth Order on Recon., 19 FCC Rcd. 9108, para. 16, n.57 (internal citations omitted) (emphasis added) (2004) (“*FCC Eighth R&O*”).

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

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

19. From November 2005 to October 2009, Hypercube or its predecessor KMC has charged DeltaCom approximately \$1,325,683.05 in such intrastate access and related charges in Florida. Of this amount, \$1,004,416.93 purportedly has been for “8YY Originating Access Service” charges, \$84,777.33 has been for “800 Data Base Query” charges and approximately \$236,488.79 has been for related late fees. For a time, Hypercube purports to have imposed these charges pursuant to the KMC Intrastate Access Services Price List (“Price List”).⁸ DeltaCom is unaware of any authority Hypercube had to provide such services or of any right Hypercube has to charge, bill and collect for services posted in a price list issued by another entity. In August 2008, Hypercube apparently made a filing with the Commission changing the name of the issuing carrier on the Price List from KMC to

⁸ Access Services Price List – KMC Data LLC Florida Price List No. 3 (filed Aug. 28, 2006) (issuing carrier changed to Hypercube Telecom, LLC by PSC Order dated October 13, 2008) (Hypercube “Price List” or “Price Lists”).

Hypercube. Copies of the Hypercube Price List and the version of the KMC Price List it replaces are appended hereto as **Exhibit B**.

20. DeltaCom also is not aware that it has received any traffic subject to the KMC or Hypercube Intrastate Access Services Price Lists. DeltaCom has neither affirmatively nor constructively ordered such services. Further, DeltaCom is under no regulatory obligation to accept service from KMC or Hypercube. Not admitting that it was a customer of Hypercube or that Hypercube had the authority to bill DeltaCom for such traffic and with all rights reserved, DeltaCom reported a 100% percent interstate usage (“PIU”) to Hypercube indicating that all of the traffic at issue (traffic Hypercube claims to have handled) belonged to the interstate jurisdiction and that none of it is subject to any intrastate tariff or price list. A copy of this letter is appended hereto as **Exhibit C**. On March 28, 2008, Hypercube unilaterally pronounced DeltaCom’s PIU report to be “invalid”. A copy of this letter is appended hereto as **Exhibit D**.⁹ DeltaCom has no real-time ability to detect which traffic is being handled by Hypercube and, if appropriate, to block the traffic on a discretionary basis. To DeltaCom's knowledge, all traffic in dispute flows in only one direction – typically, from an originating wireless carrier to Hypercube, then to the ILEC, then to DeltaCom. Hypercube itself neither originates nor terminates traffic.

21. In response to Hypercube’s unlawful intrastate access charge arbitrage scheme, DeltaCom filed a price list modification adding Intermediate Provider Access Service to its Price List. This service includes the origination or termination by DeltaCom of a call

⁹ The Price List provides for audits as the means of challenging a PIU report and does not permit such rejection by means of unilateral declaration. Price List, § 2.3.3. Hypercube also claims to have billed under the default provision of the Price List section which sets a default PIU of 50% (meaning that half of the traffic it claims to have been originated in Florida is considered interstate and half intrastate). This tactic is advantageous to Hypercube because the rates in the Price List are approximately ten times higher than those billed by Hypercube for traffic it, by default, recognizes as interstate. KMC never had an analogous FCC tariff and Hypercube has had one only since March 2009.

any portion of which traverses the network of an Intermediate Provider, as defined in the price list. These price list modifications went into effect on September 4, 2008. A copy of DeltaCom's price list is appended hereto as **Exhibit E**. DeltaCom billed Hypercube \$1,217,507.50 under this price list for the time period between September, 2008 and September, 2009. Hypercube has disputed these charges and refused to pay DeltaCom.

22. DeltaCom has disputed all of the charges invoiced by Hypercube pursuant to the KMC and Hypercube Intrastate Access Services Price Lists. DeltaCom inadvertently paid \$2,749.54 of such charges and has withheld the rest. DeltaCom's repeated attempts to resolve this matter privately with Hypercube have not been successful.

COUNT ONE

HYPERCUBE'S SCHEME OF IMPOSING INTRASTATE ACCESS CHARGES FOR WIRELESS ORIGINATED TRAFFIC IS UNFAIR, ANTICOMPETITIVE AND OTHERWISE UNLAWFUL

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

24. Hypercube charges DeltaCom and other IXCs for services performed by and for wireless carriers through its imposition of intrastate access charges. Hypercube then kicks-back a portion of those access charges to wireless carriers who are not entitled to impose those charges on IXCs. This scheme, whereby Hypercube needlessly inserts itself into the call flow so that it can collect and remit in part intrastate access charges to wireless carriers who are not authorized to charge them is an unfair and anticompetitive practice that violates state law. Sections 364.01(4)(g) and 364.03, Florida Statutes.

25. Hypercube is not a "telecommunications company" under state law because the service provided here is solely between carriers, one a non-regulated CMRS

provider and the other an ILEC. *See* Section 364.02(14), Florida Statutes¹⁰. Since Hypercube does not qualify as a telecommunications company, it cannot be allowed to file price lists for the services at issue here as part of a CLEC price list.

26. Hypercube also is not a "competitive local exchange communications company" under state law because Hypercube has no local exchange service or retail end user of its own implicated or affected in any way by the services at issue here. *See* Sections 364.02(5) and 364.337(1), Florida Statutes.¹¹ Since Hypercube does not qualify as a CLEC, it cannot be allowed to file price lists for the services at issue here as part of a CLEC price list.

27. In addition, the service provided by Hypercube is not "local exchange telecommunications service", exchange access or any other service that is properly in the price list of a CLEC in this state. Further, Hypercube neither originates nor terminates any of the traffic involved in this dispute, but instead provides an intervening transport and routing service to the wireless providers. To the extent that Hypercube has filed price lists for such services, its price lists violate the law that gives rise to its filing and is not consistent with the filed rate system nor compatible with its effective operation in this State and cannot be enforced against an IXC like DeltaCom.

28. As a result of Hypercube's unfair, anticompetitive and otherwise unlawful conduct, the Commission should order that, to the extent Hypercube provided any intrastate

¹⁰ "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include: . . . (a) An entity that provides a telecommunications facility exclusively to a certificated telecommunications company; (b) An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection; (c) A commercial mobile radio service provider

¹¹ Per section 364.02(5), a "Competitive local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications services in this state on or after July 1, 1995.

services to DeltaCom, (a) Hypercube did so unlawfully, (b) its price list is void *ab initio*, (c) it is not entitled to charge for such service, and (d) it is prohibited from further engaging in such conduct.

COUNT TWO

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

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

30. Hypercube has filed price lists for and imposed intrastate access charges on DeltaCom and other IXCs for services performed by and for wireless carriers. Hypercube's composite rate includes recovery for end office functionality provided by wireless carriers. Hypercube's filed intrastate access charges make no carve-out for intraMTA wireless traffic. The FCC has prohibited the practice of recovering through tariffed access charges for the functionalities performed by wireless carriers and has concluded that intraMTA wireless traffic is not subject to access charges. As such, federal law preempts this Commission from enforcing Hypercube's price lists containing such charges.

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

COUNT THREE

PRIOR TO OCTOBER 2008,¹² HYPERCUBE HAD NO RIGHT TO PROVIDE OR IMPOSE CHARGES FOR INTRASTATE SERVICES

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

33. Hypercube purports to have imposed charges on DeltaCom for intrastate access services provided within the state of Florida. Upon information and belief, Hypercube was not authorized to provide such services and had not obtained the requisite authority from the Commission to do so prior to October 2008.¹³

34. As a result of Hypercube's unfair, anticompetitive and otherwise unlawful conduct, the Commission should order that, to the extent Hypercube provided any intrastate services to DeltaCom prior to October 2008, Hypercube did so unlawfully and is not entitled to charge for such services. Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

COUNT FOUR

HYPERCUBE HAD NO RIGHT TO PROVIDE OR IMPOSE CHARGES FOR INTRASTATE SERVICES POSTED IN A PRICE LIST BY ANOTHER ENTITY

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

36. For a period of time prior to October 2008, Hypercube purports to have imposed charges on DeltaCom for intrastate access services provided within the state of Florida pursuant to the KMC Intrastate Access Services Price List. No Florida statute or rule authorizes Hypercube to provide or charge for services posted in a price list by another entity.

¹² To the extent the Commission finds that Hypercube is not a telecommunications company or is not providing local exchange telecommunications service, Hypercube would have had no right to provide or impose charges for intrastate access services *at any time*.

¹³ By Order No. PSC-08-0657-FOF-TP, issued October 13, 2008, the Commission acknowledged a name change for CLEC Certificate No. 7955 from KMC Data LLC to Hypercube Telecom, LLC.

Such practice is contrary to state law and deprives customers of the notice and clarity which tariffs and filed price lists are intended to provide.

37. As a result of Hypercube's unfair, anticompetitive and otherwise unlawful conduct, the Commission should order that, to the extent Hypercube provided any intrastate services to DeltaCom pursuant to the KMC Access Services Price List prior to October 2008, Hypercube did so unlawfully and is not entitled to charge for such services. Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

COUNT FIVE

HYPERCUBE HAS NO RIGHT TO DECLARE A REPORTED PIU INVALID

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

39. To the extent that Hypercube is authorized to provide intrastate services in Florida, and to provide them at certain times pursuant to another entity's price list, it is not entitled to impose such charges on interstate traffic. While reserving all rights and without any admission whatsoever that DeltaCom was or is a "Customer" of Hypercube or that Hypercube was or is providing posted price list services to DeltaCom, on or about October 11, 2007, DeltaCom reported to Hypercube a 100% PIU for the traffic at issue, thus indicating that, to the extent such traffic is not intra-MTA traffic, which would not be subject to the KMC and Hypercube Access Services Price Lists,¹⁴ it is jurisdictionally interstate in nature.

¹⁴ Federal law bars the imposition of access charges on intra-MTA wireless-originated traffic. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 1036 (1996) ("[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5) [i.e., reciprocal compensation], rather than interstate and intrastate access charges."); *see also Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶ 134 (2005) (stating that the Commission has found "that traffic to or from a CMRS network that originates

Thus, per DeltaCom's PIU report, none of the traffic at issue is intrastate access traffic subject to the KMC and Hypercube Access Services Price Lists.

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

41. The KMC and Hypercube Access Services Price Lists do not provide for the unilateral rejection of a reported PIU by declaring it to be "invalid" or otherwise. Instead, Section 2.3.3.D provides that the reported PIU factor "will be used until the Customer reports a different projected PIU factor".¹⁵ Section 2.3.4 provides for jurisdictional audits as the means of validating a reported PIU factor. Hypercube has not availed itself of this process and the Price List does not provide it with any other way of rejecting, invalidating or otherwise

and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges."); 47 C.F.R. § 51.713 (explaining that "Bill-and-keep arrangements for reciprocal compensation" are appropriate "if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so."). Thus, to the extent intraMTA traffic is not excluded, Hypercube's arbitrary imposition of a "default PIU" violates federal law.

¹⁵ DeltaCom does not admit to being a Customer and instead seeks declaratory relief affirming that it is not a Customer. See Count Seven, *infra*.

challenging a reported PIU factor. Hypercube's failure to abide by the terms of the Price List – which it purports to govern this controversy – is unfair, anticompetitive and otherwise unlawful.

42. Because Hypercube has engaged in unfair, anticompetitive and otherwise unlawful conduct in violation of the Price List pursuant to which it imposed the charges at issue here, the Commission should order that Hypercube's pronouncement that DeltaCom's reported PIU is invalid was unlawful and that no intrastate charges should have been imposed. The Commission also should order that, to the extent Hypercube imposed intrastate access charges on interstate traffic or intraMTA wireless traffic, it did so in violation of federal and state law. Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

COUNT SIX

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

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

44. Hypercube has asserted that it has provided and charged DeltaCom for at least two services included in the KMC and Hypercube Access Services Price Lists. To the extent these Price Lists are found to apply, the descriptions set forth therein of these services lack reasonable clarity necessary to support a finding that those services were provided by Hypercube to DeltaCom and that related charges apply.

45. Hypercube has asserted that it has provided to DeltaCom filed "Switched Access Service". Section 3.1 of the Price Lists contains the following service description:

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer and an End User. It provides for the use of common terminating, switching and

transport facilities. Switched Access Service provides the ability to originate calls from an End User to a Customer, and to terminate calls from a Customer to an End User.

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

Hypercube alleges it provides to DeltaCom.¹⁶

46. The service provided by Hypercube does not provide a “two-point communications path between a Customer and an End User.” DeltaCom is not a Customer of Hypercube.¹⁷ Also, Hypercube does not provide a two-point communications path between DeltaCom and an End User, regardless of whether the End User is considered to be the calling or called party or (by artifice) even the wireless carrier.¹⁸ Instead, Hypercube provides a redundant two-point link between a wireless carrier and an ILEC. *See, Exhibit A.* Under the Price List, such a link does not constitute a two point path between a Customer and an End User.

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

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

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

¹⁶ The Hypercube price list may be identical to the last on-file KMC price list.

¹⁷ As explained in Count Seven, *infra*, DeltaCom has neither ordered nor received service provided pursuant to the KMC and Hypercube Access Price Lists and thus is not a “Customer” of KMC or Hypercube. *See* Price List, § 1 Definitions at 1st Revised Page 6.

¹⁸ A carrier is not an end user.

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

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

Hypercube alleges it provides to DeltaCom.

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

51. The charges imposed by Hypercube on DeltaCom are based on a "composite rate" which includes costs for elements of service not provided by Hypercube (to anyone) in routing 8XX traffic from wireless carriers to ILECs. It is axiomatic that no carrier is entitled to charge another for services it does not provide.¹⁹ Because the charges are not limited to the "elements of the service" Hypercube allegedly provides when routing 8XX calls from wireless carriers to ILECs (Hypercube does not route calls to DeltaCom), the posted rates used by Hypercube are unfair, anticompetitive and otherwise unlawful. *See* Count Seven, *infra*.

52. The Price Lists also include the following language in Section 3.2.5:

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will utilize the Signaling System 7 (SS7) network to query an 800 data base to identify the Customer to whom the call will be delivered and provide vertical features based on the dialed ten digits. The call will then be routed to the identified Customer over FGD switched access. The 800 series includes the following service access codes: 800, 888, 877, 866, 855, 844, 833 and 822.²⁰

¹⁹ For example, the FCC has found that CLECs are not entitled to charge for services they do not provide. *See FCC Eighth R&O*, para. 21.

²⁰ Section 1 of the Price List, at 1st Revised Page 6, contains a different definition for "8XX Data Base Access Service". There appear to be no other provisions of the Price List using this term.

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

Hypercube alleges it provides to DeltaCom.

53. DeltaCom is not a Customer of Hypercube and Hypercube does not provide the Switched Access Services described in the KMC Access Services Price List to DeltaCom.

54. Hypercube does not deliver the traffic at issue to DeltaCom over FGD trunks, but rather sends it to an ILEC. Because Hypercube has not provided any of the services tariffed in the Price Lists to DeltaCom, its attempt to impose charges on DeltaCom for such services violates the Price List and is unfair, anticompetitive and otherwise unlawful. Further, because the Price List does not clearly describe and unambiguously identify the services and applicable charges at issue here, it is unreasonable for Hypercube to seek to impose charges for such services and it cannot lawfully do so. Sections 364.01(4)(g) and 364.04, Florida Statutes.

55. Because Hypercube has engaged in unfair, anticompetitive and otherwise unlawful conduct in violation of the Price List pursuant to which it imposed the charges at issue here and in violation of state law, the Commission should order that Hypercube has not provided to DeltaCom any of the services included in the KMC and Hypercube Access Services Price Lists and that Hypercube may not lawfully impose charges for such services. Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

COUNT SEVEN

**DELTA COM HAS NOT ORDERED ANY OF THE SERVICES INCLUDED IN THE KMC AND
HYPERCUBE ACCESS SERVICES PRICE LISTS AND
IS NOT A "CUSTOMER" UNDER THOSE PRICE LISTS**

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

57. DeltaCom is not required to purchase intrastate services from Hypercube. Nor has DeltaCom ever ordered any.

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

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

60. Section 1 (1st Revised at Page 6) of the Price Lists defines constructive ordering as follows:

Constructive Order: Delivery of calls to or acceptance of calls from the Company's locations constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer.

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

61. DeltaCom neither delivers calls nor accepts them from "the Company's locations". And, upon information and relief, in no case has a "Company End User" selected DeltaCom as its presubscribed IXC. Further, because the Price Lists do not clearly describe and unambiguously identify the services and applicable charges at issue here, it is unfair and anticompetitive for it to seek to impose charges for such services and it cannot lawfully do so.

62. The Price Lists define “Customer” as follows:

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

See Price List, § 1 Definitions at 1st Revised Page 6. DeltaCom is not a “Customer” under this definition. As explained herein, DeltaCom has neither ordered service or received service pursuant to the Price Lists.

63. Based on the foregoing, the Commission should order that DeltaCom is not required to order and has not ordered any services from Hypercube – affirmatively or constructively – pursuant to the KMC and Hypercube Access Services Price Lists and that it is not a Customer under those Price Lists. Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

COUNT EIGHT

**HYPERCUBE’S RATE FOR
8XX ORIGINATING ACCESS IS UNFAIR, ANTICOMPETITIVE AND OTHERWISE UNLAWFUL**

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

65. Section 3.2.5 of the KMC and Hypercube Access Services Price Lists provides:

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

The rate imposed by Hypercube for allegedly providing this service to DeltaCom encompasses more than the elements of service Hypercube claims it provides in routing such service and is therefore contrary to the terms of the Price List itself and is unfair, anticompetitive and otherwise unlawful because no carrier is entitled to charge for services it does not provide.²¹

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

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

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

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

69. Because the “blended rate” imposed by Hypercube includes charges for functionalities not provided by Hypercube, it is unfair, anticompetitive and otherwise unlawful.

70. Based on the foregoing, the Commission should order that Hypercube’s rate for Originating 800 FG Access is unfair, anticompetitive and otherwise unlawful. Sections 364.01(4)(g), 364.03, and 364.04, Florida Statutes.

COUNT NINE

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

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

72. Section 1 (at 1st Revised Page 6) of the KMC and Hypercube Access Services Price Lists defines a service called “8XX Data Base Access Service” as follows:

8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used.

This definition is ambiguous and the defined term is not used anywhere else in the Price Lists.

The Price Lists, at Section 4.2.2, also include the following provision:

800 Data Base Query

The 800 Data Base Query Charge will apply for each Toll-Free 8XX call query received at the Company’s (or its provider’s) Toll-Free 8XX data base.

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

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

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will utilize the Signaling System 7 (SS7) network to query an 800 data base to identify the Customer to whom the call will be delivered and provide vertical features based on the dialed ten digits. The call will then be routed to the identified Customer over FGD switched access. The 800 series includes the following service access codes: 800, 888, 877, 866, 855, 844, 833 and 822.

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

Per Query	
Basic	\$0.005
Vertical Feature	\$0.0055

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

73. Because the KMC and Hypercube Access Services Price Lists do not clearly describe and unambiguously identify the services and applicable charges at issue here, it is unfair and anticompetitive for Hypercube to seek to impose charges for such services and it cannot lawfully do so. Sections 364.01(4)(g), 364.03 and .364.04, Florida Statutes. Based on the foregoing, the Commission should order that Hypercube's imposition on DeltaCom of

charges for dips into a data base of 8XX numbers is unfair, anticompetitive and otherwise unlawful.

COUNT TEN

BREACH OF DELTACOM'S PRICE LIST

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

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

76. In response to Hypercube's unlawful intrastate access charge arbitrage scheme, DeltaCom filed a modification to its own intrastate access service price lists adding Intermediate Provider Access Service to its price list. These price list modifications were accepted by the Commission and went into effect on September 4, 2008. To the extent that Hypercube has provided intrastate services from its price list to DeltaCom, DeltaCom has likewise provided the Intermediate Provider Access Service from its price list to Hypercube. Per Section 3.5 of the DeltaCom Price List, this service includes the origination or termination by DeltaCom of a call any portion of which traverses the network of an Intermediate Provider, as defined in the DeltaCom Price List. The DeltaCom Price List defines Intermediate Provider as follows:

An Intermediate Provider is a provider that:

- (A) is not the telecommunications carrier for the customer who is either the originating end user or the terminating end user;
- (B) does not have a direct connection with the Company or a written agreement, executed by the Company, for the provision of such services; and,

(C) seeks to levy any charge or fee, by tariff or otherwise, against the Company.

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

Rates will be billed at the greater of:

(A) Per Minute Rate \$ 0.025

(B) Per Call Rate* \$ 0.005

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

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

Per this section of the DeltaCom Price List, DeltaCom billed Hypercube \$1,217,507.50 for the time period between September, 2008 and September, 2009. Hypercube has unlawfully refused to pay DeltaCom.

77. Based on the foregoing, and to the extent that it is determined that DeltaCom is not entitled to relief on the foregoing counts, the Commission should (a) find that Hypercube has unreasonably, unjustly and unlawfully refused to pay for the services in the DeltaCom Price List provided to it by DeltaCom, and (b) enter an order requiring Hypercube to pay all amounts owed to DeltaCom and barring Hypercube from refusing to pay DeltaCom in the future for such services provided by DeltaCom.

COUNT ELEVEN

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

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

79. Hypercube's practices and actions complained of herein are (a) unfair and anticompetitive, (b) unjust and unreasonable, (c) in bad faith and contrary to the public interest, and (d) otherwise unlawful for the reasons set forth herein, including federal preemption, and in violation of Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

80. Because of Hypercube's unfair, anticompetitive and otherwise unlawful conduct and pursuant to the above-quoted statute sections, DeltaCom is entitled to an order barring Hypercube from collecting for services billed previously under the KMC and Hypercube Access Services Price Lists, barring Hypercube from billing DeltaCom for such services in the future, requiring Hypercube to refund to DeltaCom any such amounts previously remitted.

ISSUES OF MATERIAL FACT, ULTIMATE FACTS, STATUTES VIOLATED

81. All material factual allegations which DeltaCom pleads the Commission address are as identified the preceding paragraphs hereof. The issues of material fact which may ultimately be in dispute by the parties in this proceeding cannot be identified with certainty at this time in the pleading process. Based on the foregoing, the ultimate facts alleged are that:

- (a) Hypercube has engaged in an unlawful scheme whereby it facilitates the indirect imposition of intrastate access charges by wireless carriers on IXCs such as DeltaCom;
- (b) Hypercube unlawfully has imposed charges for allegedly providing intrastate services without at all times, if at any, having had the requisite authority, price list or contract;
- (c) Hypercube is not a "telecommunications company" or a "CLEC" and it does not provide "local exchange telecommunications service" or intrastate access services;

- (d) Hypercube unlawfully has imposed intrastate access charges on intraMTA and interstate traffic;
- (e) Hypercube unlawfully has filed access charges for functionalities performed by wireless carriers;
- (f) Hypercube unlawfully has rejected DeltaCom's PIU in violation of the Price List upon which it relies;
- (g) Hypercube has not provided nor has DeltaCom ordered any intrastate service set forth in the Price List;
- (h) Hypercube's rate for 8XX Originating Access is unlawful;
- (i) Hypercube's imposition of 800 Data Base Dip charges on DeltaCom is unlawful; and
- (j) In the alternative, Hypercube has breached DeltaCom's Price List by refusing to pay DeltaCom rates for services provided by DeltaCom per the Price List.
- (k) It is anticipated that Hypercube may dispute some or even all of these facts.
- (l) The Commission must order that DeltaCom is not liable for the complained-of charges pursuant to Section 364.01(4)(g), Florida Statutes, on all counts. To the extent that Hypercube has filed price lists for the services at issue here, its price list violates any law(s) which may give rise to its filing and is not consistent with the filed rate system nor compatible with its effective operation in this State. Whether or not Hypercube is a "telecommunications company" or a CLEC, it is unfair and anticompetitive for a company to (a) file a CLEC price list to enable it do indirectly what its CMRS customers cannot do directly, while providing the CMRS customers a kick-back, and, (b) even if all or part of such a price list is permissible, attempt enforcement before the price list is

effective, misconstrue its provisions (including those that are unclear and, hence, inadequately noticed), improperly charge rates, and ignore provisions of the Price List to suit its own interests – where DeltaCom ordered no service and Hypercube provided no service to DeltaCom. To the extent Hypercube is deemed a "telecommunications company" but not a CLEC for purposes of this dispute, section 374.03, Florida Statutes, applies. This section provides that telecommunications company rates and contracts must be fair, just and reasonable and that telecommunications companies furnish services, as demanded, to those who apply for such, on terms approved by the commission.

Hypercube has not acted in compliance with this section; Hypercube has simply dropped into a CLEC price list rates and terms for so-called intrastate services which Hypercube's CMRS customers could not charge DeltaCom, at rates that include charges for services provided by the wireless carriers and a kick-back to the CMRS carriers. Hypercube neither originates nor terminates its own traffic, so it cannot seek to enforce filed access charges against an unregulated Florida IXC under Florida law. There has been no request for service from DeltaCom based on clear and approved terms for service. Hypercube has not provided to DeltaCom any of the services included in its Price List and DeltaCom has not been properly charged per the Price List's terms. Section 364.04 applies to all telecommunications companies, including CLECs, and provides that all companies will file schedules for services to be performed within the state on clear terms, with all charges separately stated. Hypercube has violated this provision in that it has ignored the terms of its own Price List, ignored DeltaCom's reported PIU, and charged DeltaCom a blended intrastate access charge and related data base dip charges on intraMTA and interstate traffic that includes charges for services not performed by Hypercube but by a

wireless carrier. The FCC has prohibited the practice of recovering through tariffed access charges for the functionalities performed by wireless carriers and has concluded that intraMTA wireless traffic is not subject to access charges. As such, federal law preempted this Commission from accepting or enforcing Hypercube's Price List containing such charges. Accordingly, the judgments and relief sought by DeltaCom are warranted. To the extent that it is determined that DeltaCom is not entitled to such, the Commission should find that Hypercube has unreasonably, unjustly and unlawfully refused to pay for the services provided to it by DeltaCom, in violation of the DeltaCom Price List.

JUDGMENT AND RELIEF SOUGHT

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

- (a) Issue an order on Count One in favor of DeltaCom that Hypercube's practice of needlessly inserting itself into the call flow so that it can collect and remit in part intrastate access charges to wireless carriers who are not authorized to charge them is an unfair and anticompetitive practice that violates state law, and that to the extent Hypercube provided any such intrastate services to the DeltaCom IXC, (a) Hypercube did so unlawfully, (b) its Price List is void *ab initio*, (c) it is not entitled to charge for such service, and (d) is prohibited from further engaging in such conduct;
- (b) Issue an order on Count Two in favor of DeltaCom that, in light of the FCC's prohibition on the tariffing of access charges for functionalities performed by wireless carriers and for intraMTA wireless traffic, (a) the Commission was preempted from accepting or enforcing Hypercube's Price List, (b) Hypercube's Price List is void *ab initio*, (c) Hypercube is not entitled to impose intrastate access charges for functionalities performed by wireless carriers or for intraMTA wireless traffic, and (d) Hypercube is prohibited from further engaging in such conduct;
- (c) Issue an order on Count Three in favor of DeltaCom that, to the extent Hypercube provided any intrastate services to DeltaCom, Hypercube did so unlawfully and is not entitled to charge for such services;
- (d) Issue an order on Count Four in favor of DeltaCom that, to the extent Hypercube provided any intrastate services to DeltaCom pursuant to the

KMC Access Services Price List, Hypercube did so unlawfully and is not entitled to charge for such services;

- (e) Issue an order on Count Five in favor of DeltaCom that Hypercube's pronouncement that DeltaCom's reported PIU is invalid was unlawful and that, consistent with the Price Lists, no intrastate charges should have been imposed;
- (f) Issue an order on Count Six in favor of DeltaCom that Hypercube has not provided to DeltaCom any of the services included in the Price Lists and that Hypercube may not lawfully impose charges for such services;
- (g) Issue an order on Count Seven in favor of DeltaCom that DeltaCom has not ordered any services from Hypercube – affirmatively or constructively – pursuant to the Price Lists and that it is not a Customer there under;
- (h) Issue an order on Count Eight in favor of DeltaCom that Hypercube's rate for Originating 800 FG Access is unlawful;
- (i) Issue an order on Count Nine in favor of DeltaCom that Hypercube's imposition on DeltaCom of charges for dips into a data base of 8XX numbers is unfair, anticompetitive and otherwise unlawful.;
- (j) Issue an order on Count Ten in favor of DeltaCom finding that Hypercube has unreasonably, unjustly and unlawfully refused to pay for the services provided to it by DeltaCom pursuant to DeltaCom's Price List, requiring Hypercube to pay all amounts owed to DeltaCom, and barring Hypercube from refusing to pay DeltaCom in the future for such services provided by DeltaCom;
- (k) Issue an order with respect to Count Eleven barring Hypercube from collecting for services billed previously under the Price Lists, barring Hypercube from billing DeltaCom for such services in the future, and requiring Hypercube to refund to DeltaCom any such amounts previously remitted, as demonstrated at hearing; and
- (l) Issue an order granting any other relief this Commission deems just and proper because Hypercube has acted unfairly, anticompetitively and in bad faith, has been stubbornly litigious, and has caused DeltaCom unnecessary trouble and expense.

Respectfully submitted this 23rd day of October, 2009.

By: 

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CERTIFICATE OF SERVICE

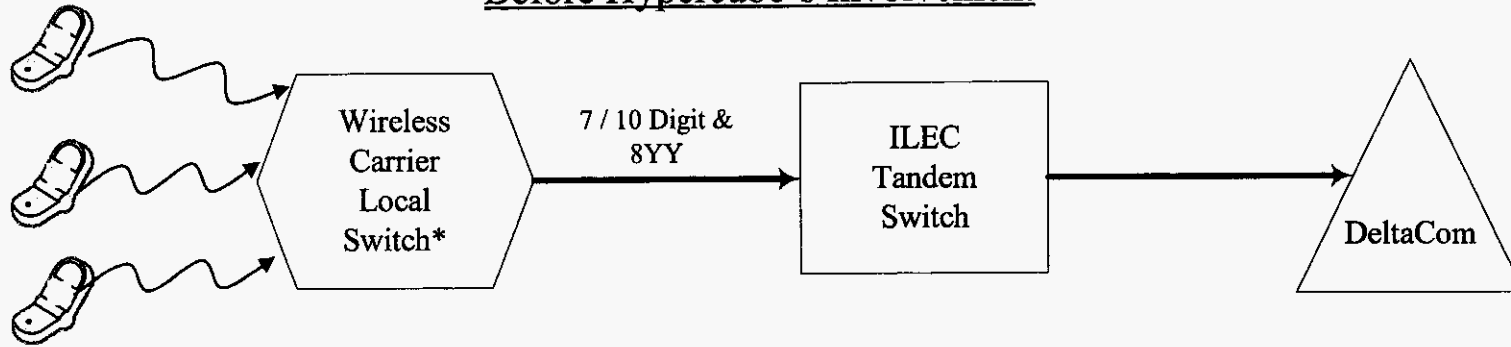
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email and/or U.S. Mail this 23rd day of October, 2009.

Charles Murphy, Esq. Timisha Brooks, Esq. Adam Teitzman, 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	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
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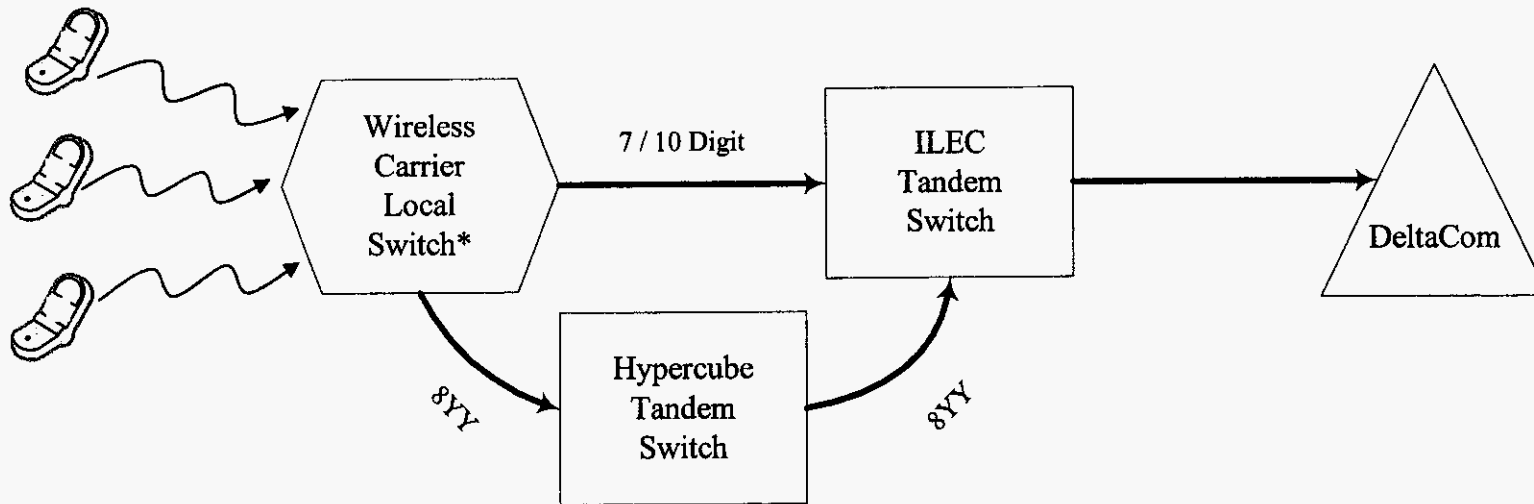
By: 
Matthew Feil, Esq.

Call-Routing Diagram

Before Hypercube's Involvement



With Hypercube's Involvement



* It is unknown whether there are wireless tandem switches between the wireless local switch serving the called party and the first non-wireless tandem switch. This diagram is based on DeltaCom's current understanding and may be updated as further information is obtained.

HYPERCUBE TELECOM, LLC

Florida Price List No. 3
1st Revised Page 1
Cancels Original Page 1

ACCESS SERVICES

REGULATION AND SCHEDULE OF INTRASTATE CHARGES
GOVERNING THE PROVISION OF SWITCHED ACCESS SERVICES
FOR CONNECTION TO COMMUNICATIONS FACILITIES WITHIN
THE STATE OF FLORIDA

This tariff contains the descriptions, regulations and rates applicable to the furnishing of competitive access service and facilities for telecommunications services provided by KMC Data, LLC within the State of Florida. This tariff is on file with the Florida Public Service Commission. Copies may be inspected during normal business hours at the Company's principal place of business at 5300 Oakbrook Parkway, Bldg 300, Suite 330, Norcross, GA 30093.

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Issued: August 28, 2006

Effective: August 29, 2006

Issued By: James M. Mertz
Vice President of Government Affairs T
Hypercube Telecom, LLC
5300 Oakbrook Parkway T
Bldg 300, Suite 330 T
Norcross, GA 30093 T

HYPERCUBE TELECOM, LLC

Florida Price List No. 3
1st Revised Page 2
Cancels Original Page 2

ACCESS SERVICES

CHECK SHEET

Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

SHEET	REVISION	SHEET	REVISION	SHEET	REVISION
1	1 st Revised	26	1 st Revised	D	D
2	1 st Revised	27	1 st Revised	D	D
3	1 st Revised	28	1 st Revised	D	D
4	1 st Revised	29	1 st Revised		
5	1 st Revised	30	1 st Revised		
6	1 st Revised	31	1 st Revised		
7	1 st Revised	32	1 st Revised		
8	1 st Revised	33	1 st Revised		
9	1 st Revised	34	1 st Revised		
10	1 st Revised	35	1 st Revised		
11	1 st Revised	36	1 st Revised		
12	1 st Revised	37	1 st Revised		
13	1 st Revised	38	1 st Revised		
14	1 st Revised	39	1 st Revised		
15	1 st Revised	40	1 st Revised		
16	1 st Revised	40.1	Original		
17	1 st Revised	41	1 st Revised		
18	1 st Revised	42	1 st Revised		
19	1 st Revised	43	1 st Revised		
20	1 st Revised	44	1 st Revised		
21	1 st Revised	45	1 st Revised		
22	1 st Revised	46	1 st Revised		
23	1 st Revised	47	1 st Revised		
24	1 st Revised	48	1 st Revised		
25	1 st Revised	D	D		

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HYPERCUBE TELECOM, LLC

Florida Price List No. 3
1st Revised Page 3
Cancels Original Page 3

ACCESS SERVICES

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ACCESS SERVICES

SYMBOLS

The following are the only symbols used for the purposes indicated below:

- | | | |
|----------|---|----------|
| D | Delete or discontinue. | |
| I | Change resulting in an increase to a Customer's bill. | T |
| M | Moved from another tariff location. | |
| N | New. | |
| R | Change resulting in a reduction to a Customer's bill. | T |
| T | Change in text or regulation but no change in rate or charge. | |

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TARIFF FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in its tariff approval process, the most current sheet number on file with the Commission is not always the sheet in effect. Consult the Check Sheet for the sheet currently in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to the next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets - When a tariff filing is made with the FCC, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross-reference to the current revision number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some sheets.) The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on file with the FCC.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS

Certain terms used generally throughout this tariff for the Access Services of this Company are defined below.

Access Code: A uniform seven digit code assigned by a Common Carrier to an individual customer. The seven digit code has the form 950-XXXX or 101XXXX. T

Access Service: Switched Access to the network of an Interexchange Carrier for the purpose of originating or terminating communications.

Access Service Request (ASR): The industry service order format used by Access Service Customers and access providers as agreed to by the Ordering and Billing Forum.

Access Tandem: A switching system that provides traffic concentration and distribution function for originating or terminating traffic as an intermediate carrier between other switching facilities that originate or terminate calls to or from an End User. T
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Authorized User: A person, firm, corporation or other entity that either is authorized by the Customer to use Access Services or is placed in a position by the Customer, either through acts or omissions, to use Access Services.

Carrier or Common Carrier: See Interexchange Carrier or Exchange Carrier.

CMRS: Commercial Mobile Radio Service T

Co-Carrier: Any other Telecommunications provider authorized by the Commission to provide local exchange service in the state.

Commission: The Florida Public Service Commission

Common Channel Signaling (CCS): A high-speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. It is used to carry addressed signaling messages for individual trunk circuits and/or database related services between signaling points in the CCS network.

Company: KMC Data, LLC, issuer of this tariff.

Constructive Order: Delivery of calls to or acceptance of calls from the Company's locations constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer. T

Customer: The person, firm, corporation or other entity which orders Service or receives service including through a Constructive Order and is responsible for the payment of charges and for compliance with the Company's tariff regulations. The Customer could be an interexchange carrier, a local exchange carrier, a wireless provider, or any other Carrier that operates in the state. T
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8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used. T

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to local exchange services, interexchange services, CMRs, VOIP services, or other telecommunications service provided by an Exchange Carrier, Common Carrier, Wireless Provider, VOIP Provider or other provider of services that transit the Company's facilities. T
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Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

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

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Inter-MTA Traffic: Wireless traffic originating on the network of a CMRS provider within one MTA and terminating to End Users in another MTA. T

Intra-MTA Traffic: Wireless traffic originating on the network of a CMRS provider within a MTA and terminating to End Users in the same MTA. T

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

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Line Information Data Base (LIDB): The data base which contains base information such as telephone numbers, calling card numbers and associated billed number restriction data used in connection with the validation and billing of calls.

Local Access: The connection between a Customer's premises and a point of presence of the Exchange Carrier.

Local Switching Center: The switching center where telephone exchange service Customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Local Traffic: Traffic, other than 8XX calls, is "Local Traffic" under this tariff if: (i) the call originates and terminates in the same exchange area; or (ii) the call originates and terminates within different KMC Data, LLC Exchanges that share a common mandatory local calling area, e.g., a mandatory Extended Local Calling Service (ELCS) or Extended Area Service areas (EAS) or other like types of mandatory local calling scopes. T

Meet Point: A point of interconnection that is not an end office or tandem.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

Meet Point Billing: The arrangement through which multiple Exchange Carriers involved in providing Access Services, divide the ordering, rating, and billing of such services on a proportional basis, so that each Exchange Carrier involved in providing a portion of the Access Service agrees to bill under its respective tariff.

Mobile Telephone Switching Office: Location where the wireless Customer maintains a facility for purposes of interconnecting to the Company's Network.

Mutual Traffic Exchange: A compensation arrangement between certified local exchange service providers where local exchange service providers pay each other "in kind" for terminating local exchange traffic on the other's network.

Network Services: The Company's telecommunications Access Services offered on the Company's Network.

Non-Recurring Charges: The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the Service Order is executed.

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

Optional Expanded Area Service Traffic (OEAS): Optional service found in large urban areas financed by separate charge on end users that elect service as defined by a tariff approved by the Commission.

On-Hook: The idle condition of switched access or a telephone exchange service line.

Out of Band Signaling: An exchange access signaling feature which allows Customers to exchange call control and signaling information over a communications path which is separate from the message path. T

Point of Presence: Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Premises: The space occupied by a Customer or Authorized User in a building or buildings or on contiguous property (except railroad rights-of-way, etc.).

Presubscription: An arrangement whereby an End User may select and designate to the Company an Interexchange Carrier (IXC) or Carriers it wishes to access, without an Access Code, for completing both intraLATA toll calls and/or interLATA calls. The selected IXC(s) are referred to as the End User's Primary Interexchange Carrier (PIC).

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this tariff.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

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

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

VOIP Provider: Any individual association, corporation, governmental agency or any other entity that is providing voice over internet protocol. The VOIP provider may or may not be certified by the Florida Public Service Commission. N
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Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging CMRS or any other form of wireless transmission. T

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS

2.1 Undertaking of KMC Data, LLC

2.1.1 Scope

KMC Data, LLC' services offered pursuant to this tariff are furnished for Switched Access Service. KMC Data, LLC may offer these services over its own or resold facilities.

KMC Data, LLC installs, operates, and maintains the communications services provided herein in accordance with the terms and conditions set forth under this tariff. KMC Data, LLC may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities as required in the Commission's rules and orders, when authorized by the Customer, to allow connection of a Customer's location to the KMC Data, LLC network. The Customer shall be responsible for all charges due for such service agreement.

The Company's services and facilities are provided on a monthly basis unless otherwise indicated, and are available twenty-four hours per day, seven days per week.

2.1.2 Shortage of Equipment or Facilities

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of lack of facilities or due to some other cause beyond the Company's control.
- B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the company may obtain from other Carriers from time to time, to furnish service as required at the sole discretion of the Company.
- C. The provisioning and restoration of service in emergencies shall be in accordance with Part 64, Subpart D, Appendix A of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

2.1.3 Terms and Conditions

- A. Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than 30 days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B. Customers seeking to cancel service have an affirmative obligation to block traffic originating from or terminating to the Company's network. By originating traffic from or originating traffic to the Company's network, the Customer will have constructively ordered the Company's switched access service.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.3 Terms and Conditions (Cont.)

- C. The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to section 2.1.3.D below.
- D. The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- E. A Customer that uses access services provided by KMC Data, LLC without submitting an actual order will be presumed to have ordered access services by using said services and charging its End User for retail services that could not be provided without the use of access services.
- F. In any action between the parties to enforce any provision of this tariff, KMC Data, LLC shall be entitled to recover its legal fees and court costs from the Customer in addition to other relief a court may award when it is the prevailing party.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.4 Liability of the Company

- A. The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, errors, other defects, or representations by the Company, or use of these services or damages arising out of the failure to furnish the service whether caused by act or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6 below. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B. With respect to any other claim or suit, by a Customer or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair interruption or restoration of any service or facilities offered under this tariff, and subject to the provisions of the Company's liability, if any, shall be limited as provided herein.
- C. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction action, or request of The United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts work stoppages, or other labor difficulties.
- D. The Company shall not be liable for (a) any act or omission of any entity furnishing the Company or the Company's Customers facilities or equipment used for the interconnection with Access Services; or (b) for the acts or omissions of other Common Carriers.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.4 Liability of the Company (Cont.)

- E. The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- F. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location, or use of any installation or equipment provided by the Company. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4.F as a condition precedent to such installations.
- G. The Company shall not be liable for any defacement of or damage to Customers Premises resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, unless such defacement or damage is caused by the gross negligence or willful misconduct of the Company's agents or employees. No agents or employees of other participating Carriers shall be deemed to be agents or employees' of the Company.
- H. Notwithstanding the Customer's obligations as set forth in Section 2.3 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the service, against any claim, loss or damage arising from Customer's use of services furnished under this tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's service; and patent infringement claims arising from combining or connecting the service offered by the Company with apparatus and systems of the Customer or others; all other claims arising out of any act or omission of the Customer or others, in connection with any service provided by the Company pursuant to this tariff.
- I. The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this tariff including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another Interexchange Carrier; or all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this tariff.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.4 Liability of the Company (Cont.)

- J. The entire liability of the Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to the Company by the Customer for the specific services giving rise to the claim, and no action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- K. The Company makes no warranties or representation, express or implied, including warranties or merchant's ability or fitness for a particular use, except those expressly set forth herein.
- L. The Company shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, Channels, or equipment which result from the operation of Customer-provided systems, equipment, facilities or service which are interconnected with Company services.
- M. The Company does not guarantee nor make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. The Customer and End User shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to, or death of, any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, locations or use of service furnished by the Company at such locations.
- N. The Company shall not be liable for the Customer's failure to fulfill its obligations to take all necessary steps including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's Network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service, that the signals emitted into the Company's Network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in Section 2.1.6 following, and that the signals do not damage Company equipment, injure its personnel or degrade service to other Customers. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to Company equipment, personnel, or the quality of service to other Customers, the Company, may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service without liability.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities within its control that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.6 Provisions of Equipment and Facilities

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B. The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E. The Customer shall be responsible for the payment of service charges imposed on the Company by another entity, for visits to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.6 Provisions of Equipment and Facilities (Cont.)

- F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Notwithstanding the above, the Company shall not be responsible for:
1. the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;
 2. the reception of signals by Customer-provided equipment; or
 3. network control signaling where such signaling is performed by Customer-provided network control signaling equipment.
- G. The Company intends to work cooperatively with the Customer to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.
- H. The Company reserves the reasonable right to assign, designate or change telephone numbers, any other call number designations associated with Access Services, or the Company serving central office prefixes associated with such numbers, when necessary in the conduct of its business.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.7 Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.8 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken and characterized by one or more of the following:

- A. where facilities are not presently available and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. where facilities are to be installed over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. where facilities are requested in a quantity greater than that which the Company would normally construct;
- E. where installation is on an expedited basis;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.8 Special Construction (Cont.)

- F. on a temporary basis until permanent facilities are available;
- G. installation involving abnormal costs; or
- H. in advance of its normal construction schedules.

Special construction charges for Switched Access Service will be determined on an individual use basis.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its agents, contractors or suppliers.

2.2 Prohibited Uses

- 2.2.1 The services the Company offers shall not be used for any unlawful purposes or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming their use of the Company's offerings complies with relevant laws and applicable state regulations, policies, orders, and decisions; and if the Reseller intends to provide intrastate services, is certified with the appropriate state entity.
- 2.2.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer

2.3.1 The Customer shall be responsible for:

- A. the payment of all applicable charges pursuant to this tariff. For the avoidance of doubt and *notwithstanding any other provision in this Tariff or other Customer service agreement or arrangement, including but not limited to Meet Point Billing arrangements, in addition to service charges imposed by KMC Data, LLC for the Service, the Customer shall be responsible for and reimburse KMC Data, LLC for any and all charges, fees, assessments of any kind or nature, including but not limited to interstate and intrastate switched access charges, imposed by any third party (collectively "Third Party Charges") upon KMC Data, LLC relating to usage incurred by the Customer in connection with the Services. The Customer hereby indemnifies KMC Data, LLC for all Third Party Charges and agrees to defend and hold KMC Data, LLC harmless for all damages, losses, claims or judgments arising out any Third Party Charges;* T
- B. reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages to its facilities or equipment, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subjugated in the Company's right of recovery of damages to the extent of such payment;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space, and power to operate Company facilities and equipment installed on the Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Access Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.C above. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be owned entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this subsection prior to accepting an order for service;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.1 The Customer shall be responsible for, (cont.):

- E. providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- F. complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses, and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible obtaining under Section 2.3.1.D above; and granting or obtaining permission for Company agents or employees to enter the Customer Premises at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company; and
- G. not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees for:

- A any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;
- B. any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting

The jurisdictional reporting requirements will be as specified below. When a Customer orders Access Service or uses Access Service based upon a Constructive Order, its projected Percent Interstate Usage (PIU) must be provided in whole numbers to the Company. These whole number percentages will be used by the Company to apportion the use and/or charges between interstate and intrastate until a revised report is received as set forth herein. Reported or default PIU factors are used only where the call detail is insufficient to determine the appropriate jurisdiction of the traffic.

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A. **Originating Access:** Originating access minutes is only traffic originating from the Company Local Switching Center(s). The Customer should provide the Company with a projected PIU factor on a quarterly basis.

If no PIU for originating minutes is submitted as specified herein, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

B. **Terminating Access:** For Feature Group D Switched Access Service(s), the Customer should provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of terminating access minutes on a quarterly basis, as described in Sections 2.3.3.E below.

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If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

C. **800 Originating Access:** 800 Originating Access is for 8XX traffic that is switched by the Company's switches and originated by an End User of an Exchange Carrier.

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If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

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D. Except where the Company measured access minutes are used as set forth above, the Customer reported Projected PIU factor as set forth above will be used until the Customer reports a different projected PIU factor, as set forth below.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting (cont.)

- E. Effective on the first of January, April, July and October of each year the Customer should update its interstate and intrastate jurisdictional report. The Customer should forward to the Company, to be received no later than 15 days after the first of each such month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June, and September, respectively, for each service arranged for interstate use, based solely on the traffic originating from or terminating to the Company. The revised report will serve as the basis for the next three months: billing and will be effective on the bill date for that service. No prorating or back billing will be done based upon the report. If the Customer does not supply the reports for those services where reports are needed, the Company will assume the percentage to be the same as that provided previously. For those cases in which a quarterly report has never been received from the Customer, the Company will assume the percentages to be the same as those provided in 2.3.3A and 2.3.3B above. T
- F. Jurisdictional Reports Verification: For Switched Access Service, if a billing dispute arises or a regulatory commission questions the projected PIU factor, the Customer will provide the data issued to determine the projected PIU factor. The Customer will supply the data within 30 days of the Company request. T
- The Customer shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The Company reserves the right to conduct an audit at any time during the year. The Customer, as its own expense, has the right to retain an independent auditing firm.
- G. For switched access services for which the Company cannot determine the jurisdictional nature of Customer traffic and its related access minutes, the company reserves the right to require the Customer to provide a projected estimate of its traffic, split between the interstate and intrastate jurisdictions. The Customer shall upon ordering service, and quarterly thereafter, report the percentage of interstate use and such report will be used for billing purposes until the Customer reports a different projected interstate percentage for a working trunk group. When the Customer adds trunks to or removes trunks from an existing group, the Customer shall furnish a revised projected interstate percentage for each service arranged for interstate use. The revised report will serve as the basis for future billing and will be effective on the next bill date. No prorating or back billing will be done based on the report. T
- H. The Company may request detailed information in support of the reported annually and retains the right to retroactively adjust the Customer's most recent bills covering the preceding eleven months if a substantial discrepancy is found to exist. If an audit of the reported percentages reveals a substantial deviation from the Customer's previously reported PIU for the period upon which audit was based, the call detail records may be requested more than once annually. T

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.4 Jurisdictional Audits

- A. The Customer shall keep sufficient detail from which the percentages of interstate and intrastate intraLATA use reported to the Company can be verified and upon request of the Company make such records available for inspection and audit. The Customer must maintain these records for 24 months from the date the report became effective for billing purposes. T
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- B. Initiation of an audit will be at the sole discretion of the Company. An audit may be initiated by the Company for a single Customer no more than once per year. The Customer shall supply required data within 30 calendar days of the Company request. T
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- C. In the event that an audit reveals that any Customer reported PIU or PLU was incorrect, the Company shall apply the audit result to all usage affected by the audit. The Customer shall be back billed for a period retroactive to the date that the incorrect percentage was reported, but not to exceed 24 months. Back billed amounts are subject to a late payment penalty and payment shall be made in immediately available funds, within 31 days from receipt of bill or by the following bill date, whichever is shorter period. T
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- D. Should an audit reveal that the misreported percentage(s) of use has resulted in an underpayment of Access charges to the Company of five percent or more the total switched Access Services bill, the Customer shall reimburse the Company for the cost of the audit. Proof of cost shall be the bills, in reasonable detail submitted to the Company by the auditor. T
- E. Within 15 days of completion of the auditor's report, the Company will furnish a copy of the audit results to the person designated by the Customer to receive such results. T

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels

2.4.1 General

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

- A. The Customer is responsible for providing and maintaining any terminal equipment on the Customer Premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinuance forthwith the use of a service temporarily if such action is reasonable under the circumstances. In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels (Cont.)

2.4.2 Station Equipment (Cont.)

- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

2.4.3 Interconnection of Facilities

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Access Services and the Channels, facilities, or equipment of others shall be provided at the Customers expense.
- B. Access Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels (Cont.)

2.4.4 Inspections

- A. Upon reasonable notification of the Customer, and at reasonable times, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.B for the installation, operation, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. *Within ten days of receiving this notice*, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment, and personnel from harm. The Company will, upon request 24 hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for payment of all charges for services and facilities furnished by the Company to the Customer or its Joint or Authorized Users. Customer must pay KMC Data, LLC for all services provided regardless of whether the Customer submitted an order to KMC Data, LLC to provide such services.

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A. Taxes

The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on the Company's net income imposed on or based upon the provision, sale or use of Access Services. All such taxes shall be separately designated on the Company's invoices.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges

Unless otherwise specified herein, bills are due and payable upon receipt.

The Company shall bill on a current basis all charges incurred by, and credits due to, the Customer under this Tariff attributable to services established, provided, or discontinued during the preceding billing period. Any known unbilled charges for prior periods and any known adjustments also will be applied to the current bill.

Non-Recurring Charges are due and payable within 30 days after the invoice date.

The Company shall present invoices for all Charges monthly to the Customer.

Amounts not paid within 30 days after the date of invoice will be considered past due. KMC Data, LLC will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 30 days. If the Company becomes concerned at any time about the ability of a Customer to pay its bills, the Company may require that the Customer pay its bills within a specified number of days and make such payments in cash or the equivalent of cash.

If the Customer does not provide remittance advice with its payments, payments will be applied to outstanding charges in the following order: 1.) the oldest to the most recent late payment charges, 2.) the oldest to the most recent outstanding intrastate charges, and finally to 3.) the oldest to most recent outstanding interstate charges.

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If a service is disconnected by the Company in accordance with Section 2.5.3 following and later restored, restoration of service will be subject to all applicable installation charges.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges (Cont.)

The Customer shall notify the Company of any disputed items on an invoice within 90 days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Commission in accordance with the Commission's rules of procedures.

Any disputed charges must be paid when due. After the dispute is settled, the Customer will be credited with any payments in excess of those actually due the Company. The Company will also remit interest for all such credited amounts. Interest will be paid at rate required by the Commission for Customer deposits.

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2.5.3 Refusal and Discontinuance of Service

A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer discontinue or suspend service without incurring any liability. KMC Data, LLC may deliver such notice via electronic mail, facsimile, regular mail or certified mail.

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B. Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 10 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.

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C. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

D. Upon any governmental prohibition, or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any Liability.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

- E. Upon the Company's discontinuance of service to the Customer under Section 2.5.3.A or 2.5.3.B above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.

- F. The Company may discontinue the furnishings of any and/or all service(s) to Customer, without incurring any liability:
 - 1. Immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section 2.5.3.F.1. (a-e), if
 - (a) The Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s); or

 - (b) The Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s); or

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

F. (cont.)

1. (cont.)

(c) The Customer states that it will not comply with a request of the Company for security for the payment for service(s) in accordance with Section 2.5.3.A above, or

(d) The Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used; or

(e) The Customer uses, or attempts or use, service with the intent to void the payment, either in whole or in part, of the tariff charges for the service by:

I. Using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff, or

II. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or

III. By delivering calls to or accepting calls from the Company's locations over Company switched local exchange services; or

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IV. Continuing to have Company End Users presubscribed to the Customer; or

V. Any other Fraudulent means or devices; or

2. Upon ten (10) days written notice to the Customer of any sum thirty (30) days past due;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

F. (cont.)

3. Upon ten (10) days: written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.5.3.A, above; or

4. Seven (7) days after sending the Customer written notice of noncompliance with any provision of this tariff if the noncompliance is not corrected within that seven (7) day period. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

G. In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.5.4 Cancellation of Application for Service

Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

The special charges described will be calculated and applied on a case-by-case basis.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service

Interruptions in service which are not due to the negligence of or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power, or equipment provided by the Customer will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

The credit allowance will be calculated by the Company after the Customer notifies the Company of service interruption. The amount of the allowance will depend on the length of the outage and the service impacted. Service Outage conditions are defined as complete loss of call origination and/or receipt capability. Credit Allowances, if any, will be deducted from the charges payable by the IXC and will be expressly indicated on the next invoice. A Service Outage begins when the IXC reports the outage to KMC Data, LLC. A Service Outage ends when the affected circuit and/or associated KMC Data, LLC equipment is fully operational in accordance with the technical specifications.

Credit allowances do not apply to outages (i) caused by the IXC; (ii) due to failure of equipment provided by the IXC; (iii) during any period in which KMC Data, LLC is not given access to the service premises; (iv) failures of LEC facilities or equipment which are carrying the failures resulting from the activities or negligence of LEC employees; (v) inability to gain access to the IXC's equipment; and (vii) due to mutually agreed upon maintenance and repair.

Credit Allowances received by KMC Data, LLC from the LEC for Off-Net facility outages which affects the IXC's Switched Services will be passed through to the IXC in the form of a credit on the next invoice.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service (Cont.)

2.6.1 Limitations on Allowances

No credit allowance will be made for:

- A. interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, Authorized User, Joint-User, or other Common Carrier providing service connected to the service of Company;
- B. interruptions due to the negligence of any person other than the Company, including, but not limited to, the Customer or other Common Carriers connected to the Company's facilities;
- C. interruptions due to the failure or malfunction of non-Company equipment;
- D. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- E. interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- F. interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. interruption of service due to circumstances or causes beyond the control of the Company.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.7 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent Company or affiliate of the Company (b) pursuant to any sale or transfer of substantially all the assets of the Company; or pursuant to any financing, merger or reorganization of the Company.

2.8 Notices and Communications

- 2.8.1 Delivery of calls to or acceptance of calls from the Company's locations over Company-switched exchange services constitutes an order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes an order of switched access by the Customer. In these cases, an invoice will be the first communication from the Company to the Customer. In other instances a Service Order may be used. T
- 2.8.2 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.8.3 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.
- 2.8.4 All notices or other communications required to be given pursuant to this tariff shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.8.5 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.9 Meet Point Billing

Meet Point Billing applies when more than one Exchange Company is involved in the provision of Access Service. All recurring and nonrecurring charges for services provided by each Exchange Company are billed under each company's applicable rates as set forth below.

The Company accepts and adheres to the Ordering and Billing Forum guidelines, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD).

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ACCESS SERVICES

SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer and an End User. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User to a Customer, and to terminate calls from a Customer to an End User. T

Switched Access Service is available when originating or terminating calls from or to an End User. T

Rates and charges are set forth in Section 4. The application of rates for Switched Access Service is described in Section 4.

3.2 Provision and Description of Switched Access Service Arrangements

3.2.1 Feature Group Access

FG Access is provisioned at the DS-1 level and provides trunk-side access to Switching Center switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist). T

All traffic is routed to and from the Company's switching center via direct trunking or via an alternative route when direct trunking has not been arranged. Delivery of calls to, or acceptance of calls from, the Company's locations over Company-switched exchange services shall constitute an agreement by the Customer to purchase switched access services as described herein. The Company reserves the right to require the Customer to submit an ASR for switched access. T
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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.2 Provision and Description of Switched Access Service Arrangements (Cont.)

3.2.2 Manner of Provision

Trunks used for Switched Access Service may be configured for one-way (either originating only or terminating only) or for two-way directionality.

3.2.3 Call Types

The following Switched Access Service call types are available:

- A. Originating FG Access
- B. Originating 800 FG Access
- C. Terminating FG Access

3.2.4 Originating FG Access

The access code for FG Access switching is a uniform access code of the form 1+ or 011+ or 101XXXX. For 101XXXX dialing a single access code will be the assigned number of all FG Access provided to the Customer by a Common Carrier When the access code is used, FG Access switching also provides for dialing the digit 0 for access to the Customer's operator service, 911 for access to emergency service, and/or the end of dialing digit (11) for cut-through access to the Customer's premises. The Company will provide originating routing information access consistent with dialing parity obligations.

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Originating FG Access is assessed for each minute of use.

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.2 Provision and Description of Switched Access Service Arrangements (Cont.)

3.2.5 Originating 800 FG Access

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will utilize the Signaling System 7 (SS7) network to query an 800 data base to identify the Customer to whom the call will be delivered and provide vertical features based on the dialed ten digits. The call will then be routed to the identified Customer over FGD switched access. The 800 series includes the following service access codes: 800, 888, 877, 866, 855, 844, 833 and 822.

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Originating FG Access is assessed for each minute of use.

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

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A Basic or Vertical Feature Query charge is assessed for each completed query returned from the data base identifying the Customer to whom the call will be delivered whether or not the actual call is delivered to the Customer. The Basic Query provides the identification of the Customer to whom the call will be delivered and includes area of service routing which allows routing of 800 series calls by telephone companies to different interexchange carriers based on the Local Access Transport Area (LATA) in which the call originates. The Vertical Feature Query provides the same Customer identification as the basic query and vertical features which may include: (1) call validation, (ensuring that calls originate from subscribed service areas); (2) POTS translation of 800 series numbers; (3) alternate POTS translation (which allows subscribers to vary the routing of 800 series calls based on factors such as time of day, place or origination of the call, etc.); and (4) multiple carrier routing (which allows subscribers to route to different carriers based on factors similar to those in (3)).

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3.2.6 Terminating FG Access

FG Access, when used in the terminating direction, may only be used to access End Users who are connected to the Company. Calls in the terminating direction will not be completed to 950-OXXX or 950-1XXX access codes, local operator assistance (0-and 0+), Directory Assistance, (411 or 555-1212) service codes 611 and 911 and IO1XXXX access codes.

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Terminating FG Access is assessed for each minute of use.

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.3 Reports and Testing

- 3.3.1 Design Layout Report: At the request of the Customer, the Company will provide to the Customer the makeup of the facilities and services provided from the Customer's Premises to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the Customer at no charge.
- 3.3.2 Acceptance Testing: At no additional charge, the Company will, at the Customer's request, cooperatively test, at the time of installation, the following parameters: loss, C-notched noise, Cmessage noise, 3-tone slope, d.c. continuity and operational signaling.

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ACCESS SERVICES

SECTION 4-SWITCHED ACCESS RATES

4.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES, (Cont.)

4.2 Rate Categories

4.2.1 There are several rate categories which apply to Switched Access Service:

- Blended Carrier Switched Access Originating
- Blended Carrier Switched Access Terminating
- 800 Data Base Access Service

The Company provides originating and terminating switched access service through a single blended rate based on aggregate traffic volumes from the following cost categories:

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Switched Transport

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

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Switching – (End Office, Tandem or both)

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.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES, (Cont.)

4.2 Rate Categories (Cont.)

4.2.2 800 Data Base Query

The 800 Data Base Query Charge will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

4.2.3 Optional Features

Other optional features may be available on an Individual Case Basis (ICB).

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SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center-(indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

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SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.4 Rates and Charges

4.4.1 Blended Carrier Switched Access

KMC Data, LLC bills originating and terminating access per minute as a blended rate. The blended rate includes Switching and Transport.

Originating FG Access	\$0.025
Terminating FG Access	\$0.025

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SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.4 Rates and Charges (Cont.)

4.4.2 800 Data Base Access Service Queries

Per Query	
Basic	\$0.005
Vertical Feature	\$0.0055

4.4.3 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

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ACCESS SERVICES

SECTION 5 CONTRACTS AND INDIVIDUAL CASE BASIS ARRANGEMENTS

5.1 Contracts

The Company may provide any of the services offered under this tariff, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this tariff do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under contract are not eligible for any promotional offerings which may be offered by the Company from time to time.

5.2 Individual Case Basis Arrangements

Arrangements will be developed on an individual case basis (ICB) in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.

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ACCESS SERVICES

SECTION 6 - MISCELLANEOUS SERVICES

6.1 Presubscription

Presubscription is the process by which End User Customers may select and designate to the Company an IXC to access, without an access code, for intrastate toll calls. This IXC is referred to as the End User's presubscribed long distance carrier. T
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End Users may select one of the following options at no charge: T

- Indicate a primary IXC for all of its lines,
- Indicate a different IXC for each of its lines.

Only one IXC may be selected for each line or lines terminating in the same hunt group.

End Users may designate that they do not want to presubscribe to any IXC. The End User must arrange this designation by directly notifying the Company's business office. This choice will require the End User to dial an access code (101XXXX) for all interstate calls. T
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After the End User's initial selection of a predesignated IXC or the designation that they do not want to presubscribe to any IXC, for any change in selection after conversion to Equal Access in the serving end office, the following nonrecurring charge applies. T

	Nonrecurring Charge
Per Telephone Exchange Service line or trunk	\$ 5.00

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ACCESS SERVICES

REGULATION AND SCHEDULE OF INTRASTATE CHARGES
GOVERNING THE PROVISION OF SWITCHED ACCESS SERVICES
FOR CONNECTION TO COMMUNICATIONS FACILITIES WITHIN
THE STATE OF FLORIDA

This tariff contains the descriptions, regulations and rates applicable to the furnishing of competitive access service and facilities for telecommunications services provided by KMC Data, LLC within the State of Florida. This tariff is on file with the Florida Public Service Commission. Copies may be inspected during normal business hours at the Company's principal place of business at 5300 Oakbrook Parkway, Bldg 300, Suite 330, Norcross, GA 30093.

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CHECK SHEET

Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

SHEET	REVISION	SHEET	REVISION	SHEET	REVISION
1	1 st Revised	26	1 st Revised	D	D
2	1 st Revised	27	1 st Revised	D	D
3	1 st Revised	28	1 st Revised	D	D
4	1 st Revised	29	1 st Revised		
5	1 st Revised	30	1 st Revised		
6	1 st Revised	31	1 st Revised		
7	1 st Revised	32	1 st Revised		
8	1 st Revised	33	1 st Revised		
9	1 st Revised	34	1 st Revised		
10	1 st Revised	35	1 st Revised		
11	1 st Revised	36	1 st Revised		
12	1 st Revised	37	1 st Revised		
13	1 st Revised	38	1 st Revised		
14	1 st Revised	39	1 st Revised		
15	1 st Revised	40	1 st Revised		
16	1 st Revised	40.1	Original		
17	1 st Revised	41	1 st Revised		
18	1 st Revised	42	1 st Revised		
19	1 st Revised	43	1 st Revised		
20	1 st Revised	44	1 st Revised		
21	1 st Revised	45	1 st Revised		
22	1 st Revised	46	1 st Revised		
23	1 st Revised	47	1 st Revised		
24	1 st Revised	48	1 st Revised		
25	1 st Revised	D	D		

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SYMBOLS

The following are the only symbols used for the purposes indicated below:

- | | | |
|----------|---|----------|
| D | Delete or discontinue. | |
| I | Change resulting in an increase to a Customer's bill. | T |
| M | Moved from another tariff location. | |
| N | New. | |
| R | Change resulting in a reduction to a Customer's bill. | T |
| T | Change in text or regulation but no change in rate or charge. | |

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TARIFF FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in its tariff approval process, the most current sheet number on file with the Commission is not always the sheet in effect. Consult the Check Sheet for the sheet currently in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to the next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets - When a tariff filing is made with the FCC, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross-reference to the current revision number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some sheets.) The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on file with the FCC.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS

Certain terms used generally throughout this tariff for the Access Services of this Company are defined below.

Access Code: A uniform seven digit code assigned by a Common Carrier to an individual customer. The seven digit code has the form 950-XXXX or 101XXXX. T

Access Service: Switched Access to the network of an Interexchange Carrier for the purpose of originating or terminating communications.

Access Service Request (ASR): The industry service order format used by Access Service Customers and access providers as agreed to by the Ordering and Billing Forum.

Access Tandem: A switching system that provides traffic concentration and distribution function for originating or terminating traffic as an intermediate carrier between other switching facilities that originate or terminate calls to or from an End User. T
T

Authorized User: A person, firm, corporation or other entity that either is authorized by the Customer to use Access Services or is placed in a position by the Customer, either through acts or omissions, to use Access Services.

Carrier or Common Carrier: See Interexchange Carrier or Exchange Carrier.

CMRS: Commercial Mobile Radio Service T

Co-Carrier: Any other Telecommunications provider authorized by the Commission to provide local exchange service in the state.

Commission: The Florida Public Service Commission

Common Channel Signaling (CCS): A high-speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. It is used to carry addressed signaling messages for individual trunk circuits and/or database related services between signaling points in the CCS network.

Company: KMC Data, LLC, issuer of this tariff.

Constructive Order: Delivery of calls to or acceptance of calls from the Company's locations constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer. T

Customer: The person, firm, corporation or other entity which orders Service or receives service including through a Constructive Order and is responsible for the payment of charges and for compliance with the Company's tariff regulations. The Customer could be an interexchange carrier, a local exchange carrier, a wireless provider, or any other Carrier that operates in the state. T
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8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used. T

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to local exchange services, interexchange services, CMRs, VOIP services, or other telecommunications service provided by an Exchange Carrier, Common Carrier, Wireless Provider, VOIP Provider or other provider of services that transit the Company's facilities. T
T

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

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

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Inter-MTA Traffic: Wireless traffic originating on the network of a CMRS provider within one MTA and terminating to End Users in another MTA. T

Intra-MTA Traffic: Wireless traffic originating on the network of a CMRS provider within a MTA and terminating to End Users in the same MTA. T

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

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Line Information Data Base (LIDB): The data base which contains base information such as telephone numbers, calling card numbers and associated billed number restriction data used in connection with the validation and billing of calls.

Local Access: The connection between a Customer's premises and a point of presence of the Exchange Carrier.

Local Switching Center: The switching center where telephone exchange service Customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Local Traffic: Traffic, other than 8XX calls, is "Local Traffic" under this tariff if: (i) the call originates and terminates in the same exchange area; or (ii) the call originates and terminates within different KMC Data, LLC Exchanges that share a common mandatory local calling area, e.g., a mandatory Extended Local Calling Service (ELCS) or Extended Area Service areas (EAS) or other like types of mandatory local calling scopes. T

Meet Point: A point of interconnection that is not an end office or tandem.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

Meet Point Billing: The arrangement through which multiple Exchange Carriers involved in providing Access Services, divide the ordering, rating, and billing of such services on a proportional basis, so that each Exchange Carrier involved in providing a portion of the Access Service agrees to bill under its respective tariff.

Mobile Telephone Switching Office: Location where the wireless Customer maintains a facility for purposes of interconnecting to the Company's Network.

Mutual Traffic Exchange: A compensation arrangement between certified local exchange service providers where local exchange service providers pay each other "in kind" for terminating local exchange traffic on the other's network.

Network Services: The Company's telecommunications Access Services offered on the Company's Network.

Non-Recurring Charges: The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the Service Order is executed.

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

Optional Expanded Area Service Traffic (OEAS): Optional service found in large urban areas financed by separate charge on end users that elect service as defined by a tariff approved by the Commission.

On-Hook: The idle condition of switched access or a telephone exchange service line.

Out of Band Signaling: An exchange access signaling feature which allows Customers to exchange call control and signaling information over a communications path which is separate from the message path. T

Point of Presence: Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Premises: The space occupied by a Customer or Authorized User in a building or buildings or on contiguous property (except railroad rights-of-way, etc.).

Presubscription: An arrangement whereby an End User may select and designate to the Company an Interexchange Carrier (IXC) or Carriers it wishes to access, without an Access Code, for completing both intraLATA toll calls and/or interLATA calls. The selected IXC(s) are referred to as the End User's Primary Interexchange Carrier (PIC).

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this tariff.

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ACCESS SERVICES

SECTION 1 - DEFINITIONS (Cont.)

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

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

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

VOIP Provider: Any individual association, corporation, governmental agency or any other entity that is providing voice over internet protocol. The VOIP provider may or may not be certified by the Florida Public Service Commission. N
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Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging CMRS or any other form of wireless transmission. T

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS

2.1 Undertaking of KMC Data, LLC

2.1.1 Scope

KMC Data, LLC' services offered pursuant to this tariff are furnished for Switched Access Service. KMC Data, LLC may offer these services over its own or resold facilities.

KMC Data, LLC installs, operates, and maintains the communications services provided herein in accordance with the terms and conditions set forth under this tariff. KMC Data, LLC may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities as required in the Commission's rules and orders, when authorized by the Customer, to allow connection of a Customer's location to the KMC Data, LLC network. The Customer shall be responsible for all charges due for such service agreement.

The Company's services and facilities are provided on a monthly basis unless otherwise indicated, and are available twenty-four hours per day, seven days per week.

2.1 .2 Shortage of Equipment or Facilities

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of lack of facilities or due to some other cause beyond the Company's control.
- B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the company may obtain from other Carriers from time to time, to furnish service as required at the sole discretion of the Company.
- C. The provisioning and restoration of service in emergencies shall be in accordance with Part 64, Subpart D, Appendix A of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

2.1.3 Terms and Conditions

- A. Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than 30 days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B. Customers seeking to cancel service have an affirmative obligation to block traffic originating from or terminating to the Company's network. By originating traffic from or originating traffic to the Company's network, the Customer will have constructively ordered the Company's switched access service.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.3 Terms and Conditions (Cont.)

- C. The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to section 2.1.3.D below.
- D. The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- E. A Customer that uses access services provided by KMC Data, LLC without submitting an actual order will be presumed to have ordered access services by using said services and charging its End User for retail services that could not be provided without the use of access services.
- F. In any action between the parties to enforce any provision of this tariff, KMC Data, LLC shall be entitled to recover its legal fees and court costs from the Customer in addition to other relief a court may award when it is the prevailing party.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.4 Liability of the Company

- A. The liability of the Company for damages arising out of the furnishing of its Services, including *but not limited to mistakes, omissions, interruptions, delays, errors, other defects, or representations by the Company, or use of these services or damages arising out of the failure to furnish the service whether caused by act or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6 below. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.*
- B. With respect to any other claim or suit, by a Customer or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair interruption or restoration of any service or facilities offered under this tariff, and subject to the provisions of the Company's liability, if any, shall be limited as provided herein.
- C. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction action, or request of The United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts work stoppages, or other labor difficulties.
- D. The Company shall not be liable for (a) any act or omission of any entity furnishing the Company or the Company's Customers facilities or equipment used for the interconnection with Access Services; or (b) for the acts or omissions of other Common Carriers.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.4 Liability of the Company (Cont.)

- E. The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- F. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location, or use of any installation or equipment provided by the Company. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4.F as a condition precedent to such installations.
- G. The Company shall not be liable for any defacement of or damage to Customers Premises resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, unless such defacement or damage is caused by the gross negligence or willful misconduct of the Company's agents or employees. No agents or employees of other participating Carriers shall be deemed to be agents or employees' of the Company.
- H. Notwithstanding the Customer's obligations as set forth in Section 2.3 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the service, against any claim, loss or damage arising from Customer's use of services furnished under this tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's service; and patent infringement claims arising from combining or connecting the service offered by the Company with apparatus and systems of the Customer or others; all other claims arising out of any act or omission of the Customer or others, in connection with any service provided by the Company pursuant to this tariff.
- I. The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this tariff including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another Interexchange Carrier; or all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this tariff.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.4 Liability of the Company (Cont.)

- J. The entire liability of the Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to the Company by the Customer for the specific services giving rise to the claim, and no action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- K. The Company makes no warranties or representation, express or implied, including warranties or merchant's ability or fitness for a particular use, except those expressly set forth herein.
- L. The Company shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, Channels, or equipment which result from the operation of Customer-provided systems, equipment, facilities or service which are interconnected with Company services.
- M. The Company does not guarantee nor make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. The Customer and End User shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to, or death of, any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, locations or use of service furnished by the Company at such locations.
- N. The Company shall not be liable for the Customer's failure to fulfill its obligations to take all necessary steps including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's Network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service, that the signals emitted into the Company's Network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in Section 2.1.6 following, and that the signals do not damage Company equipment, injure its personnel or degrade service to other Customers. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to Company equipment, personnel, or the quality of service to other Customers, the Company, may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service without liability.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities within its control that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.6 Provisions of Equipment and Facilities

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B. The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E. The Customer shall be responsible for the payment of service charges imposed on the Company by another entity, for visits to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.6 Provisions of Equipment and Facilities (Cont.)

- F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Notwithstanding the above, the Company shall not be responsible for:
1. the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;
 2. the reception of signals by Customer-provided equipment; or
 3. network control signaling where such signaling is performed by Customer-provided network control signaling equipment.
- G. The Company intends to work cooperatively with the Customer to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.
- H. The Company reserves the reasonable right to assign, designate or change telephone numbers, any other call number designations associated with Access Services, or the Company serving central office prefixes associated with such numbers, when necessary in the conduct of its business.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.7 Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.8 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken and characterized by one or more of the following:

- A. where facilities are not presently available and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. where facilities are to be installed over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. where facilities are requested in a quantity greater than that which the Company would normally construct;
- E. where installation is on an expedited basis;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.1 Undertaking of KMC Data, LLC (Cont.)

2.1.8 Special Construction (Cont.)

- F. on a temporary basis until permanent facilities are available;
- G. installation involving abnormal costs; or
- H. in advance of its normal construction schedules.

Special construction charges for Switched Access Service will be determined on an individual use basis.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its agents, contractors or suppliers.

2.2 Prohibited Uses

- 2.2.1 The services the Company offers shall not be used for any unlawful purposes or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming their use of the Company's offerings complies with relevant laws and applicable state regulations, policies, orders, and decisions; and if the Reseller intends to provide intrastate services, is certified with the appropriate state entity.
- 2.2.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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ACCESS SERVICES

SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer

2.3.1 The Customer shall be responsible for:

- A. the payment of all applicable charges pursuant to this tariff. For the avoidance of doubt and notwithstanding any other provision in this Tariff or other Customer service agreement or arrangement, including but not limited to Meet Point Billing arrangements, in addition to service charges imposed by KMC Data, LLC for the Service, the Customer shall be responsible for and reimburse KMC Data, LLC for any and all charges, fees, assessments of any kind or nature, including but not limited to interstate and intrastate switched access charges, imposed by any third party (collectively "Third Party Charges") upon KMC Data, LLC relating to usage incurred by the Customer in connection with the Services. The Customer hereby indemnifies KMC Data, LLC for all Third Party Charges and agrees to defend and hold KMC Data, LLC harmless for all damages, losses, claims or judgments arising out any Third Party Charges;
- B. reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages to its facilities or equipment, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subjugated in the Company's right of recovery of damages to the extent of such payment;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space, and power to operate Company facilities and equipment installed on the Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Access Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.C above. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be owned entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this subsection prior to accepting an order for service;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.1 The Customer shall be responsible for, (cont.):

- E. providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. *The Customer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;*
- F. complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses, and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible obtaining under Section 2.3.1.D above; and granting or obtaining permission for Company agents or employees to enter the Customer Premises at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company; and
- G. not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees for:

- A any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;

- B. any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting

The jurisdictional reporting requirements will be as specified below. When a Customer orders Access Service or uses Access Service based upon a Constructive Order, its projected Percent Interstate Usage (PIU) must be provided in whole numbers to the Company. These whole number percentages will be used by the Company to apportion the use and/or charges between interstate and intrastate until a revised report is received as set forth herein. Reported or default PIU factors are used only where the call detail is insufficient to determine the appropriate jurisdiction of the traffic.

T

- A. **Originating Access:** Originating access minutes is only traffic originating from the Company Local Switching Center(s). The Customer should provide the Company with a projected PIU factor on a quarterly basis.

If no PIU for originating minutes is submitted as specified herein, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

- B. **Terminating Access:** For Feature Group D Switched Access Service(s), the Customer should provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of terminating access minutes on a quarterly basis, as described in Sections 2.3.3.E below.

T

If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

- C. **800 Originating Access:** 800 Originating Access is for 8XX traffic that is switched by the Company's switches and originated by an End User of an Exchange Carrier.

N

If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis of 50 percent interstate traffic and 50 percent intrastate traffic.

N

- D. **Except where the Company measured access minutes are used as set forth above, the Customer reported Projected PIU factor as set forth above will be used until the Customer reports a different projected PIU factor, as set forth below.**

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting (cont.)

- E. Effective on the first of January, April, July and October of each year the Customer should update its interstate and intrastate jurisdictional report. The Customer should forward to the Company, to be received no later than 15 days after the first of each such month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June, and September, respectively, for each service arranged for interstate use, based solely on the traffic originating from or terminating to the Company. The revised report will serve as the basis for the next three months: billing and will be effective on the bill date for that service. No prorating or back billing will be done based upon the report. If the Customer does not supply the reports for those services where reports are needed, the Company will assume the percentage to be the same as that provided previously. For those cases in which a quarterly report has never been received from the Customer, the Company will assume the percentages to be the same as those provided in 2.3.3A and 2.3.3B above. T
- F. Jurisdictional Reports Verification: For Switched Access Service, if a billing dispute arises or a regulatory commission questions the projected PIU factor, the Customer will provide the data issued to determine the projected PIU factor. The Customer will supply the data within 30 days of the Company request. T
- The Customer shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The Company reserves the right to conduct an audit at any time during the year. The Customer, as its own expense, has the right to retain an independent auditing firm.
- G. For switched access services for which the Company cannot determine the jurisdictional nature of Customer traffic and its related access minutes, the company reserves the right to require the Customer to provide a projected estimate of its traffic, split between the interstate and intrastate jurisdictions. The Customer shall upon ordering service, and quarterly thereafter, report the percentage of interstate use and such report will be used for billing purposes until the Customer reports a different projected interstate percentage for a working trunk group. When the Customer adds trunks to or removes trunks from an existing group, the Customer shall furnish a revised projected interstate percentage for each service arranged for interstate use. The revised report will serve as the basis for future billing and will be effective on the next bill date. No prorating or back billing will be done based on the report. T
- H. The Company may request detailed information in support of the reported annually and retains the right to retroactively adjust the Customer's most recent bills covering the preceding eleven months if a substantial discrepancy is found to exist. If an audit of the reported percentages reveals a substantial deviation from the Customer's previously reported PIU for the period upon which audit was based, the call detail records may be requested more than once annually. T

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.4 Jurisdictional Audits

- A. The Customer shall keep sufficient detail from which the percentages of interstate and intrastate intraLATA use reported to the Company can be verified and upon request of the Company make such records available for inspection and audit. The Customer must maintain these records for 24 months from the date the report became effective for billing purposes. T
- B. Initiation of an audit will be at the sole discretion of the Company. An audit may be initiated by the Company for a single Customer no more than once per year. The Customer shall supply required data within 30 calendar days of the Company request. T
- C. In the event that an audit reveals that any Customer reported PIU or PLU was incorrect, the Company shall apply the audit result to all usage affected by the audit. The Customer shall be back billed for a period retroactive to the date that the incorrect percentage was reported, but not to exceed 24 months. Back billed amounts are subject to a late payment penalty and payment shall be made in immediately available funds, within 31 days from receipt of bill or by the following bill date, whichever is shorter period. T
- D. Should an audit reveal that the misreported percentage(s) of use has resulted in an underpayment of Access charges to the Company of five percent or more the total switched Access Services bill, the Customer shall reimburse the Company for the cost of the audit. Proof of cost shall be the bills, in reasonable detail submitted to the Company by the auditor. T
- E. Within 15 days of completion of the auditor's report, the Company will furnish a copy of the audit results to the person designated by the Customer to receive such results. T

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels

2.4.1 General

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

- A. The Customer is responsible for providing and maintaining any terminal equipment on the Customer Premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinue forthwith the use of a service temporarily if such action is reasonable under the circumstances. In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels (Cont.)

2.4.2 Station Equipment (Cont.)

- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

2.4.3 Interconnection of Facilities

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Access Services and the Channels, facilities, or equipment of others shall be provided at the Customers expense.
- B. Access Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.4 Customer Equipment and Channels (Cont.)

2.4.4 Inspections

- A. Upon reasonable notification of the Customer, and at reasonable times, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.B for the installation, operation, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.

- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment, and personnel from harm. The Company will, upon request 24 hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for payment of all charges for services and facilities furnished by the Company to the Customer or its Joint or Authorized Users. Customer must pay KMC Data, LLC for all services provided regardless of whether the Customer submitted an order to KMC Data, LLC to provide such services.

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A. Taxes

The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on the Company's net income imposed on or based upon the provision, sale or use of Access Services. All such taxes shall be separately designated on the Company's invoices.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges

Unless otherwise specified herein, bills are due and payable upon receipt.

The Company shall bill on a current basis all charges incurred by, and credits due to, the Customer under this Tariff attributable to services established, provided, or discontinued during the preceding billing period. Any known unbilled charges for prior periods and any known adjustments also will be applied to the current bill.

Non-Recurring Charges are due and payable within 30 days after the invoice date.

The Company shall present invoices for all Charges monthly to the Customer.

Amounts not paid within 30 days after the date of invoice will be considered past due. KMC Data, LLC will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 30 days. If the Company becomes concerned at any time about the ability of a Customer to pay its bills, the Company may require that the Customer pay its bills within a specified number of days and make such payments in cash or the equivalent of cash.

If the Customer does not provide remittance advice with its payments, payments will be applied to outstanding charges in the following order: 1.) the oldest to the most recent late payment charges, 2.) the oldest to the most recent outstanding intrastate charges, and finally to 3.) the oldest to most recent outstanding interstate charges.

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If a service is disconnected by the Company in accordance with Section 2.5.3 following and later restored, restoration of service will be subject to all applicable installation charges.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges (Cont.)

The Customer shall notify the Company of any disputed items on an invoice within 90 days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Commission in accordance with the Commission's rules of procedures.

Any disputed charges must be paid when due. After the dispute is settled, the Customer will be credited with any payments in excess of those actually due the Company. The Company will also remit interest for all such credited amounts. Interest will be paid at rate required by the Commission for Customer deposits. T

2.5.3 Refusal and Discontinuance of Service

A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer discontinue or suspend service without incurring any liability. KMC Data, LLC may deliver such notice via electronic mail, facsimile, regular mail or certified mail. T
T

B. Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 10 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period. T

C. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

D. Upon any governmental prohibition, or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any Liability.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

- E. Upon the Company's discontinuance of service to the Customer under Section 2.5.3.A or 2.5.3.B above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.

- F. The Company may discontinue the furnishings of any and/or all service(s) to Customer, without incurring any liability:
 - 1. Immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section 2.5.3.F.1. (a-e), if
 - (a) The Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s); or

 - (b) The Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s); or

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

F. (cont.)

1. (cont.)

(c) The Customer states that it will not comply with a request of the Company for security for the payment for service(s) in accordance with Section 2.5.3.A above, or

(d) The Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used; or

(e) The Customer uses, or attempts or use, service with the intent to void the payment, either in whole or in part, of the tariff charges for the service by:

I. Using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff, or

II. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or

III. By delivering calls to or accepting calls from the Company's locations over Company switched local exchange services; or

IV. Continuing to have Company End Users presubscribed to the Customer; or

V. Any other Fraudulent means or devices; or

2. Upon ten (10) days written notice to the Customer of any sum thirty (30) days past due;

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Refusal and Discontinuance of Service (Cont.)

F. (cont.)

3. Upon ten (10) days: written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.5.3.A, above; or
4. Seven (7) days after sending the Customer written notice of noncompliance with any provision of this tariff if the noncompliance is not corrected within that seven (7) day period. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

G. In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.5.4 Cancellation of Application for Service

Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

The special charges described will be calculated and applied on a case-by-case basis.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service

Interruptions in service which are not due to the negligence of or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power, or equipment provided by the Customer will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

The credit allowance will be calculated by the Company after the Customer notifies the Company of service interruption. The amount of the allowance will depend on the length of the outage and the service impacted. Service Outage conditions are defined as complete loss of call origination and/or receipt capability. Credit Allowances, if any, will be deducted from the charges payable by the IXC and will be expressly indicated on the next invoice. A Service Outage begins when the IXC reports the outage to KMC Data, LLC. A Service Outage ends when the affected circuit and/or associated KMC Data, LLC equipment is fully operational in accordance with the technical specifications.

Credit allowances do not apply to outages (i) caused by the IXC; (ii) due to failure of equipment provided by the IXC; (iii) during any period in which KMC Data, LLC is not given access to the service premises; (iv) failures of LEC facilities or equipment which are carrying the failures resulting from the activities or negligence of LEC employees; (v) inability to gain access to the IXC's equipment; and (vii) due to mutually agreed upon maintenance and repair.

Credit Allowances received by KMC Data, LLC from the LEC for Off-Net facility outages which affects the IXC's Switched Services will be passed through to the IXC in the form of a credit on the next invoice.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service (Cont.)

2.6.1 Limitations on Allowances

No credit allowance will be made for:

- A. interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, Authorized User, Joint-User, or other Common Carrier providing service connected to the service of Company;
- B. interruptions due to the negligence of any person other than the Company, including, but not limited to, the Customer or other Common Carriers connected to the Company's facilities;
- C. interruptions due to the failure or malfunction of non-Company equipment;
- D. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- E. interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- F. interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. interruption of service due to circumstances or causes beyond the control of the Company.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.7 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent Company or affiliate of the Company (b) pursuant to any sale or transfer of substantially all the assets of the Company; or pursuant to any financing, merger or reorganization of the Company.

2.8 Notices and Communications

- 2.8.1 Delivery of calls to or acceptance of calls from the Company's locations over Company-switched exchange services constitutes an order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes an order of switched access by the Customer. In these cases, an invoice will be the first communication from the Company to the Customer. In other instances a Service Order may be used. T
- 2.8.2 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.8.3 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.
- 2.8.4 All notices or other communications required to be given pursuant to this tariff shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.8.5 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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SECTION 2- RULES AND REGULATIONS (Cont.)

2.9 Meet Point Billing

Meet Point Billing applies when more than one Exchange Company is involved in the provision of Access Service. All recurring and nonrecurring charges for services provided by each Exchange Company are billed under each company's applicable rates as set forth below.

The Company accepts and adheres to the Ordering and Billing Forum guidelines, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD).

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SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer and an End User. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User to a Customer, and to terminate calls from a Customer to an End User. T

Switched Access Service is available when originating or terminating calls from or to an End User. T

Rates and charges are set forth in Section 4. The application of rates for Switched Access Service is described in Section 4.

3.2 Provision and Description of Switched Access Service Arrangements

3.2.1 Feature Group Access

FG Access is provisioned at the DS-1 level and provides trunk-side access to Switching Center switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist). T

All traffic is routed to and from the Company's switching center via direct trunking or via an alternative route when direct trunking has not been arranged. Delivery of calls to, or acceptance of calls from, the Company's locations over Company-switched exchange services shall constitute an agreement by the Customer to purchase switched access services as described herein. The Company reserves the right to require the Customer to submit an ASR for switched access. T

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KMC Data, LLC

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.2 Provision and Description of Switched Access Service Arrangements (Cont.)

3.2.2 Manner of Provision

Trunks used for Switched Access Service may be configured for one-way (either originating only or terminating only) or for two-way directionality.

3.2.3 Call Types

The following Switched Access Service call types are available:

- A. Originating FG Access
- B. Originating 800 FG Access
- C. Terminating FG Access

3.2.4 Originating FG Access

The access code for FG Access switching is a uniform access code of the form 1+ or 011+ or 101XXXX. For 101XXXX dialing a single access code will be the assigned number of all FG Access provided to the Customer by a Common Carrier. When the access code is used, FG Access switching also provides for dialing the digit 0 for access to the Customer's operator service, 911 for access to emergency service, and/or the end of dialing digit (11) for cut-through access to the Customer's premises. The Company will provide originating routing information access consistent with dialing parity obligations.

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Originating FG Access is assessed for each minute of use.

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.2 Provision and Description of Switched Access Service Arrangements (Cont.)

3.2.5 Originating 800 FG Access

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will utilize the Signaling System 7 (SS7) network to query an 800 data base to identify the Customer to whom the call will be delivered and provide vertical features based on the dialed ten digits. The call will then be routed to the identified Customer over FGD switched access. The 800 series includes the following service access codes: 800, 888, 877, 866, 855, 844, 833 and 822.

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Originating FG Access is assessed for each minute of use.

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

N

A Basic or Vertical Feature Query charge is assessed for each completed query returned from the data base identifying the Customer to whom the call will be delivered whether or not the actual call is delivered to the Customer. The Basic Query provides the identification of the Customer to whom the call will be delivered and includes area of service routing which allows routing of 800 series calls by telephone companies to different interexchange carriers based on the Local Access Transport Area (LATA) in which the call originates. The Vertical Feature Query provides the same Customer identification as the basic query and vertical features which may include: (1) call validation, (ensuring that calls originate from subscribed service areas); (2) POTS translation of 800 series numbers; (3) alternate POTS translation (which allows subscribers to vary the routing of 800 series calls based on factors such as time of day, place or origination of the call, etc.); and (4) multiple carrier routing (which allows subscribers to route to different carriers based on factors similar to those in (3)).

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3.2.6 Terminating FG Access

FG Access, when used in the terminating direction, may only be used to access End Users who are connected to the Company. Calls in the terminating direction will not be completed to 950-OXXX or 950-1XXX access codes, local operator assistance (0-and 0+), Directory Assistance, (411 or 555-1212) service codes 611 and 911 and IO1XXXX access codes.

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Terminating FG Access is assessed for each minute of use.

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ACCESS SERVICES

SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.3 Reports and Testing

- 3.3.1 Design Layout Report: At the request of the Customer, the Company will provide to the Customer the makeup of the facilities and services provided from the Customer's Premises to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the Customer at no charge.
- 3.3.2 Acceptance Testing: At no additional charge, the Company will, at the Customer's request, cooperatively test, at the time of installation, the following parameters: loss, C-notched noise, Cmessage noise, 3-tone slope, d.c. continuity and operational signaling.

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ACCESS SERVICES

SECTION 4-SWITCHED ACCESS RATES

4.1 General

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

There are three types of rates and charges that apply to Switched Access Service:

- Non-Recurring Charges: One-time charges that apply for a specific work activity.
- Recurring Charges: Fixed charges apply each month and depend on the number and type of facilities in place.
- Usage Charges: Charges that are applied on a per access minute basis. Usage rates are accumulated over a monthly period.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES, (Cont.)

4.2 Rate Categories

4.2.1 There are several rate categories which apply to Switched Access Service:

- Blended Carrier Switched Access Originating
- Blended Carrier Switched Access Terminating
- 800 Data Base Access Service

The Company provides originating and terminating switched access service through a single blended rate based on aggregate traffic volumes from the following cost categories:

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Switched Transport

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

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Switching – (End Office, Tandem or both)

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.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES, (Cont.)

4.2 Rate Categories (Cont.)

4.2.2 800 Data Base Query

The 800 Data Base Query Charge will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

4.2.3 Optional Features

Other optional features may be available on an Individual Case Basis (ICB).

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.3 Billing of Access Minutes

When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's Local Switching Center-(indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.4 Rates and Charges

4.4.1 Blended Carrier Switched Access

KMC Data, LLC bills originating and terminating access per minute as a blended rate. The blended rate includes Switching and Transport.

Originating FG Access	\$0.025
Terminating FG Access	\$0.025

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ACCESS SERVICES

SECTION 4- SWITCHED ACCESS RATES (Cont.)

4.4 Rates and Charges (Cont.)

4.4.2 800 Data Base Access Service Queries

Per Query	
Basic	\$0.005
Vertical Feature	\$0.0055

4.4.3 Switched Access Optional Features

All Optional Features are offered on an Individual Case Basis (ICB).

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ACCESS SERVICES

SECTION 5 CONTRACTS AND INDIVIDUAL CASE BASIS ARRANGEMENTS

5.1 Contracts

The Company may provide any of the services offered under this tariff, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this tariff do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under contract are not eligible for any promotional offerings which may be offered by the Company from time to time.

5.2 Individual Case Basis Arrangements

Arrangements will be developed on an individual case basis (ICB) in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.

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ACCESS SERVICES

SECTION 6 - MISCELLANEOUS SERVICES

6.1 Presubscription

Presubscription is the process by which End User Customers may select and designate to the Company an IXC to access, without an access code, for intrastate toll calls. This IXC is referred to as the End User's presubscribed long distance carrier. T
T

End Users may select one of the following options at no charge: T

- Indicate a primary IXC for all of its lines,
- Indicate a different IXC for each of its lines.

Only one IXC may be selected for each line or lines terminating in the same hunt group.

End Users may designate that they do not want to presubscribe to any IXC. The End User must arrange this designation by directly notifying the Company's business office. This choice will require the End User to dial an access code (101XXXX) for all interstate calls. T
T

After the End User's initial selection of a predesignated IXC or the designation that they do not want to presubscribe to any IXC, for any change in selection after conversion to Equal Access in the serving end office, the following nonrecurring charge applies. T

	Nonrecurring <u>Charge</u>
Per Telephone Exchange Service line or trunk	\$ 5.00

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ACCESS SERVICES

SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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ACCESS SERVICES

SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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ACCESS SERVICES

SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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ACCESS SERVICES

SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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Norcross, GA 30093 T

Cathey, Sean

From: Cathey, Sean
Sent: Thursday, October 11, 2007 3:54 PM
To: 'Ball, James'
Cc: Mastando, Tony; Watts, Jerry; Williams, Marlene; Cathey, Sean
Subject:
Attachments: PIU Notification Deltacom-Hypercube 101107v2 F.doc

James,

Please see the attached jurisdictional factors.

Sean Cathey
Sr. Manager, Line Cost
256-382-7047
deltacom 

6/5/2009



DeltaCom, Inc.
Business Telecom, Inc.
7037 Old Madison Pike
Huntsville, AL 35806

Subject: PIU Jurisdictional Reporting

DeltaCom, Inc. (f/k/a ITC^Deltacom Communications, Inc.) and Business Telecom, Inc. (collectively, the "Companies") provide the following jurisdictional reporting information with reservations.

As a threshold matter, the Companies expressly deny actively or constructively ordering service from KMC Data and/or Hypercube and reserve the right to challenge the validity and effect of any tariff, or any provision of any tariff, in each case separately and severally, filed by or on behalf of KMC Data and/or Hypercube in any jurisdiction. Notwithstanding and without waiving the foregoing denials and reservations of right, to the extent that KMC Data and/or Hypercube handles any traffic destined to either of the Companies (including its end-users), then KMC Data and Hypercube shall apply the jurisdictional factors set forth herein in accordance with the parties' compromise and settlement agreement, regardless of any other payment obligations that KMC Data and/or Hypercube believe their respective involvement in the call flow triggers.

The instant PIU factors shall apply to CICs 5374, 6233, 0233, 0249, and 0833 (ACNAs BTM, DLT, and SIR). Because the jurisdiction of wireless calls to tollfree numbers cannot be determined with certainty and, in the Companies' view, there is regulatory uncertainty surrounding the practices of KMC Data and/or Hypercube, including the reasonableness and applicability of associated tariffs, with respect to traffic destined to the Companies, Hypercube and/or KMC Data shall apply a jurisdictional factor across all states of PIU 100%, which most closely approximates the terms of our compromise and settlement agreement; provided, however, that the effective rate for the "origination" of any traffic shall not exceed \$0.001198/mou and the effective rate for tollfree (8YY) database queries shall not exceed a per query rate of \$0.004, pursuant to the agreement.

Please revise your billing accordingly. If you have any concerns regarding this notification, please contact the undersigned.

Sean Cathey
Sr. Manager, Line Cost
256-382-7047
deltacom



KMC Data LLC
A Hypercube Company

KMC Data LLC
3200 W. Pleasant Run Road
Suite 260
Lancaster, TX 75146

March 28, 2008

Via Certified Mail

ITC DeltaCom
Attn: Sean Cathey
Sr. Manager, Line Cost
7037 Old Madison Pike
Huntsville, AL 35806

Subject: ITC DeltaCom jurisdictional reporting and severe delinquency

KMC Data LLC and its affiliate Hypercube LLC (collectively "Hypercube") does not have a compromise and settlement agreement with ITC DeltaCom or any of its affiliates (collectively "ITCD") as you assert in your memorandum to Hypercube. Considering that ITCD references an agreement that does not exist between the parties in submitting jurisdictional factors, Hypercube considers such jurisdictional factors submitted by ITCD invalid. According to Hypercube's records, ITCD has never submitted valid jurisdictional factors by state for Hypercube's OCNs. Therefore, billing for switched access services to ITCD include a default jurisdictional rate of 50% interstate use in accordance with Hypercube's interstate and intrastate tariffs.

If ITCD has valid jurisdictional factors to submit to Hypercube by state for Hypercube's OCNs and for each CIC that ITCD is the responsible organization for, Hypercube will apply these factors to invoices generated to ITCD prospectively. Hypercube reserves its rights to audit the underlying traffic study data and validate the factors submitted.

ITCD remains severely delinquent on payment of the Hypercube's switched access invoices for interstate and intrastate switched access services. Hypercube's records reflect an amount due of \$976,002.02 for all outstanding invoices inclusive of late payment charges as outlined in Hypercube's interstate and intrastate tariffs.

Please be advised that due to ITCD's very poor payment history, Hypercube may require a security deposit equal to 3 months' billings for switched access in accordance with the Company's interstate and intrastate tariffs.

Hypercube reserves its rights to discontinue processing ITCD's switched access services at any time without further notice in accordance with the provisions of Hypercube's interstate and intrastate switched access tariffs. Discontinuance of services may occur entirely or it may occur in stages (e.g., on a state-by-state basis). In accordance with Hypercube's tariffs, (1) Hypercube shall have no liability to ITCD for discontinuance of services; (2) the discontinuance of service

does not relieve ITCD of its obligation to pay for all services furnished to it by HyperCube prior to discontinuance; and (3) ITCD is liable to Hypercube for all fees and expenses, including attorney's fees, it reasonably incurs in collecting, or attempting to collect, those charges owed by ITCD to Hypercube.

You may remit payments of to: Citibank; ABA # _____, Account Number _____ FBO
KMC Data LLC.

Please contact me if you have questions regarding this matter.

Sincerely,



Clay Myers
CFO
Hypercube LLC
469-727-1520
clay.myers@hypercube-llc.com

REDACTED

cc: Ron Beaumont
James Mertz

DeltaCom, Inc.

Florida

Switched Access Price List
Third Revised Page 1
Cancels Second Revised Page 1
Transmittal No. 14

DELTACOM, INC.

ACCESS SERVICES PRICE LIST

Regulations and Schedule of Intrastate Access Rates

This price list includes the rates, charges, terms and conditions of service for the provision of intrastate access telecommunications services by DeltaCom, Inc. This price list is on file with the Florida Public Service Commission. Copies are available for public inspection during normal business hours at the main office of DeltaCom, Inc. at 7037 Old Madison Pike, Huntsville, Alabama 35806.

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ISSUED: March 31, 2009

Senior Manager – Regulatory Affairs
7037 Old Madison Pike
Huntsville, Alabama 35806

EFFECTIVE: April 1, 2009

DeltaCom, Inc.

Switched Access Price List
Fifteenth Revised Page 2
Cancels Fourteenth Revised Page 2
Transmittal No. 15

Florida

CHECK SHEET

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

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9	Original		31.1	First
10	First		31.2	Original
11	Original		31.3	Original
12	First		31.4	Original
13	Original		32	First
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15	Second		34	First
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19	Original		34.4	Original
20	Original		34.5	Original
21	Original			
22	Original			
23	First			

ISSUED: May 21, 2009

EFFECTIVE: May 22, 2009

Senior Manager – Regulatory Affairs
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Huntsville, Alabama 35806

DeltaCom, Inc.

Switched Access Price List

Florida

Ninth Revised Page 2.1
Cancels Eighth Revised Page 2.1
Transmittal No. 15

CHECK SHEET

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39	Original	54	Third
40	Original	55	Original
41	First	56	First
42	First	56.1	First
43	First	56.1.1	First
44	First	56.1.2	First
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46.8	Original	57.2	First
46.9	Original	57.3	First
46.10	Original	57.4	First
47	Original	57.5	First
48	First	57.6	First
49	First	57.7	First
49.1	Original	58	First
		59	First

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EFFECTIVE: May 22, 2009

Senior Manager – Regulatory Affairs
7037 Old Madison Pike
Huntsville, Alabama 35806

DeltaCom, Inc.

Switched Access Price List
First Revised Page 3
Cancels Original Page 3
Transmittal No. 7

Florida

(T)

ISSUING CARRIERS

DELTACOM, INC.

(T)

OTHER CARRIERS

NONE

CONCURRING CARRIERS

NONE

CONNECTING CARRIERS

NONE

OTHER PARTICIPATING CARRIERS

NONE

ISSUED: March 30, 2006

EFFECTIVE: March 31, 2006

Senior Manager – Regulatory Affairs
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Huntsville, Alabama 35806

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EXPLANATION OF SYMBOLS AND ABBREVIATIONS

SYMBOLS

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

ABBREVIATIONS

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

EXPLANATION OF SYMBOLS AND ABBREVIATIONS

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

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

ABBREVIATIONS, (Cont'd.)

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

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EXPLANATION OF SYMBOLS AND ABBREVIATIONS

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

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DeltaCom, Inc.

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EFFECTIVE: April 1, 2009

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SECTION 1 - DEFINITIONS

The following definitions are applicable to this tariff:

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

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

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

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

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

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

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

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

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SECTION 1- DEFINITIONS, (Cont'd.)

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

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

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

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

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

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

Commission - Florida Public Service Commission.

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

(N)
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(N)

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

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

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

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SECTION 1- DEFINITIONS, (Cont'd.)

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

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

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

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

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

Entry Switch - First point of switching.

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

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DeltaCom, Inc.

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SECTION 1- DEFINITIONS, (Cont'd.)

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

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

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

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

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

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

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

(T)

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

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SECTION 1- DEFINITIONS, (Cont'd.)

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

Message - A Message is a Call as defined above.

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

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

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

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

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

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

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

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DeltaCom, Inc.

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SECTION 1- DEFINITIONS, (Cont'd.)

Special Access - See Dedicated Access.

Tariff - For the purpose of this document, the term tariff should be replaced and referred to as Price List. (N)

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

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

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

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

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

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

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

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

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DeltaCom, Inc.

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SECTION 2- TERMS AND CONDITIONS

2.1 Undertaking of DeltaCom, Inc.

(T)

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

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

2.2 Unauthorized Change Charge

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

2.3 Limitation On Service

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

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(T)

SECTION 2- TERMS AND CONDITIONS

2.3 Limitation On Service, (Cont'd).

- 2.3.2 The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control (examples of these conditions are more fully set forth elsewhere in this tariff), or when service is used in violation of provisions of this tariff or the law.
- 2.3.3 The Company does not undertake to transmit messages, but offers the use of its service when available, and, as more fully set forth elsewhere in this tariff, shall not be liable for errors in transmission or for failure to establish connections.
- 2.3.4 The Company reserves the right to discontinue service, limit service, or to impose requirements as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material affect on the business or economic feasibility of providing service, as determined by the Company in its reasonable judgment.

2.4 Assignment or Transfer

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

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SECTION 2- TERMS AND CONDITIONS

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SECTION 2- TERMS AND CONDITIONS

2.5 Location of Service

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

2.6 Use of Service

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

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

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

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

SECTION 2- TERMS AND CONDITIONS

2.7 Discontinuance and Restoration of Service

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

2.7.1 Cancellation by the Customer

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

2.7.2 Cancellation by the Company

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

DeltaCom, Inc.

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SECTION 2- TERMS AND CONDITIONS

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

2.7.2 Cancellation by the Company (cont'd.)

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

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SECTION 2- TERMS AND CONDITIONS

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

2.7.3 Restoration of Service

- (i) If service has been discontinued for nonpayment or as otherwise provided herein and the Customer wishes it continued, service shall, at the Company's discretion, be restored when all past due amounts are paid or the event giving rise to the discontinuance (if other than nonpayment) is corrected and the Customer pays a deposit at Company's discretion. Nonrecurring charges apply to restored services.
- (ii) Restoration of disrupted services shall be in accordance with the Florida Public Service Commission Rules and Regulations, which specify the priority system for such activities.

2.8 Cancellation of Application for Service

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

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

SECTION 2- TERMS AND CONDITIONS

2.9 Minimum Period

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

2.10 Billing and Payments

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

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SECTION 2- TERMS AND CONDITIONS

2.10 Billing and Payments (Cont'd.)

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

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

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

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SECTION 2- TERMS AND CONDITIONS

2.10 Billing and Payments (Cont'd.)

2.10.3 (cont'd.)

- .1 If such payment due date falls on a Sunday or on a Legal Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday date following such Sunday or Legal Holiday. If such payment due date falls on a Saturday or on a Legal Holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Legal Holiday.

- .2 Further, if any portion of the payment is received by the Company after the payment due date as set forth above, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment charge shall be due the Company. The late payment charge shall be that portion of the payment not received by the date due minus any charges billed as local taxes multiplied by the lesser of (i) 1.5 percent monthly or (ii) the highest amount allowable by law. (C)

- .3 In the event the Company incurs fees or expenses, including attorney's fees and/or court costs, in collecting or attempting to collect any charges owed to the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred. (C)

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SECTION 2- TERMS AND CONDITIONS

2.10 Billing and Payments (Cont'd.)

(N)

2.10.4 Invoice Reprint Charge

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

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

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

Delivery Charges

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

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

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

(N)

SECTION 2- TERMS AND CONDITIONS

2.11 Claims and Disputes

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

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

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

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

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

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SECTION 2- TERMS AND CONDITIONS

[RESERVED FOR FUTURE USE]

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SECTION 2- TERMS AND CONDITIONS

2.11 Claims and Disputes (Cont'd.)

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

2.12 Payment of Deposits

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

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

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SECTION 2- TERMS AND CONDITIONS

2.12 Payment of Deposits (cont'd.)

- 2.12.3** At such time as the provision of the service to the Customer is terminated, the amount of the deposit will be credited to the Customer's account and any credit balance which may remain will be refunded. After the Customer has established a one year prompt payment record, such a deposit will be refunded or credited to the Customer account at any time prior to the termination of the provision of the service to the Customer.
- 2.12.4** In case of a cash deposit, for the period the deposit is held by the Company, simple annual interest will be applied to the deposit for the number of days from the date the Customer deposit is received by the Company to and including the date such deposit is credited to the Customer's account or the date the deposit is refunded by the Company.
- 2.12.5** If the amount of a deposit is proven to be less than required to meet the requirements specified above, the Customer shall be required to pay an additional deposit upon request.

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SECTION 2- TERMS AND CONDITIONS

2.13 Inspection, Testing and Adjustment

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

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

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SECTION 2- TERMS AND CONDITIONS

2.14 Interconnection

2.14.1 Service furnished by the Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to technical limitations established by the Company. Service furnished by the Company is not part of a joint undertaking with such other common carriers or systems. The Company does not undertake to provide any special facilities, equipment, or services to enable the Customer to interconnect the facilities or the equipment of the Company with services or facilities of other common carriers or with private systems.

2.14.2 Interconnection with the services or facilities of other common carriers shall be under the applicable terms and conditions of this tariff and the other common carrier's tariffs.

2.14.3 The Customer shall ensure that the facilities or equipment provided by the Customer are properly interconnected with the facilities or equipment of the Company. If the Customer maintains or operates the interconnected facilities or equipment in a manner which results or may result in harm to the Company's facilities, equipment, personnel, or the quality of service, the Company may, upon written notice, require the use of protective equipment at the Customer's expense.

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

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SECTION 2 - TERMS AND CONDITIONS

2.14 Interconnection (Cont'd.)

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2.14.4 Physical Network Interconnection Arrangements

2.14.4.1 SS7 Interconnection

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

A. If a Customer chooses to connect to the Company's SS7 network using links(s) and port(s), the Customer shall pay the charges set forth in Section 3.6.8, or

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

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

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SECTION 2- TERMS AND CONDITIONS

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2.15 Liability of the Company

- 2.15.1** The liability of the Company for damages of any nature arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants, or employees, in the course of establishing, furnishing, rearranging, moving, terminating, or changing the service or facilities or equipment shall not exceed an amount equal to the charges applicable under this tariff (calculated on a proportionate basis where appropriate) to the period during which such error, mistake, omission, interruption or delay occurs.
- 2.15.2** In no event shall the Company be liable for any incidental, indirect, special, or consequential damages (including lost revenue or profits) of any kind whatsoever regardless of the cause or foreseeability thereof.

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SECTION 2- TERMS AND CONDITIONS

2.15 Liability of the Company (Cont'd.)

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

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

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SECTION 2- TERMS AND CONDITIONS

2.15 Liability of the Company (Cont'd.)

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

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SECTION 2 – TERMS AND CONDITIONS

2.16 Liability of the Customer

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

- (i) Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information, or other content transmitted over the Company's facilities or equipment; and
- (ii) Claims for patent infringement arising from combining or connecting the Company's facilities or equipment with facilities, equipment, apparatus or systems of the Customer; and
- (iii) All other claims (including, without limitation, claims for damage to any business or property, or injury to, or death of, any person) arising out of any act or omission of the Customer, or the Customer's agents, End Users, or customers, in connection with any service or facilities or equipment provided by the Company.

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SECTION 2- TERMS AND CONDITIONS

2.17 Taxes

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

2.18 Local Charges

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

2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements

(C)

2.19.1 Determination of Switched Access Jurisdiction

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

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2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements

(C)

2.19.2 Jurisdictional Report Requirements

(A) Percent Interstate Usage (PIU)

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

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

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

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

(C)

2.19.2 Jurisdictional Report Requirements (Cont'd.)

(B) Report Updates

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

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

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Section 2.20 has moved to Page 34.5.

SECTION 2- TERMS AND CONDITIONS

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

2.19.3 Maintenance of Customer Records

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

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

(C)

SECTION 2- TERMS AND CONDITIONS

2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements (Cont'd) (C)

2.19.4 Jurisdictional Reports Verification

(A) Billing Dispute/Regulatory Commission Inquiry

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

(B) Company Traffic Studies

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

SECTION 2- TERMS AND CONDITIONS

2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements (Cont'd) (C)

2.19.4 Jurisdictional Reports Verification (Cont'd.)

(C) Company Audit

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

(C)

SECTION 2- TERMS AND CONDITIONS

2.19 Determination of Switched Access Jurisdiction and Jurisdictional Reports Requirements (Cont'd) (C)

2.19.5 Mixed Interstate and Intrastate Access Service

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

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

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SECTION 2- TERMS AND CONDITIONS

2.20 Damages

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

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2.21 Ownership of Facilities

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

2.22 Testing

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

2.23 Design of Customer Services

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

2.24 Network Contingency Coordination

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point electrical communications path between a Customer's premises and an End-User's premises. It provides for the use of common terminating, switching and trunking facilities, and for the use of common subscriber plant of the Company. Switched Access Service provides for the ability to originate calls from an End-User's premises to a Customer's premises in the LATA(s) where it is provided.

The application of rates for Switched Access Service is described in Section 3.6 following. Rates and charges for services other than Switched Access Service, e.g., a Customer interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services.

3.1.1 Measuring Access Minutes

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

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General (Cont'd.)

3.1.1 Measuring Access Minutes

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

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

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

3.1.2 Mileage Measurement

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General (Cont'd.)

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3.1.3 Two types of Feature Group Access are available:

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

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3.2 Rate Categories

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

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories

3.2.1 End Office Local Switching

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

Transport Termination which provides for the trunk side arrangements terminate the Switched Transport facilities. The number of Transport Terminations provided will be determined by the Company. (T)

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.2 Switched Transport

(T)

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

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

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.2 Switched Transport

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.2 Switched Transport (T)

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3.2 Rate Categories, (Cont'd.)

3.2.2 Switched Transport

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.2 Switched Transport

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

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3.2.2 Switched Transport

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.2 Switched Transport

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A. Feature Group D

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

FGD is provided with Directory Assistance service via Company designated access tandem switches appropriately equipped for DA measurement. Completion of these calls is set forth in Section 3.2.5 preceding. When Directory Assistance Access Service is provided with FGD switching, calls routed to the access tandem will be completed to the DA location. Calls completed to the DA location are subject to the charges in Section 3.6.5.

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.3 Common Line

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

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3.2.4 8XX Toll Free Dialing

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories, (Cont'd.)

3.2.5 Directory Assistance Access Service

Directory Assistance Access Service provides: (1) service to Directory Assistance Access Service locations; (2) the use of Directory Assistance Access equipment; and (3) the use of Directory Assistance Access operators to provide telephone numbers. A Company Directory Assistance operator, when furnished a name and locality, will provide or attempt to provide the telephone number listed in the Company Directory Assistance records associated with the name given at the rates and charges in Section 3.6.5. The Company will not transfer, forward or redial a Customer's end user call to any other location for any purpose other than the provision of Directory Assistance Access service.

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

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.2 Rate Categories (Cont'd).

3.2.5 Directory Assistance Access Service (cont'd).

A local channel, interoffice channel and access tandem switching will be charged pursuant to 3.6, when applicable.

Type A Transmission Specification is provided.

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

3.2.5.1 Billing (T)

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

3.2.5.2 Credit Allowance (T)

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

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

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

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(T)

SECTION 3 - SWITCHED ACCESS SERVICE**3.3 Obligations of the Company**

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

3.3.1 Network Management

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.3 Obligations of the Company

3.3.2 Design and Traffic Routing of Switched Access Service

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.4 Obligations of the Customer

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

3.4.1 Report Requirements

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

(A) Jurisdictional Reports

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

(C)

(B) Code Screening Reports

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

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.4 Obligations of the Customer

3.4.2 On and Off-Hook Supervision

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

3.4.3 Terminating Signaling

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

(N)

(N)

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(M)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.5 Intermediate Provider Access Service

(T) (N)

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

An Intermediate Provider is a provider that:

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

(N)

Material now appearing on Original Page 49.1 was moved from Original Page 49.

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SECTION 3 - SWITCHED ACCESS SERVICE

3.6 [Reserved for Future Use]

(D)

(D)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges

3.7.1 Rate Regulations

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

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

3.7.2 Minimum Periods

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

3.7.3 Charges

.1 End Office Local Switching* (T)

Usage Sensitive Rates (C)
- per access minute

Service provided via UNE-P/Commercial Agreement

	<u>Originating</u>	<u>Terminating</u>
Tandem Connect Access – AT&T areas	\$0.039629	\$0.062299
Tandem Connect Access – Other ILEC areas	\$0.048569	\$0.101969
Direct Connect Access – AT&T areas	\$0.037102	\$0.059772
Direct Connect Access – Other ILEC areas	\$0.046042	\$0.099442

Service provided via Company Switches and Facilities

Tandem Connect Access – AT&T areas	\$0.043710	\$0.066380
Tandem Connect Access – Other ILEC areas	\$0.052650	\$0.106050

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges, (Cont'd.)

3.7.3 Charges (Cont'd.)

.2 Switched Transport (T)

Nonrecurring Charges (C)

	<u>Monthly Rate</u>	<u>1st Service Installed</u>	<u>Additional Service</u>
Direct Network Interconnection	ICB	ICB	ICB

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges, (Cont'd.)

3.7.3 Charges (Cont'd.)

(D)

(D)

.3 Carrier Common Line Access Charges

(M)

All access minutes are billed a composite per minute access rate found in Section 3.6.3.1, Local Switching. This composite rate includes the element traditionally billed as Carrier Common Line.

(M)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges, (Cont'd.)

3.7.4 8XX Toll Free Dialing

Per Query

- Per Toll Free Dialing Call with POTS Number
Delivery for Toll Free Dialing Numbers with Optional
Complex Features, e.g. Call Handling and Destination
Features (All but Vista-United)

\$.0111

(I)

Vista-United

\$.2800

3.7.5 Directory Assistance Access Service

Directory Assistance Service Call (Each call)

\$.60

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges, (Cont'd.)

3.7.6 Service Order Charges

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

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

² This charge is in addition to that in 3.6.5A.

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges, (Cont'd.)

3.7.6 Service Order Charges (Cont'd.)

F. Transfer of Service

Per Billing Number \$170.00

Trunk Side Service

Per transmission Path \$9.00

3.7.7 Primary Interexchange Carrier (PIC) Charge

(N)

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

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(N)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.6 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection

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

- A. There are recurring and non-recurring charges that apply for each Link Termination and Port that is established.
- B. Non-recurring charges apply for the establishment or disconnection of Originating Point Codes (OPC). An OPC installation charge applies for each OPC established, as well as each OPC added or changed subsequent to the establishment of STP Access. An OPC disconnection charge applied for each OPC removed. The OPC charge applies on a per service basis.
- C. Usage charges apply for the formulation, transport and switching of ISUP or TCAP messages related directly to the Customer's origination and termination of switched access services throughout the Company's network. The Company may bill these charges by using (C)
|
|
(C)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.6 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection

3.7.8.1 C. (Cont'd)

a surrogate charge or as a per message fee as delineated in 3.6.8 following. (C)
To the extent non-local SS7 messaging is billed to the Company by another
carrier, the Company will bill the carrier reciprocal charges for the number
of messages billed. (C)

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

E. Reporting SPIU and SPLU Factors

1) SPIU

If Customer has access to CCS7 Signaling Services monitoring
software, then that carrier may (M)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection (Cont'd)

3.7.8.1 E. (Cont'd)

1) SPIU (Cont'd)

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

(M)

(M)

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3.7 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection (Cont'd)

3.7.8.1 E. (Cont'd)

- 1) SPIU (Cont'd) (M)
Carriers developing and reporting an SPIU in this manner shall inform Company of the methodology used to determine the signals associated with billed minutes that are jurisdictionally interstate and the methodology used to determine the signals associated with total billed minutes.
- 2) SPLU
Where Customer is an approved local service provider, then the Customer may report an SPLU in the following manner:

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

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection (Cont'd)

(M)

3.7.8.1 E. (Cont'd)

2) SPLU (Cont'd)

herein. If, however, a Customer does not have access to CCS7 Signaling Services, factors shall be developed and reported based upon the associated billed minutes of use for SWA Usage based services and Local services. The signals associated with billed minutes that are jurisdictionally local as a percentage of the signals associated with total intrastate billed minutes shall be reported as the CCS7 Access SPLU. Where the customer is a Third Party provider of CCS7 services then the SPLU will be developed based upon a weighted average of all of that provider's "Third Party Customer's" end user traffic. Customers developing and reporting an SPLU in this manner shall inform Company of the methodology used to determine the signals associated with billed minutes that are jurisdictionally local and the methodology used to determine the signals associated with total

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection (Cont'd)

(M)

3.7.8.1 E. (Cont'd)

2) SPLU (Cont'd)

intrastate billed minutes.

3) Example

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

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

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

(M)

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Florida

SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection (Cont'd)

1. CCS7 Signaling Connection

	<u>Monthly Rate</u>	<u>Nonrecurring Charge</u>
(a) Per 56 kbps facility	\$500.00	\$550.00

2. CCS7 Signaling Termination

	<u>Monthly Rate</u>	<u>Nonrecurring Charge</u>
(a) Per STP port	\$300.00	\$350.00

3. CCS7 Signaling

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

	<u>Monthly Rate</u>	
(2) Per Message (ISUP, TCAP)	\$400.00	(N)
ISUP	\$.000035	
TCAP	\$.000123	

(M)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges (Cont'd).

3.7.8 SS7 Interconnection (Cont'd)

4. CCS7 Point Code Establishment or Change

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

3.7.9 Intermediate Provider Access Service

(N)

Rates will be billed at the greater of:

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

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

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

(N)

(D)

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SECTION 3 - SWITCHED ACCESS SERVICE

3.7 Rates and Charges (Cont'd).

3.7.10 Wireless to Wireline Traffic

(N)

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

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

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

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

(N)

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SECTION 4 – RESERVED FOR FUTURE USE

(M, D)

(M, D)

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SECTION 5 – RESERVED FOR FUTURE USE

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SECTION 5 -- RESERVED FOR FUTURE USE

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Florida

SECTION 6 - PROMOTIONS

(T)

6.1 Promotions - General

(T)

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

6.2 Demonstration of Service

(T)

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

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Florida

SECTION 7 - CONTRACT SERVICES

(T)

7.1 General

(T)

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

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