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June 5, 2009

VIA HAND DELIVERY

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

Re: Docket No. _____ – 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 **in a new docket** an original and seven (7) copies of the above-captioned DeltaCom, Inc., Petition along with a diskette containing an electronic version of the filing. The Petition contains four Exhibits, identified as Exhibits A through D.

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 2 _____
- OPC _____
- RCP _____
- SSC _____
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CK note: CD forwarded to ECL

(TL194002;1)Enclosures

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In re:

DeltaCom, Inc.

Plaintiff,

-v.-

KMC Data LLC, Hypercube, LLC and
Hypercube Telecom, LLC,

Defendant.

Docket No.:

090327

PETITION OF DELTACOM, INC. FOR ORDER DETERMINING
DELTACOM, INC. NOT LIABLE FOR ACCESS CHARGES OF
KMC DATA LLC, HYPERCUBE, 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”), Hypercube, LLC, 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

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intrastate services 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 replicates that which the wireless carrier otherwise does for itself (sending the call to the ILEC for delivery to DeltaCom and other carriers). What’s different, however, is that Hypercube attempts to charge access charges to DeltaCom and other carriers whereas the wireless carriers could not. 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. 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 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. 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

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. To the extent the Commission finds that Hypercube is not a “telecommunications company,” or providing a “local exchange telecommunications service,” the Commission may consider action to investigate and rescind the validity of Hypercube’s CLEC authority and price lists. In any event, as asserted in the body of this Petition, DeltaCom maintains that 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.

list provisions which fail to describe the services and charges with reasonable clarity. Finally, 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.

PARTIES AND JURISDICTION

5. 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.

6. 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.

7. Upon information and belief, Hypercube, LLC is a Delaware limited liability company with its principal place of business at 3200 West Pleasant Run Road, Suite 260, Lancaster, Texas 75146. Hypercube, LLC is the parent of its wholly owned subsidiary, Hypercube Telecom, LLC. Hypercube, LLC provides management services to Hypercube Telecom, LLC, including billing services. Hypercube, LLC is not a CLEC certificated to provide services in Florida.

8. 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.

9. The Commission has jurisdiction over this Complaint pursuant to Florida Statutes, sections 364.01(4)(g), 364.03 and 364.04.³

FACTUAL BACKGROUND

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

11. 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

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).

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**.

12. Upon information and belief, Hypercube furnishes a redundant transiting 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. Hypercube does not charge wireless providers for this transiting service, but instead seeks to charge carriers such as DeltaCom for the service. The call flow described here – with Hypercube inserted – also is depicted in the diagram appended hereto as **Exhibit A**.

13. 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

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). 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>

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

14. 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.

15. From November 2005 to May 2009, Hypercube charged DeltaCom approximately \$1,019,350.33 in such intrastate access and related charges in Florida. Of this amount, \$786,793.00 purportedly has been for “8YY Originating Access Service” charges,

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*”).

\$67,430.03 has been for “800 Data Base Query” charges and approximately \$165,127.30 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”).⁷ 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 Hypercube. Copies of the Hypercube Price List and the version of the KMC Price List it replaces are appended hereto as **Exhibit B**.

16. 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. Out of an abundance of caution 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**.⁸ DeltaCom has no real-time ability to detect which traffic is being handled by Hypercube and, if appropriate, to block the traffic on a

⁷ 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) (“Price List” or “Price Lists”).

⁸ 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.

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.

17. 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

18. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 17 hereof, as if fully set forth herein.

19. Hypercube charges DeltaCom and other IXC's 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 IXC's. 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.

20. 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, Hypercube did so unlawfully, is not entitled to charge for such service, and is prohibited from further engaging in such conduct.

COUNT TWO

PRIOR TO OCTOBER 2008,⁹ HYPERCUBE HAD NO RIGHT TO PROVIDE OR IMPOSE CHARGES FOR INTRASTATE SERVICES

21. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 20 hereof, as if fully set forth herein.

22. 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 2008.¹⁰

23. 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 THREE

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

24. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 23 hereof, as if fully set forth herein.

25. 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.

⁹ 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*.

¹⁰ 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.

26. 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 FOUR

HYPERCUBE HAS NO RIGHT TO DECLARE A REPORTED PIU INVALID

27. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 26 hereof, as if fully set forth herein.

28. 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,¹¹ it is jurisdictionally interstate in nature.

¹¹ 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.

29. 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.

30. 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".¹² 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.

¹² DeltaCom does not admit to being a Customer and instead seeks declaratory relief affirming that it is not a Customer. See Count Five, *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.

31. 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 FIVE

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

32. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 31 hereof, as if fully set forth herein.

33. Hypercube has asserted that it has provided and charged DeltaCom for at least two services included in the KMC and Hypercube Access Services Tariffs. 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.

34. Hypercube has asserted that it has provided to DeltaCom tariffed "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.¹³

35. 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.¹⁴ 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.¹⁵ 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.

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

37. 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.

¹³ The Hypercube price list may be identical to the last on-file KMC price list.

¹⁴ As explained in Count Six, *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.

¹⁵ A carrier is not an end user.

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

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.

39. 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.

40. 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.¹⁶ 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*.

41. 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

¹⁶ 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.

FGD switched access. The 800 series includes the following service access codes: 800, 888, 877, 866, 855, 844, 833 and 822.¹⁷

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

Hypercube alleges it provides to DeltaCom.

42. DeltaCom is not a Customer of Hypercube and Hypercube does not provide the Switched Access Services described in the KMC Access Services Tariff to DeltaCom.

43. 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 tariff 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.

44. 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.

¹⁷ 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.

COUNT SIX

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

45. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 44 hereof, as if fully set forth herein.

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

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

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

49. 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.

50. 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.

51. 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.

52. 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 SEVEN

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

53. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 52 hereof, as if fully set forth herein.

54. 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 tariff itself and is unfair, anticompetitive and otherwise unlawful because no carrier is entitled to charge for services it does not provide.¹⁸

55. 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”.

56. Upon information and belief, Hypercube applies the same “blended rate” of \$0.025 per minute regardless of the access 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 Originating 800 FG Access. 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

¹⁸ 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.

switching, which with respect to the traffic at issue here, also would have been provided by the wireless carrier.

57. 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.”

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

59. 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 EIGHT

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

60. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 59 hereof, as if fully set forth herein.

61. 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.

62. 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 NINE

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

63. DeltaCom repeats and realleges each and every allegation contained in Paragraphs 1 through 62 hereof, as if fully set forth herein.

64. 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 and in violation of Sections 364.01(4)(g), 364.03 and 364.04, Florida Statutes.

65. 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

66. All material factual allegations which DeltaCom pleads the Commission address are as identified by paragraphs 1 – 65, above. 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 rejected DeltaCom's PIU in violation of the Price List upon which it relies;
- (f) Hypercube has not provided nor has DeltaCom ordered any intrastate service set forth in the Price List;
- (g) Hypercube's rate for 8XX Originating Access is unlawful; and
- (h) Hypercube's imposition of 800 Data Base Dip charges on DeltaCom is unlawful.

It is anticipated that Hypercube may dispute some or even all of these facts.

67. 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. 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 as alleged in Counts 4 - 8, and ignore the clear 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 other carriers and a kick-back to the CMRS carriers. 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 for any carrier. Accordingly, the judgments and relief sought by DeltaCom are warranted.

JUDGMENT AND RELIEF SOUGHT¹⁹

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 DeltaCom, Hypercube did so unlawfully and is not entitled to charge for such services;
- (b) Issue an order on Count Two 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;
- (c) Issue an order on Count Three 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;
- (d) Issue an order on Count Four 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;
- (e) Issue an order on Count Five 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;
- (f) Issue an order on Count Six 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;
- (g) Issue an order on Count Seven in favor of DeltaCom that Hypercube's rate for Originating 800 FG Access is unlawful;
- (h) Issue an order on Count Eight 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.;

¹⁹ 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. To the extent the Commission finds that Hypercube is not a "telecommunications company," or providing a "local exchange telecommunications service," the Commission may consider action to investigate and rescind the validity of Hypercube's CLEC authority and price lists.

- (i) Issue an order with respect to Count Nine 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
- (j) 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 5th day of June, 2009.

By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition has been served upon the following by Hand Delivery (*) and/or U.S. Mail this 5th day of June, 2009.

Adam Teitzman *
Office of the General Counsel
Room 370, Gunter Building
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Hypercube Telecom, LLC
C/O Registered Agent:
Corporate Service Company
1201 Hays Street
Tallahassee, FL 32301

By: _____



Matthew Feil

AKERMAN SENTERFITT

106 East College Avenue, Suite 1200

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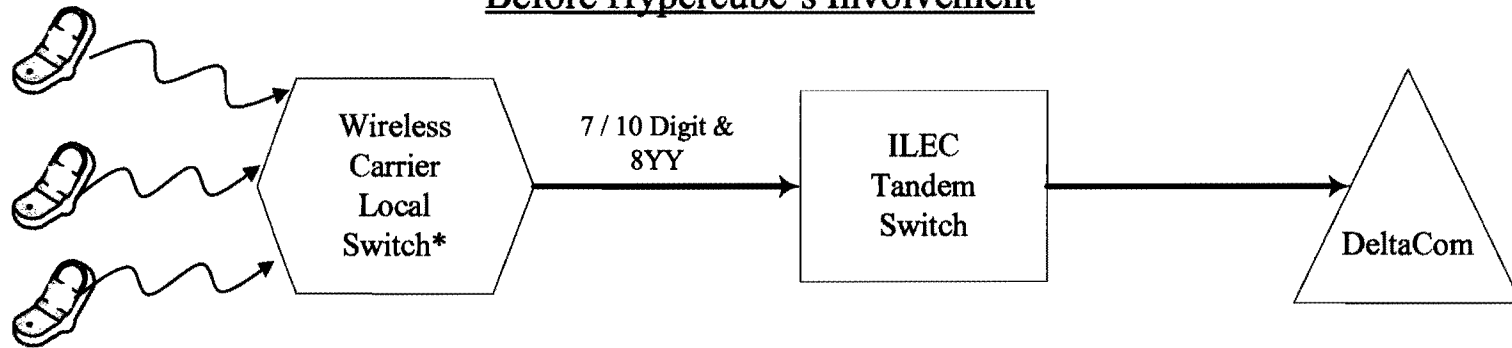
(850) 425-1614

(850) 222-0103

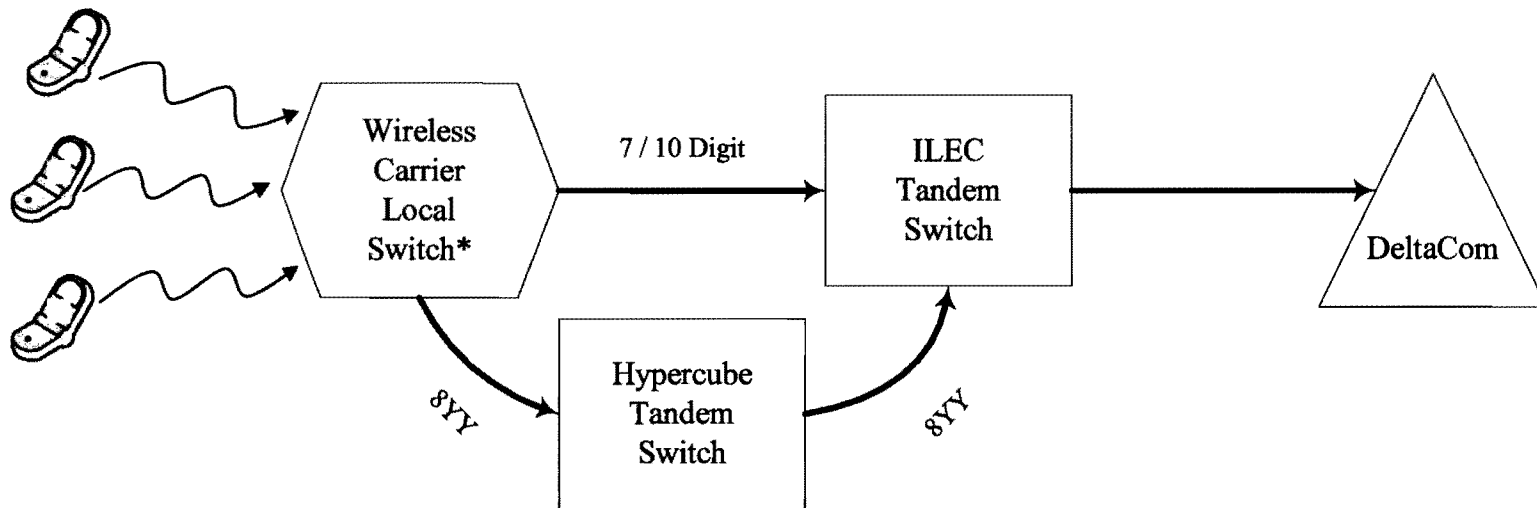
matt.feil@akerman.com

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

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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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Issued: August 28, 2006

Effective: August 29, 2006

Issued By: James M. Mertz
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HYPERCUBE TELECOM, LLC

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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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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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ACCESS SERVICES

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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HYPERCUBE TELECOM, LLC

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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.

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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.

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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.

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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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ACCESS SERVICES

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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ACCESS SERVICES

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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ACCESS SERVICES

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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ACCESS SERVICES

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; 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; T
- 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; T
- 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; T

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ACCESS SERVICES

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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ACCESS SERVICES

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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ACCESS SERVICES

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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ACCESS SERVICES

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 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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ACCESS SERVICES

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
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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. 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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ACCESS SERVICES

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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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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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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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)

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

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SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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SECTION 6 - MISCELLANEOUS SERVICES (Cont'd)

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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
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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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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

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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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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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.)

2.1.4 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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ACCESS SERVICES

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;
- 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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ACCESS SERVICES

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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ACCESS SERVICES

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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ACCESS SERVICES

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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ACCESS SERVICES

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.

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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ACCESS SERVICES

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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ACCESS SERVICES

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
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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. 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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ACCESS SERVICES

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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ACCESS SERVICES

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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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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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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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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SECTION 3- SWITCHED ACCESS SERVICE (Cont.)

3.3 Reports and Testing

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- 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)

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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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	KMC Data, LLC	
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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
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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 <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 



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 # 111901629, Account Number 040110551, 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

cc: Ron Beaumont
James Mertz