



June 6, 2009

Via ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation
Petition for Declaratory Ruling Regarding Access Charges by Certain Inserted CLECs
for CMRS-Originated Toll-Free Calls, WC Docket Nos. 01-92, 96-262

Dear Ms. Dortch:

DeltaCom, Inc. (“DeltaCom”) respectfully submits this written *ex parte* presentation in the above-referenced dockets. DeltaCom is yet another victim of the same access charge arbitrage scheme that Level 3 alleges Hypercube Telecom, LLC (“Hypercube”) and apparently other companies are perpetrating. *See, also, Initial Reply Comments of Excel Telecommunications* (filed June 1, 2009).

DeltaCom is both a competitive local exchange carrier (“CLEC”) and an interexchange carrier (“IXC”) operating primarily in the Southeast. Among other services, DeltaCom furnishes toll-free service (8XX) to its customers that 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 CLEC, or they may be customers of a commercial mobile radio service provider (“CMRS” or “wireless” carrier).

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. When the calling parties are customers of a wireless carrier, the wireless carrier traditionally has routed the calls to DeltaCom through the ILEC tandem.

As Level 3 explains in its petition, Hypercube has contracted with various wireless carriers to send toll-free calls originated on the wireless networks first to Hypercube, then Hypercube sends these calls onto the ILEC for delivery to interexchange carriers serving the toll-free end-user. 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 interexchange carriers, like Level 3, Excel and Deltacom). What’s different, however, is that Hypercube has filed an interstate tariff and attempts to charge (re-)originating access charges to DeltaCom and other carriers, whereas the wireless carriers could not.¹ As set forth in detail by Level 3, Hypercube induces wireless carriers to

¹ Although this tariff was filed in March 2009, Hypercube has attempted to impose interstate access charges through the tariff of companies formerly affiliated with its predecessor in interest, which never was a participating carrier in that tariff and which ceased to exist long before Hypercube adopted the tariff it now calls its own through a “name change” filing. Hypercube’s conduct with respect to these tariffs should be investigated.

participate in this scheme by offering those wireless carriers a “kick-back” of originating access charges in the form of substantial percentage of any amounts collected.²

Thus, through the artifice of a federal tariff and kick-back scheme, Hypercube is enabling wireless carriers to route traffic through it to accomplish indirectly that which the FCC said they cannot do directly. The FCC rejected as unjust, unreasonable, and otherwise unlawful the form of the arbitrage scheme engaged in 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.*”³.

On June 5, 2009, DeltaCom filed a series of actions before several state utilities commissions in the Southeast seeking orders declaring the intrastate access component of Hypercube’s arbitrage scheme unlawful. These state commissions, however, cannot address the interstate access charge aspect of Hypercube’s arbitrage scheme. For that reason, DeltaCom urges the Commission to address Level 3’s petition promptly by clarifying that Hypercube’s arbitrage scheme is unjust and unlawful and has been at least since the Commission’s *Eighth Report and Order* became effective.

In accordance with the Commission’s rules, this letter is being filed electronically for inclusion in the public record of the above-referenced dockets.

Respectfully submitted,

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² It is DeltCom’s understanding that prior to Hypercube’s involvement in the call-flow, BellSouth Telecommunications, as incumbent, charged the wireless carrier for tandem transit, tandem switching and SMS/800 data base query charges. In contrast, Hypercube’s interstate access tariff attempts to impose those charges on the interexchange carrier and, by contract with the wireless carrier, Hypercube provides a kick-back of revenues collected under the tariff.

³ *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) (“*Eighth Report and Order*”).