

Before the Federal Communications Commission
Washington DC 20554

PETITION

To:
Regina M. Keeney, Chief
Common Carrier Bureau, Room 500
1919 M St. NW
Washington DC 20554

1. The PETITIONER, abbreviated as MAI, states that its name and address are

Microscope Associates, Inc.
50 Village Ave.
Dedham MA 02026

attention: Frederick W. Martin, President
telephone: 617-326-2288

2. This is a petition seeking an interim order by authority of 47 USC 203(b)(2) to the effect that:

No tariff or customer subscription agreement of a telecommunications carrier may prohibit redistribution or resale of Internet service.

It is sent following a phone chain of referrals to
R. L. Smith, Policy and Analysis Branch
David Konuch, staff attorney, Policy Branch, 202 418 0199
Edward Kratchmer, 202 418 0198

3a. STATEMENT OF FACTS

On April 17 1996 Dr. Martin wrote to Continental Cablevision (CC) on his company letterhead proposing a demonstration project for Internet use, to be funded by a proposed grant from the National Science Foundation in the amount of \$15,000. CC did not answer.

Following announcement of regular Internet service in Dedham,

Dr. Martin again wrote to CC on his company letterhead Jan 9, 1997 enclosing a "concept description for Internet service at the Dedham Historical Society". CC did not answer.

Dr. Martin made numerous telephone calls to the sales office of CC, asking for prices for business service. The sales representatives indicated that business service is provided under the same terms and conditions as home service, and at the same price. The verbal quotation was \$60 per month, but no written quotation was provided. The verbal conditions included "no reselling of bandwidth." He then asked for a copy of the subscriber's agreement. In order to receive service, the business subscriber must agree to the same terms as the residential subscriber. As found in paragraph 11.1 of the agreement, these are "not to resell or redistribute access to the service in any manner. The prohibition on resale or redistribution of access includes, but is not limited to the provision of email, FTP and Telnet access." A copy of the full agreement is attached.

MAI notes that it does not object to the method by which the agreement provides for the costs of service. Should "excessive data transfer" develop based on email, FTP, etc, paragraph 11.3 of the attached subscription agreement permits "reclassification to a commercial grade of service", should that grade ever exist.

On Jan 14, 1997 Dr. Martin telephoned Mr. Ed Holleran, Vice President of CC, informing him of the NSF deadline of Jan 31. Mr. Holleran indicated that CC had a planned business use which is not yet defined, but that he would entertain approval of a special proposal for the NSF deadline. On Jan 14, Dr. Martin again wrote to CC.

MAI is a Massachusetts non-profit corporation organized in 1978 and certified under IRC 501(c)(3). The letter explained that NSF normally will not award funds to corporations having stockholders. Thus any excess revenues must be used for the charitable purposes of the corporation, which generally include scientific research on ion microscopy leading to publication. Most past work has been done in conjunction with Worcester Polytechnic Institute, where Dr. Martin is an Adjunct Associate Professor of Physics.

On Jan 14, 1997 Dr. Martin again wrote to CC. The letter included the concept description of 1/9/97, which stated that the operating program would be the Wildcat Interactive Network Server, a suite which includes the Wildcat Navigator. The Wildcat Navigator competes with the Netscape Navigator and the Internet Explorer as a program for Internet access. The program is a bulletin board system which is designed to serve up to 100 subscribers dialing in on up to 8 telephone lines. The concept description said that one class of users would be "Any Society member who wishes to subscribe for Internet access including E-

mail and the World Wide Web at a remote location such as his study." Again there was no response.

Dr. Martin again telephoned the sales office, explaining to the sales manager that there could be no purchase of business usage for the Historical Society out of its normal funds, and that service to members was essential to cover the cost of payments amounting to some \$1440 over two years to CC. The sales manager alerted his vice president, who finally responded by telephone on the evening of Jan 21. In that call, Mr. Holleran indicated intent, subject to discussion with his staff, to send a letter for inclusion in the NSF proposal, which would state a price in writing and would authorize resale of the cable TV feed into the limited bandwidth of the telephone modems. However on the afternoon of Jan 22 he called back to indicate that no letter would be sent. The main reason seemed to be that, although one demonstration would do no harm by itself, CC does not want many local computers attached to the cable, each of which redistributes Internet access.

There was nothing that MAI could do in view of the short time to the proposal deadline of Jan 31, and Mr. Holleran advised that business service would be available in a few months. On 6/3/97 Dr. Martin inquired further, reaching Ronnie Lipton, advising her of the next deadline for proposals which is July 31, 1997. Ms. Lipton among other things said the company would disconnect the proposed service if it were implemented and advised contacting the company attorney Bartlett Thomas. Ms. Thomas said that Ms. Lipton had advised her that business service is planned in winter 1998. If similar promises continue, it is possible that such service will never be offered.

The facts of this controversy are likely to recur many times and in many places. The carrier always believes it will obtain greater numbers of subscribers for its own network if redistribution is prohibited. As will be argued below however, the interest of the subscribers is always in a new low-cost technology and service, and the public interest requires that redistribution must be allowed.

The present ruling is sought as an interim stopgap while the ponderous process of rulemaking proceeds (note Internet Access and Information Service Provider NOI, CC Docket No 96-263). It is motivated by the 6-month wait for a Formal Complaint, and the 4-month wait for an Informal Complaint. Hopefully the Head Office can exercise the discretion it is given under the law before July 15, 1997, which would permit MAI to file its proposal by the NSF deadline of July 31. We believe the situation is flagrant. A general ruling would assist not only MAI but probably also many other small organizations interested in farming out Internet service.

3b. LEGAL ARGUMENTS

(1) *jurisdictional preamble* -- The FCC is established under 47 USC 151. which gives it jurisdiction over common carriers an at 47 USC 201 and over cable communications at 47 USC 521. "Cable service" is defined as "one-way transmission" by 477 USC 522(6)(a). Thus as further expressed in P. L. 98-549 [98 Stat 2801], the common carrier law has jurisdiction over communications "other than cable service ... provided through a cable system". Such two-way messages include telephone conversations or those interactive digital services provided by the Internet.

The FCC has long recognized that basic high-speed packet-switching service in which the customer's message is not altered is regulated by the common carrier division. Further FCC 87-103 provided "a combined offering of protocol processing and basic transport service would be considered a basic service for regulatory purposes." The Telecommunications Act of 1966 at 47 USC 153(r)(48) defined telecommunications as transmission of "information of the user's choosing, without change in the form or content of the information." Most importantly it provided at 47 USC 153(r)(49) that "A telecommunications carrier shall be treated as a common carrier under this act.. to the extent that it is engaged in providing telecommunications services."

Common carriers are required to file "classifications, practices and regulations" with the Commission by 47 USC 203, and this so-called tariff has the force of law. [485 F2d 1390]. "It has long been the policy of telephone companies to provide by tariff and rule that no person shall attach any device to a telephone, or to a wire, instrument or device furnished by the telephone company, on penalty of termination of service." [74 Am Jur 2d 518]

It has also been ruled that the FCC has primary jurisdiction in determining what "charges, practices, classifications, and regulations of telephone companies" are unjust and unreasonable and hence illegal not only under the communication Act 47 USC 151 but also under the Sherman Anti-Trust Act 15 USCA 1,2. [Macom vs AT&T, 3259 F Supp 973 (1973)].

There is no Massachussetts tariff governing computer connections within the customer's premises. The Massachusetts Department of Public Utilities, operating under MGL 159A, regulates pole attachments or rates as prescribed in 220 CMR 45. These regulations contain no authority to regulate customer premises. There is no informational tariff which any State may require for cable services under 47 USC 541(d)(1), and if even if there were it would not apply to two-way communications. "The conduct of the carrier in filing a tariff was thus not within state-action exclusion from application of antitrust statutes. [Macom vs AT&T, loc cit]

(2) *Argument for provision of a new technology and service* -
- One of the long-standing FCC statutes, 47 USC 157, states "It shall be the policy of the United States to encourage the provision of new technologies and services to the public." This intent is further amplified in the Telecommunications Act of 1996, which reads at 47 USC 257(b), "The Commission shall seek to promote.. technological advancement, and promotion of the public interest, convenience, and necessity.," and at 47 USC 257(a) specifically mentions "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services". Market entry barriers are also presumably an arguable factor under the Sherman Act 15 USC 1.

In order to discuss the public interest and convenience, it is necessary to describe the costs of three types of Internet telecommunications services found in the local vicinity of the petitioner: cable services, traditional dial-up telephone services, and combined cable and dial-up service.

In the local market for Internet service providers, the offering of cable service by CC provides a unique wide-bandwidth service. Its data rate is 1.5 million bits per second. As stated in the CC advertisement provided with its subscriber's agreement, "This network ... can now provide Internet access at more than 100 times the speed of traditional dial-up services." The cost for this service is \$60 per month, and no telephone line is required.

Traditional dial-up services typically are used with a modem capable of 14 thousand bits per second. They require at least a local telephone line, which for a business costs about \$20 per month. The internet access charge depends upon the type of service provided. Typical fees are as follows:

shore.net	\$10/mo up to 5 hrs, \$2/hr thereafter
usal.com	\$10/mo up to 10 hrs, then \$20/mo flat rate
oa.net	\$17.50/mo up to 50 hrs, \$1/hr thereafter
channell.com	\$10/mo up to 15 hrs, \$1/hr thereafter
ultranet.com	\$10/mo up to 10 hrs, \$2/hr thereafter.

These providers also typically provide memory space which may be connected to the Internet at high data rates, from which the user can present a home page to the World Wide Web. The minimum additional cost to a small user is thus about \$10 per month, assuming that he already has a telephone line and does not mind blocking it during Internet access.

Combined, efficient use of the long-distance, incoming cable and local, outgoing telephone lines offers an innovative way to deliver a low-cost service in the traditional dial-up market. Assuming that one telephone line is capable of 64 kB/sec, a cable modem delivering 1.5MB/sec is equivalent to 24 telephone lines. The industry standard for dial-up access is 15 customers per

telephone line. At a cost of \$60 shared among 360 customers, the cost for the cable is only 16 cents per month for each customer. Thus the local telephone lines become the major cost in delivering to the traditional dial-up market. If the cost of \$20/mo for an outgoing telephone line is shared among 15 customers, this amounts to \$1.33 per customer. Thus the monthly cost for cable and telephone lines is $1.33 + 0.16 = \$1.49$ per customer, considerably lower than the fees of \$10/mo charged in the current market. The "concept description" estimated a subscriber fee of \$5 per month, with 10 cents per hour added for usage more than 50 hours.

It is noted that combined cable and telephone service may contribute to the affordable rates which are specified in 47 USC 254(b)(1) as a prime requisite for universal telecommunications services.

The reason for the high fees charged in the traditional dial-up market probably is the cost of wide-bandwidth telephone lines and associated switching facilities, which the existing companies use as an incoming service. The current local rate for a so-called T1 telephone line with a bandwidth of 1.54 Mb from Dedham to Quincy, some 5 miles, is \$434/mo. If this is shared among 360 customers, it adds \$1.20 to the operating costs, amounting to \$2.53 per customer for incoming telephone and outgoing telephone lines. This estimate is also on the low side because it is actually further than 5 miles to a major Internet node, and because cost of wide-bandwidth internet service is neglected.

In summary, by connecting its cables to local telephone lines, telecommunicaztions carriers can participate in provision of a new technology and service to the public. This technology is in the public interest because it provides a lower-cost service in the traditional dial-up market for Internet access, including mainly text-based messages. It does not compete directly with cable service, because it cannot deliver images quickly enough.

MAI notes that 47 USC 157 states that "Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this act shall have the burden to demonstrate that such proposal is inconsistent with the public interest."

(3) *Argument for interconnection* -- 47 USC 251 states that "Each telecommunications carrier has the duty - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

A tariff or subscription agreement which prevents redistribution or resale of Internet service has the effect of avoiding the duty to interconnect with other telecommunications carriers. It flies in the face of the law. Although redistribution follows directly from the physical nature of

interconnection, so does resale, for it cannot be expected that interconnection will be a duty to be performed without due and reasonable financial compensation.

The size of the interconnection is not germane, in fact interconnection by many small computers, each making an indirect connection between cable and telephone networks, is a way of forming a distributed, fault-tolerant telecommunications network.

A tariff or subscription agreement which prevents redistribution or resale is inconsistent with the design principles of the Internet, which intentionally consider a tree-like structure of telecommunication links with many successive branches from root to leaf.

(4) Argument under the Telecommunications Act of 1996 -- 47 USC 230(b) states that "It is the policy of the United States (1) to promote the continued development of the Internet and other interactive computer services....(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services ...(3) to encourage the development of technologies which maximize user control" MAI suggests that interconnection of the cable system to the traditional telephone system is in accord with the policy of the United States to encourage a competitive market maximizing user control, whereas tariffs or subscription agreements which prohibit resale or redistribution are not.

(5) Authority for Commission Orders -- In the common carrier act 47 USC 201 "any ...practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." Under 47 USC 203 the Commission "may, for good cause shown, modify any requirement made by or under the authority of this section either in particular circumstances or by general order applicable to special circumstances". Since section 203 refers to tariffs, the Commission may make a general order about allowable practices, classifications, or regulations. If the requirement to file a tariff is suspended the Commission may presumably make an order relative to customer subscription contracts.

"The findings required of the FCC in its investigative or rulemaking capacity are of a different nature from those required in adjudication. ... In arriving at a policy determination under this procedure the FCC is not bound by the record but may look beyond it and draw upon its own expertise and experience. However, if judicial review is to serve its purpose, it is expected that the FCC will make a concise general statement of basis and purpose which will enable the court to see what major issues of policy were ventilated in the informal rulemaking proceedings and why the agency reacted to them as it did." [74 Am Jur 2d 491, citing 449 F2d 846]

4. RULINGS SOUGHT FROM THE FCC

MAI believes that it has shown that:

- 1) delivery of two-way signals using long-distance service by cable combined with local distribution by telephone is a new technology and service to the public, which is to be encouraged by the policy of the United States as expressed at 47 USC 157,
- 2) prohibitions of redistribution or resale prevent the prohibiting telecommunications carrier from fulfilling its duty of interconnection under 47 USC 251; and
- 3) prohibitions of redistribution or resale impede the proper development of the Internet, which is encouraged by the policy of the United States as expressed at 47 USC 230

and that therefore "for good cause shown" the Commission may follow the authority of 47 USC 203 (b)(2) to issue a "general order applicable to special circumstances" to the effect that:

No tariff or customer subscription agreement of a telecommunications carrier may prohibit redistribution or resale of Internet service.

SUBSCRIPTION AND AFFIDAVIT

State of Massachusetts
County of Norfolk

Frederick W. Martin, whose address is 50 Village Ave, Dedham MA 02026, being duly affirmed, deposes and says voluntarily and of his own free will:

The above document consisting of sections 1 to 4 and including a statement of facts was entirely written by me and is true to the best of my knowledge and belief.

signed: *Fred W Martin*

Subscribed and affirmed before me this *9th* day of *June* 1997.

(seal)

signed: *Rosemarie Selaras*
title: *Sales & Service Assoc*

My commission expires *3/30 19 2001*

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SERVICE AGREEMENT FOR HIGHWAY 1 CABLE INTERNET ACCESS SERVICE



This Agreement sets forth the terms and conditions under which Continental Online of New England, Inc. ("Continental") will provide Highway 1 Cable Internet Access Service to you,

_____ at your home, _____
(Customer Name) (Customer Address)

1. THE SERVICE.

1.1 Continental will provide you with Highway 1 Cable Internet Access Service ("the Service") from a single computer connection in your home. Continental will provide: one cable outlet for a separate cable connection to your computer; one cable modem; the connection between the modem and your home computer; and certain software. The software will include a single user electronic mail account and a web browser, and if required, TCP/IP software. Continental will provide a single user IP connection through the BBN Planet commercial network. For additional charges, Continental will provide you with certain hardware, including a Network Interface card.

1.2 No representation, warranty, term or condition other than as specifically set forth in this Agreement shall be binding on Continental.

2. GENERAL SUBSCRIBER OBLIGATIONS.

2.1 You are signing this Agreement on behalf of yourself and any person who accesses the Service through your home computer, under your screen name or password or through the cable outlet in your home. You assume responsibility to ensure that all such other users understand this Agreement and comply with its terms.

2.2 You represent and warrant that you are at least 18 years of age. You may, at your discretion permit persons under 18 years of age to use the Service and you acknowledge that you are responsible to provide adult supervision. You acknowledge further that the Service provides full access to the Internet without restriction. The Service is not intended to be used to enable persons under 18 years of age to obtain material that is prohibited by law to be sent or displayed, including material deemed to be indecent or obscene.

2.3 The Service is provided to you at your residence. You may not transfer your subscription or your rights and obligations under this Agreement to any other person or to yourself at a new residence.

3. COMPUTER EQUIPMENT REQUIREMENT.

3.1 You must have, as a minimum, one of the types of computer equipment and software suites listed below installed on your home computer (the "home computer"):

3.1.1 PC EQUIPMENT REQUIRED
Network Interface Compatible

4. PAYMENT TERMS.

4.1 You agree to pay an installation fee and a monthly recurring charge for the Service. The schedule of fees and charges is set forth in the equipment and installation charges attachment which is incorporated into this Agreement and made a part hereof. You agree to pay all applicable federal, state and local fees or taxes.

4.2 Continental reserves the right to change the amount of fees and charges from time to time at its discretion and upon reasonable notice to you.

4.3 Installation fees are due at the time of installation. Monthly charges are payable in advance. Failure to pay all bills within 30 days of billing will cause disconnection and/or imposition of a late fee of not more than 5% on any outstanding amount as a one-time late charge, at Continental's discretion. Continental may charge a reasonable service fee for all returned checks and bank card or charge card chargebacks.

4.4 If you discontinue the Service or are disconnected, you agree to pay a reconnect charge before reconnection.

4.5 You will be responsible for all expenses (including reasonable attorney's fees) incurred by Continental in collecting any unpaid amounts due in accordance with this Agreement.

5. CHARGES FOR ON-LINE SERVICES/ INTERNET TRANSACTIONS.

5.1 Through use of the Service, you may access certain information, products, and services from persons other than Continental for which there is a charge, including certain on-line services such as America Online and CompuServe. YOU AGREE THAT ALL SUCH FEES OR CHARGES FOR ON-LINE SERVICES, PRODUCTS, OR INFORMATION ARE YOUR SOLE RESPONSIBILITY AND NOT THE RESPONSIBILITY OF CONTINENTAL.

5.2 YOU ARE ALSO ADVISED THAT YOU ARE SOLELY RESPONSIBLE FOR PROTECTING THE SECURITY OF YOUR CREDIT CARD INFORMATION FROM UNWANTED OR UNAUTHORIZED CHARGES FOR INTERNET BASED TRANSACTIONS.

6. USER BACK-UP RECOMMENDATION.

6.1 In order to install the Network Interface card, it is necessary to open the home computer. In addition, when

7. INSTALLATION AND ACCESS.

7.1 Continental will schedule one or more installation visits with you. You must be present at your home during installation. Following installation, you will provide Continental with reasonable access to the premises to inspect, repair and maintain Continental's equipment. Upon termination of your purchase of the Service, you will return the equipment or provide Continental with access to your premises to remove it.

8. SERVICE AND PERFORMANCE.

8.1 Continental will make reasonable efforts to assure that the Service is available to you 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of service. If an outage condition is known sufficiently in advance, Continental will attempt to provide you with electronic mail notification.

8.2 The Service provided is an Ethernet-like protocol service over a shared network, and users will contend for bandwidth. Continental will undertake reasonable network management, traffic analysis, operational procedures and user policies that ensure appropriate bandwidth at all times for as many customers as possible.

8.3 The Service should not affect the video programming portions of your cable television service. If you experience problems with your video programming services, contact your local Continental Cablevision office in the usual manner.

9. SUPPORT AND MAINTENANCE.

9.1 Continental will provide customer support which can be accessed by telephone or by electronic mail. Support will be provided for use of the Service via the hardware and software listed in Section 3 above and via the software provided by Continental. Continental does not provide support for the Service when you use other hardware or software. The telephone numbers and electronic mail addresses for support services, as well as hours of operation, are printed in the Customer Guide and are available on line.

9.2 If your use or modification of the software, hardware or equipment supplied by Continental requires a visit to your home for repair or correction, Continental reserves the right to charge you for the visit and labor required to correct the situation. Continental does not undertake to correct or repair software, hardware or equipment which it does not supply.

10. OWNERSHIP AND USE OF EQUIPMENT AND SOFTWARE.

10.1 The cable modem supplied and installed by Continental under this Agreement shall at all times remain the property of Continental and it must be returned to Continental in good condition at the termination of service. You will use reasonable care to avoid damaging it, and will not move, relocate, alter, sell, lease, assign, encumber or otherwise tamper with the

nates upon termination of this Agreement, disconnection or discontinuance of the Service. Upon termination, discontinuance or disconnection, you will promptly destroy all such software and any copy you have made.

11. CUSTOMER USE.

11.1 The Service is a cable programming service for personal use. You agree not to resell or redistribute access to the Service in any manner. The prohibition on resale or redistribution of access includes, but is not limited to the provision of email, FTP and Telnet access. Continental reserves the right to disconnect or reclassify the Service to a commercial grade for failure to comply with any portion of this provision.

11.2 Continental will provide you with an IP connection as a component of the single user electronic mail account. You agree not to alter, modify or tamper with the IP connection or those of any customer on the system. Continental will take back the IP connection upon disconnection, discontinuance or termination of the Service.

11.3 You agree not to use the Service, including but not limited to the equipment and software provided by Continental, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. You agree not to copy, distribute or sublicense any software provided by Continental, except that you may make one copy of each software program for back-up or archival purposes only. Excessive data transfer may interfere with the experience of other users. You agree not to interfere with the use of the equipment or services by other Customers or disrupt the Continental backbone network nodes or network services. Violation of any part of this section is grounds for immediate termination of this Agreement and your continued purchase of the Service, or reclassification to a commercial grade of service, at Continental's discretion.

12. CUSTOMER INFORMATION AND PRIVACY.

12.1 Your privacy interests, including your ability to limit disclosure of certain information to third parties, are safeguarded by the subscriber privacy provisions of the 1984 Cable Act, as amended. Your rights under the Cable Act, and the High Speed Data and Internet Access Service's privacy practices, are described in the Subscriber Privacy Notice, which is attached hereto and is incorporated by reference.

13. LIMITATION OF LIABILITY: NO WARRANTIES.

PLEASE READ THIS SECTION CAREFULLY. IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY, MADE ON BEHALF OF CONTINENTAL ONLINE OF NEW ENGLAND, INC., AND ALL ITS AFFILIATES, INCLUDING WITHOUT LIMITATION CONTINENTAL CABLEVISION, INC. AND CONTINENTAL CABLEVISION OF NEW ENGLAND, INC.

that any data or files sent by or to you will be transmitted in uncorrupted form or within a reasonable period of time.

13.3 No Warranties/Limitation Of Liability.

Continental makes no warranty, express or implied, of merchantability or fitness for a particular purpose, and all equipment, software, and services are supplied AS IS. In no event shall Continental be liable for any direct, indirect or consequential losses or damages arising in any manner out of the installation, maintenance, failure, removal or use of the equipment, software or Service.

13.4 No Liability For Unauthorized Access.

Continental treats private communications on or through its network as strictly confidential and does not access, use, or disclose the contents of private communications, except in limited circumstances referenced at 12.1 above and as permitted by law. However, the cable network is a shared network used by subscribers to video programming and Highway 1 Cable Internet Access Services. Since the network is shared and beyond the network the Internet does not provide security, others may access or monitor your traffic. Continental does not warrant that any data or files sent or received by you over the network, or communications directed to or received from outside of the network, will not be subject to unauthorized access by others or that other users will not gain access to your home computer. Continental has no responsibility and assumes no liability for such acts or occurrences. Please refer to the Customer Guide provided to you or available on line for additional information about the risk of unauthorized access by others and information about confidentiality. Continental makes no representation or warranty that any software installed on the home computer or which you may download from the Internet, on-line service provider, or other information provider does not contain any virus or other damaging or destructive attribute. Continental has no responsibility and assumes no liability for such acts or occurrences. If you choose to run applications from your home computer which permit others to gain access to it, you must take appropriate security measures. Failure to do so may cause immediate termination of your service by Continental. Continental is not responsible for and assumes no liability for any damages resulting from the use of such applications. Continental is not responsible and assumes no liability for damages resulting from others accessing the home computer.

13.5 No Liability For Viruses.

Continental makes no representation or warranty that any software installed on the home computer or which you may download from the Internet, on-line service provider, or other information provider (other than Continental) does not contain any virus or other damaging or destructive attribute.

13.6 No Liability For Content.

While Continental supplies access to the Internet, it is not the publisher of any information provided by others through the Internet. Continental does not review, censor, or monitor and is not in any manner responsible for any programs or content sent or accessed over the Internet or made available by any

inappropriate material and to protect them from disclosing personal or other information, it is not the publisher of this software. Continental is not in any manner responsible for the effectiveness of these blocking and filtering technologies.

14 INFRINGEMENT.

14.1 While Continental believes strongly in copyright law and other laws that protect the rights of persons transmitting communications within and outside of its network, Continental in most instances merely provides carriage of material contained in electronic communications, browser software, and access to networks and facilities not under its control. Continental assumes no liability whatsoever for any losses, claims, damages, expenses, liabilities or costs (including legal fees) arising out of or in connection with any allegation, claim, suit or other proceeding based upon a contention that the use of the equipment or services by you or a third party infringes the copyright, patent, trademark, trade secret or other industrial or intellectual property rights or contractual rights of any third party.

15 TERMINATION.

15.1 You may terminate this Agreement at any time. The cable modem must be returned within 15 days to avoid charges to your credit card.

15.2 Continental does not visit your home upon termination to restore or reconfigure the home computer. Please refer to the Customer Guide for useful information about deinstallation.

BY SIGNING BELOW, I AUTHORIZE INSTALLATION AND ACKNOWLEDGE THAT I HAVE READ AND FULLY UNDERSTAND ALL OF THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT AND THAT I AGREE TO ABIDE BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Customer Acceptance and Authorization to Install:

Signature

Date

Name (Please Print)

Address

7

1997

PM

BROCKTON, MA 024



RECEIVED
 JUN 11 1997

FROM

Microscope Associates, Inc.

50 Village Ave., Dedham, Mass. 02026

A Non-Profit Corporation for Research and Development

TO

Regina M. Keeney, Chief
 FCC Common Carrier Bureau, Rm 500
 1919 M St. NW
 Washington DC 20554