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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

In the Matter of	)	
	)	
GTE Telephone Operating Companies	)	
GTOC Tariff FCC No. 1	)	CC Docket No. 98-79
GTOC Trans. No. 1148	)	
	)	
BellSouth Telecommunications, Inc.,	)	
Tariff FCC No. 1 Access Service	)	CC Docket No. 98-161
BellSouth Trans. No. 476	)	
	)	
Pacific Bell Telephone Company	)	
Pacific Bell Tariff FCC No. 128	)	CC Docket No. 98-103
Pacific Trans. No. 1986	)	
	)	
To: Competitive Pricing Division	)	

OPPOSITION OF HYPERION TELECOMMUNICATIONS, INC.
TO DIRECT CASES OF
GTE, BELLSOUTH, AND PACIFIC BELL

Hyperion Telecommunications, Inc. ("Hyperion") hereby submits its Opposition to the Direct Cases of GTE Telephone Operating Companies ("GTE"), BellSouth Telecommunications, Inc. ("BellSouth"), and Pacific Bell Telephone Company ("Pacific") (collectively, the "ADSL LECs"), which were filed in the above-referenced dockets. The tariffs filed by the ADSL LECs are improper because the ADSL service they provide for is not interstate access, as the ADSL LECs claim; indeed, the service is not interstate service at all, but local service. Thus the tariffs for such service are properly filed at the state, not the federal, level. Moreover, the filing of the tariffs is a transparent attempt to end-run important Commission policies, as well as to

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undermine the ADSL LECs responsibility to pay reciprocal compensation to other carriers for transporting and terminating traffic. For these reasons, the tariff filings must be rejected.

I. ADSL SERVICE TO ISPS IS NOT EXCHANGE ACCESS.

The Commission should reject the ADSL tariffs of Pacific Bell, BellSouth and GTE as defective because the services provided thereunder are not exchange access. Accordingly, the tariffs are not properly filed as "exchange access" tariffs.

Exchange access is defined by the Communications Act as "the offering of access to telephone exchange services or facilities for the purposes of the origination and termination of *telephone toll services*." 47 U.S.C. § 153(16) (emphasis added). Telephone toll service is defined by the Act as "telephone service between stations in different exchange areas for which there is made a separate charge not included in the contracts with subscribers for exchange service." 47 U.S.C. § 153(48).

Thus, in order for the ADSL service provided by Pacific Bell, BellSouth and GTE to constitute exchange access under the Act, the service must be used for the purposes of the origination and termination of telephone toll services. However, the services and facilities that Pacific Bell, BellSouth and GTE propose to provide will connect local exchange end users to ISPs. But the service provided by ISPs is not telephone toll service -- it is not even telecommunications. As the Commission has recently told Congress, ISPs "generally do not provide telecommunications." In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report to Congress*, FCC 98-67 paras. 15, 55 (rel. Apr. 10, 1998).

Instead, ISPs provide information services. *Id.* para. 81 [1] Because ISPs do not provide telecommunications service, they necessarily do not provide telephone toll service, and the service offerings of Pacific Bell, BellSouth, and GTE to ISPs cannot be exchange access as defined by the Act.

Nor would the filings be proper under the Commission's definition of "Access Service" -- services and facilities provided for the origination and termination of any interstate or foreign telecommunications." 47 C.F.R. § 69.2(b). The services and facilities proposed to be provided by Pacific Bell, BellSouth and GTE may be telecommunications, but they terminate with the ISP, and from that point the ISP provides information, not telecommunications, services. No "interstate telecommunications", are being provided at any point, and so the ADSL LECs' proposed ADSL service is not access service under the Commission's definition. Under either the Act or the rules of the Commission, the ADSL services proposed by Pacific Bell, BellSouth and GTE are not exchange access, and these tariffs must be rejected.

II. THE COMMISSION SHOULD REJECT THE TARIFF BECAUSE PERMITTING THE ADSL LECS TO TARIFF THE SERVICE AT THE FEDERAL LEVEL WOULD VIOLATE IMPORTANT COMMISSION POLICIES.

The ADSL LECs' attempts to improperly treat their ADSL services as "exchange access" service for purposes of their tariff filings should also be rejected because they are inconsistent with important Commission policies. In effect, these carriers are attempting an end-run around these policies and this attempt should not be countenanced.

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[1] Information services and telecommunications services are mutually exclusive. *Id.* paras. 13, 39.

Foremost among the policies which these filings attempt to circumvent is the continuing Commission recognition that it is inappropriate to require ISPs to pay interstate access charges. The ADSL LECs attempt to justify this argument by suggesting that the policy is meant to be a narrow, one-time "exemption" for ISPs from charges to which they would otherwise be subject, a sort of regulatory fluke which should not be repeated here. *E.g.*, Pacific Direct Case at 8. In its access charge reform proceeding, the Commission has been explicit that this policy remains sound for several reasons -- and that it is *not* a mere one-time exemption.

> The access charge system contains non-cost based rates and inefficient rate structures, and this Order goes only part of the way to remove rate inefficiencies. Moreover, given the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to IXCs. . . . As commenters point out, many of the characteristics of ISP traffic (such as large numbers of incoming calls to Internet service providers) may be shared by other classes of business customers.

In the Matter of Access Charge Reform, CC Docket No. 96-262, *First Report and Order*, 12 FCC Rcd 15982, para. 345 (1997) *aff'd sub nom Southwestern Bell Tel. Co. v. FCC*, 1998 WL 485387 (8th Cir. 1998) (hereinafter *"Access Reform Order"*). The Commission noted that LECs would be compensated for their costs by selling service to the ISPs under state tariffs, and any failure to be fully compensated for such costs could be remedied by an appropriate appeal to *state* regulators. *Id.* at para. 346. Accordingly, the Commission determined: "ISPs should remain classified as *end-users* for purposes of the access charge system." *Id.* at para. 348 (emphasis added).

As the Commission stated, it had been the Commission's expectation that ISPs would connect their services with end-users by purchasing services from local tariffs -- and so they

have. These services include business lines, dedicated lines, and, most recently, ISDN. All have been tariffed on a local basis. Indeed, the two RBOCs who have now filed interstate DSL tariffs -- Pacific and BellSouth -- have both also filed state tariffs for providing DSL service to end-users. While the ADSL LECs appear to believe that they can force ISPs to purchase under their newly filed interstate tariffs, the policy of the *Access Reform Order* clearly dictates that ISPs should -- as end users -- be permitted to purchase ADSL as a local service from the state tariffs.

Pacific attempts to distinguish its intrastate filing on the ground that it is intended for "work at home" users, who would use the service to connect with their employers' corporate LANs, and access their employers' Intranets and their work computers; according to Pacific Bell, such use should be viewed as intrastate because the "customer's intended use" is purely intrastate in nature. Pacific Direct Case at 2. It is unassailable that that use would in fact be intrastate, whether the employee or the employer were the subscriber. But Pacific ignores the fact that many corporate LANs are connected to the Internet, or to corporate wide area networks (WANs) that include facilities in other states, and that a "work at home" user can typically access these functionalities. Conversely, many ISPs provide localized value-added services in addition to Internet access, such as E-mail accounts, web page hosting, and content. Pacific has, in short, failed to differentiate ISPs from other end-users, or ADSL from other local services such as ISDN or local dedicated connections [2]

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[2] It should be noted that Bell Atlantic, by contrast, expressly markets its locally tariffed ADSL service to end-users for the purpose of connecting to ISPs. *See Bell Atlantic Infospeed DSL: It works on your existing phone line* (visited Sep. 18, 1998) <http://www.bell-atl.com/adsl/more_info/how.html>[attached hereto as Exhibit 1].

The analytical flaws in Pacific's argument are addressed in a subsequent section of this filing. But even before reaching those flaws, it is clear that the acceptance of Pacific's analysis would be dramatically at odds with the long-accepted regulatory framework for dealing with the use by end users, *including* ISPs, of local facilities and services for interconnecting with data networks and the Internet. A tariff proceeding such as this one is hardly the place for such a regulatory revolution, which would in any event be profoundly ill-advised.

It might be different if Pacific, GTE or BellSouth had provided a principled reason for distinguishing between ADSL, on the one hand, and ISDN and dedicated lines on the other, or between ISPs and other end users. But they have not done so. They have simply ignored the Commission's fundamental conclusion in the *Access Reform Order* that ISPs are "end users," and accordingly have failed utterly to show why that same analysis should not apply equally to ADSL.[3]

Other Commission policies have implicitly recognized what a regulatory morass would result from the approach these LECs advocate, especially as regards cost allocation and separations. The ADSL service uses the same local loop for which the end user is now paying

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[3] Twenty-one state public utility commissions have already considered this issue with respect to dial-up traffic and ruled that traffic to ISPs are intrastate calls. *See* Exhibit 2. By contrast, not a single commission has ruled that calls to ISPs are jurisdictionally anything other than local calls. All these states have ruled that ILECs are required to pay reciprocal compensation for such traffic under the terms of the interconnection agreements at issue. The ADSL LECs appear to be trying to undermine these rulings through the subterfuge of their jurisdictional arguments on this tariff filing. This Commission should firmly reject their tactic. If the Commission should decide, notwithstanding the analysis set forth herein, that ADSL is an interstate service, it should explicitly limit this decision to ADSL service and expressly state that it is not altering the twenty-one state decisions or future decisions by other states that hold dial-up traffic to ISPs to be local.

monthly residential or business line charges under a state tariff. Yet the ADSL LECs have not presented a methodology for separating and allocating these costs. The "mix-and-match" rule promulgated by the Commission in its Open Network Architecture (ONA) proceeding recognized that allowing an ESP to mix state and federal BSAs and BSEs could cause a mismatch of revenues and costs, could seriously undermine local policies, and could result in inconsistent terms and conditions resulting from differences between state and federal tariffs. In re Amendments of Part 69, CC Docket No. 89-79, *Notice of Proposed Rulemaking,* 4 FCC Rcd 3983 at paras. 43-47 (1989). But precisely the same problems would arise here. Upon conversion of a particular local loop, the same local loop that today is tariffed at the state level would, if the ADSL LECs had their way, be tariffed simultaneously at the state level (for voice services) and at the federal level (for ADSL). Patently, a mismatch of costs and revenues could occur, local policies (such as avoiding double recovery for the same facility) jeopardized, and inconsistencies arise.

Finally, the ADSL LECs have flouted the Commission's order in its *Advanced Services* rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Memorandum Opinion and Order and Notice of Proposed Rulemaking,* CC Docket No. 98-147, FCC 98-188, (rel August 7, 1998). In that order, at paras. 50-57, the Commission expressly held that ADSL is subject to the unbundling requirements of the Act. Yet the ADSL LECs have not made a showing as to how they will comply with this requirement.

All of these are very good reasons for the Commission to do here as it has done elsewhere -- recognize that services designed to link ISPs to other end-users are best tariffed as

local, intrastate services, just like any other local link between two end users. The Commission should reject these attempts by the LECs to diverge from this wise policy.

It is important to stress that such rejection will *not* delay the availability of ADSL service in the marketplace. As noted above, two of the three ADSL LECs already have state tariffs on file to cover the service. The third -- GTE -- can readily draft and file state tariffs to cover the service and the states have consistently shown their willingness and ability to quickly process such tariff filings. Arguments that federal tariffing is necessary to speed the service to the market are transparently specious.

III. DSL SERVICE IS AN INTRASTATE TELECOMMUNICATIONS SERVICE THAT TERMINATES AT THE ISP.

The tariffs proposed clearly are for an intrastate service. ADSL provides for the use of a local loop that terminates between end users -- one of which is an ISP -- located in the same state. As this Commission noted in the context of reciprocal compensation:

> We define "termination" for purposes of section 251(b)(5) [the reciprocal compensation provision of the 1996 Act] as the switching of traffic that is subject to section 251(b)(5) [e.g. local traffic] at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises.[4]

A call to an ISP using ADSL goes through the end office and is delivered to the ISP -- the called party. It is by the Commission's own definition a local service. The Commission has noted in several instances in the related area of dial-up traffic to ISPs that telecommunication services

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[4] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 para.1040 (August 8, 1996) (hereinafter "*First Report and Order*").

"terminates" at the ISP's local phone number;[5] this is because the service provided by the ISP after the call terminates at the ISP is not *telecommunications* service at all, but information service.

The ADSL LECs assert that an "end-to-end" interstate communication occurs because users are able to access information stored on out-of-state computers. But this ignores the fact that the interstate component is information services, not telecommunications. The cases cited by the ADSL LECs are clearly distinguishable from the situation here. In those cases, the telecommunications component originated in one state and terminated in another. That is not the case here; rather, ADSL provides a telecommunications connection to an end user -- the ISP -- at whose premises the telecommunications connection is terminated

CONCLUSION

The tariffs filed by the ADSL LECs are unlawful and contrary to this Commission's well-established policies. They should be rejected.

Respectfully submitted,

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Dated: September 18, 1998

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[5] *See, e.g., id.*

EXHIBIT 1

Bell Atlantic Infospeed DSL: It works on your existing phone line
(visited Sep. 18, 1998) <http://www.bell-atl.com /adsl/more_info/how.html>

Bell Atlantic

Home

Infospeed DSL

For Your Home

Infospeed DSL Home

What is Infospeed DSL?

Availability

Pricing

Frequently Asked Questions

Press Releases and Links

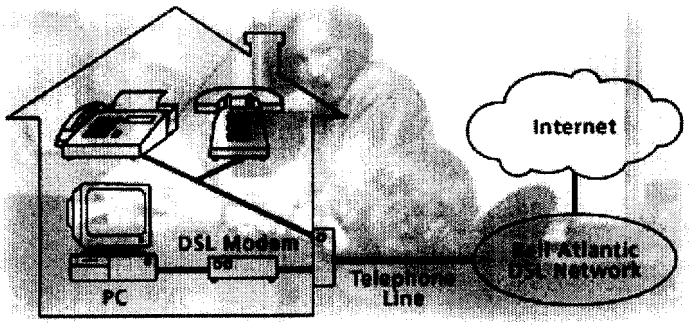
Become a Service Provider

Contact Us

Infospeed DSL: It works on your existing phone line.

Bell Atlantic Infospeed DSL is an Asymmetrical Digital Subscriber Line (ADSL). ADSL is a modem technology that uses bandwidth from a part of your telephone line that doesn't get used during voice communications. This is why the use of your phone or fax does not affect your Infospeed DSL connection.

The line is split at your home, carrying voice to your telephone or fax machine and data to your computer via a DSL modem, also called an ADSL Terminal Unit-Remote (ATU-R). An Ethernet card is required in your computer to interface with the DSL modem. A standard Ethernet cable connects the DSL modem to the Ethernet card.



As the name implies, ADSL is an asymmetric technology. Asymmetric means that incoming and outgoing data travels at two different speeds. Infospeed DSL provides higher bandwidth speeds where you need it most - from the Internet (or office) to your home. Smaller bandwidth is provided upstream (from your home). DSL technology is distance sensitive - so you must reside within a specific distance from your Bell Atlantic Central Office to get it. It is the upstream bandwidth that limits the distance.

Infospeed DSL is available at the following speeds:

- Infospeed 640K, which will provide downstream speeds up to 640 Kbps and upstream speeds up to 90 Kbps.
- Infospeed 1.6M, which will provide downstream speeds up to 1.6 Mbps and upstream speeds up to 90 Kbps.
- Infospeed 7.1M, which will provide downstream speeds up to 7.1 Mbps and upstream speeds up to 680 Kbps.

Even more exciting, we offer special packages that combine Infospeed DSL with our Bell Atlantic.net ISP services, starting as low as $59.95! The packages are as follows:

- Personal Infospeed, which includes Infospeed 640 Kbps and BellAtlantic.net.
- Professional Infospeed, which includes Infospeed 1.6 Mbps and BellAtlantic.net.
- Power Infospeed, which includes Infospeed 7.1 Mbps and BellAtlantic.net.

Availability | What Is Infospeed DSL? | Pricing | FAQ

Homepage For Your Home For Your Business For Government About Us

Privacy

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EXHIBIT 2

LIST OF STATES FINDING CALLS TO ISPS TO BE LOCAL

STATE COMMISSION DECISIONS REGARDING RECIPROCAL COMPENSATION FOR LOCAL TRAFFIC TO INTERNET SERVICE PROVIDERS

1. **ARIZONA:** *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996,* Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 *et al.* (Az. C.C. Oct. 29, 1996) at 7. US West has appealed the decision on other issues to the United States District Court for the District of Arizona, Docket Nos. U-3021-96-448 (consol.).

2. **COLORADO:** *Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc.,* Decision Regarding Petition for Arbitration, Docket No. 96A-287T (Co. PUC Nov. 5, 1996) at 30. The Colorado Public Utilities Commission has since affirmed its rejection of US West's efforts to exclude ISP traffic from reciprocal compensation by rejecting such a provision in a proposed US West tariff. *The Investigation and Suspension of Tariff Sheets Filed by U S West Communications, Inc. With Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling and Resale of Services,* Docket No. 96A-331T, Commission Order, at 8 (Co. PUC July 16, 1997). US West has appealed the arbitration decision to the United States District Court for the District of Colorado, Civil Action Nos. 97-D-152 (consol.)

3. **WASHINGTON:** *Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications, Inc., Pursuant to 47 USC § 252,* Arbitrator's Report and Decision, Docket No. UT-960323 (Wash. Utils. and Transp. Comm. Nov. 8, 1996) at 26; The U.S. District Court for the Western District of Washington upheld the WUTC decision. In its decision, the District Court stated that the WUTC decision not to change the current treatment of ESP calls as eligible for reciprocal compensation is "properly based on FCC regulations which exempt ESP providers from paying access charges." *U S West Communications, Inc. v. MFS Intelenet, Inc. et al.*, Order, No. C97-222WD (W.D. Wash. January 7, 1998) at 8 (Citing 47 C.F.R. Part 69). US West has appealed the district court decision to the United States Court of Appeals for the Ninth Circuit, Case No. CV-97-00222-WLD.

4. **MINNESOTA:** *Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc. and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996,* Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996) at 75-76. US West has appealed the arbitration decision to the United States District Court for the District of Minnesota, Civil Action No. 97-913 MJD/AJB.

5. **OREGON:** *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996,* Commission Decision, Order No. 96-324 (Ore. PUC Dec. 9, 1996) at 13. US West has appealed the arbitration decision to the United States District Court for the District of Oregon, Civil Action No. CV97-857-JE.

6. **NEW YORK:** When WorldCom filed a complaint with the New York Public Service Commission ("NYPSC") after New York Telephone (now owned by Bell Atlantic) began to unilaterally withhold payment of reciprocal compensation for local exchange traffic delivered to ISPs served by WorldCom, the NYPSC ordered New York Telephone to continue to pay reciprocal compensation for such traffic. *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic,* Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y. PSC. July 17, 1997). The Order also instituted a proceeding to consider issues related to Internet access traffic. On December 17, 1997, the New York Commission approved a Recommendation in that proceeding. Public Session of the Public Service Commission, December 17, 1997 (N.Y. PSC) at 14-15. *See also*, Order Closing Proceeding, (NYPSC March 19, 1998).

7. **MARYLAND:** The Maryland Public Service Commission ruled on September 11, 1997 that local exchange traffic to ISPs is eligible for reciprocal compensation. Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. On October 1, 1997, the Commission rejected Bell Atlantic's petition for reconsideration. Bell Atlantic appealed the decision to the Circuit Court for Montgomery County (CA No. 178260); the Circuit Court upheld the Commission decision. A written decision is not available.

8. **CONNECTICUT:** The Connecticut Department of Public Utility Control has also concluded that these calls are subject to reciprocal compensation. *Petition of the Southern New England Telephone Company For a Declaratory Ruling Concerning Internet Service Provider Traffic*, Docket No. 97-05-22 (Conn DPUC Oct. 10, 1997) at 11.

9. **VIRGINIA:** The Virginia State Corporation Commission reached the same conclusion. *Petition of Cox Virginia Telcom, Inc. for Enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers*, Final Order, Case No. PUC970069 (Va. S.C.C. Oct. 24, 1997) at 2; Notice of Appeal Withdrawn.

10. **TEXAS:** On February 5, 1998, the Texas Public Utility Commission reversed an arbitrator's ruling and found that calls made by Southwestern Bell Telephone's end users that terminated to ISPs on competitors' networks are local calls entitled to reciprocal compensation under interconnection agreements. *Complaint and Request for Expedited Ruling of Time Warner Communications*, Order, PUC Docket 18082 (TX PUC, February 27, 1998). As the Commission's Chairman concluded, ". . . I do feel comfortable that (a) we have jurisdiction; that (b) these are local calls that should be compensated accordingly; and that (c) I don't really see any ability or desire on my part to undo a business contract." *Id.*

at 23. The United States District Court for the Western District of Texas affirmed the Commission decision. *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, Case No. MO-98-CA-43, June 22, 1998

11. **WEST VIRGINIA:** The West Virginia Commission also concluded that "calls that originate and are terminated to ISPs in local calling areas are treated as local traffic -- regardless of whether the ISP reformats or retransmits information received over such calls to or from further interstate (or international) destinations." *Petition For Arbitration of Unresolved Issues For the Interconnection Negotiations Between MCI and Bell Atlantic - West Virginia, Inc.*, Order, Case No. 97-1210-T-PC (W.Va PSC Jan. 13, 1998) at 29.

12. **MICHIGAN:** On January 28, 1998, the Michigan Public Service Commission concluded that Ameritech's withholding of reciprocal compensation in Michigan violated its interconnection agreements. *Consolidated Petitions of Brooks Fiber Communications of Michigan, Inc., TCG Detroit, MFS Intelenet of Michigan, Inc, and Brooks Fiber Communications of Michigan, Inc. against Michigan Bell Telephone Company, d/b/a Ameritech Michigan and Request for Immediate Relief,* Order, Case Nos. U-11178, U-11502, U-11522, U-11553 (Mich. PSC Jan. 28, 1998) at 1. The Commission held that FCC precedent, the interconnection agreements "on their face," and Ameritech's conduct and implementation of the interconnection agreements "fully support a conclusion that those agreements require reciprocal compensation for calls to ISPs." *Id.* at 8, 11, 14-15. Ameritech has appealed the Commission decision to the United States District Court for the Western District of Michigan, Case No. 5:98-CV-18.

13. **NORTH CAROLINA:** *In the Matter of Interconnection Agreement Between BellSouth Telecommunications, Inc. and US LEC of North Carolina, LLC,* Order Concerning Reciprocal Compensation for ISP Traffic, Docket No. P-55, Sub 1027 (N.C. Util. Comm. Feb. 26, 1998) at 6. BellSouth has appealed the Commission decision to the United States District Court for the Western District of North Carolina, Civil Action No. 3:98CV170H.

14. **ILLINOIS:** *Teleport Communications Group, Inc. v. Illinois Bell Telephone Company, Ameritech Illinois, et al.*, Docket Nos. 97-0404, 97-0519, 97-0525 (Consol.), Order, (Ill. C.C. Mar. 11, 1998) at 15. The United States District Court for the Northern District of Illinois affirmed the Commission's decision *Illinois Bell Telephone v. WorldCom Technologies, Inc.*, Case No. 98-C-1925, Memorandum Opinion and Order, July 21, 1998.

15. **MISSOURI:** The Missouri Public Service Commission found that calls to ISPs should be treated and compensated as if they are local calls by the parties pending the FCC's final determination of the issue. *In the Matter of the Petition of Birch Telecom of Missouri, Inc. For Arbitration of the Rates, Terms, Conditions, and Related Arrangements for Interconnection with Southwestern Bell Telephone Company,* Arbitration Order, Case No. TO-98-278 (Mo. P.S.C. Apr. 23, 1998) at 8

16. **WISCONSIN:** The Wisconsin Public Service Commission found that calls to an Internet service provider are local traffic - not switched exchange access service - under an

applicable interconnection agreement. *Re: Contractual Dispute About the Terms of an Interconnection Agreement Between Ameritech Wisconsin and TCG-Milwaukee, Inc.* Letter from Lynda L. Dorr, Secretary to the Commission, Public Service Commission of Wisconsin, to Rhonda Johnson and Mike Paulson, dated May 13, 1998. Ameritech has appealed the decision to the United States District Court for the Western District of Wisconsin, Civil Action No. 98 C 0366 C.

17. **OKLAHOMA:** *In the Matter of Brooks Fiber Communications of Oklahoma, Inc. et al. For An Order Concerning Traffic Terminating To Internet Service Providers and Enforcing Provisions of the Interconnection Agreement With Southwestern Bell Telephone Company,* Case No. PUD 970000548, Order No. 423626 (June 3, 1998).

18. **PENNSYLVANIA:** *Petition for Declaratory Order of TCG Delaware Valley, Inc.*, Docket No. P-00971256, (June 16, 1998).

19. **TENNESSEE:** *Petition of Brooks Fiber to Enforce Interconnection Agreement and for Emergency Relief*, Docket No. 98-00118, voted to Affirm Hearing Officer, June 2, 1998.

20. **FLORIDA:** *Complaint of World[Com] Technologies, Inc. Against BellSouth Telecommunications, Inc., for Breach of Terms of Florida Partial Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 and Request for Relief,* Docket No. 971478-TP, Memorandum, July 23, 1998.

21. **OHIO:** *Complaint of ICG Telecom Group, Inc., v. Ameritech Ohio Regarding the Payment of Reciprocal Compensation,* Case No. 97-1557-TP-CSS, Opinion and Order (PUCO, Aug. 27, 1998).

CERTIFICATE OF SERVICE

I, Patrick J. Whittle, hereby certify that on September 18, 1998 a copy of the foregoing "OPPOSITION OF HYPERION TELECOMMUNICATIONS, INC. TO DIRECT CASES OF GTE, BELLSOUTH AND PACIFIC BELL." was sent by First Class United States Mail, postage prepaid, to the following:

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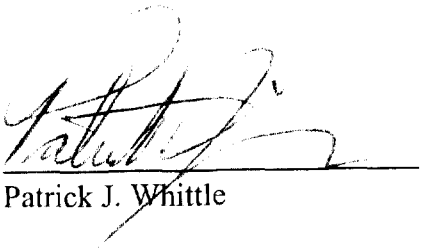

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