

ORIGINAL  
RECEIVED

MAR 1 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Telephone Operating Companies	)	CC Docket No. 98-79
GTOC Tariff FCC No. 1	)	
GTOC Transmittal No. 1148	)	
	)	

**COMMENTS OF BELL ATLANTIC<sup>1</sup> IN SUPPORT OF MOTION TO STRIKE**

As GTE's motion demonstrates, the reply comments filed by Hyperion that purport to show that Internet traffic constitutes less than ten percent of the total traffic over GTE's ADSL service are procedurally and substantively defective. In addition, the study is based upon the faulty "two-call" premise that is flatly inconsistent with a long line of Commission precedent and which the Commission rejected anew in this very proceeding.

The methodological flaws which GTE identified are fully sufficient for the Commission to reject Hyperion's reply and its study. But even more fundamentally, the basic premise of the study – that information from a website becomes intrastate and intraLATA once it is "cached" or stored at an Internet Service Provider's ("ISP's") server – is flatly inconsistent with long-standing precedent.

---

<sup>1</sup> Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

No. of Copies rec'd  
List A B C D E

074

Hyperion assumes that the customer's total Internet service consists of two calls – one from the end user to the ISP to communicate with the cache server and the other from the ISP to the distant website to retrieve the data. The Commission, however, flatly rejected this “two-call” argument when it found that Internet access through GTE's ADSL tariff is jurisdictionally interstate. As the Commission found, “the communications at issue here do not terminate at the ISP's local server.” *Memorandum Opinion and Order*, 14 Comm. Reg. (P & F) 279 (1998) (“GTE ADSL Order”). Instead, “the Commission analyzes the totality of the communication when determining the jurisdictional nature of a communication.” *Id.* at ¶ 20. The Commission recently reiterated this finding that Internet communications “do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a [sic] Internet website that is often located in another state.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 99-68, FCC 99-38, ¶ 12 (rel. Feb. 26, 1999) (“Reciprocal Compensation Order”).

Here, the end user obtains information from a distant web site, then interacts with that information for a period of time before either terminating the call or accessing a different web site. Although some of that information may be temporarily “cached” at a local site, that does not change the nature of the end-to-end communication. As Bell Atlantic demonstrated earlier in this proceeding, and the Commission confirmed, the communication remains interstate throughout the period in which the user interacts with the information, regardless of where it is temporarily cached. GTE ADSL Order at ¶¶ 19-25; Comments of Bell Atlantic on Direct Cases at 5-7 (filed Sept. 18, 1998). This

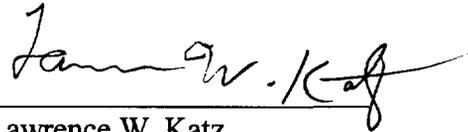
finding was based on an unbroken line of cases over more than a decade that uniformly rejected the very “two-call” argument that Hyperion propounds here, most recently one business day ago in the Reciprocal Compensation Order at ¶ 13 (“Thus, we analyze ISP traffic for jurisdictional purposes as a continuous transmission from the end user to a distant Internet site”).<sup>2</sup> Instead, as the Commission has found, an ISP is merely an intermediary that “connects the end user to an Internet backbone provider that carries traffic to and from other Internet host sites.” *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, n.291 (1996). Therefore, “ISP traffic [is] a continuous transmission from the end user to a distant Internet site.” *GTE ADSL Order* at ¶ 20.

---

<sup>2</sup> See, also, *Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 FCC Rcd 1619, ¶ 9 (1992) (a call originating in another state and stored in a voice mail processor retains its interstate character despite the storage and retrieval from a telephone within the state or LATA); *Southwestern Bell Tel. Co.*, 3 FCC Rcd 2339, ¶ 28 (1988) (an 800 service call does not become two calls when it is intercepted for credit card verification); *Long Distance/USA, Inc. v. Bell Tel. Co. of Pa.*, 10 FCC Rcd 1634, ¶ 15 (1995) (a call that is suspended while the caller dials a second number “convey[s] a single communication from the caller to the called party”).

Hyperion's study, based upon the defective "two-call" theory that the Commission has frequently and uniformly rejected for the past decade, including in the order here, must be rejected for the same reason.

Respectfully submitted,



Lawrence W. Katz  
1320 North Court House Road  
8th Floor  
Arlington, Virginia 22201  
(703) 974-4862

Attorney for the Bell Atlantic  
telephone companies

Michael E. Glover  
Of Counsel

March 1, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this First day of March, 1999, copies of the foregoing "Comments of Bell Atlantic in Support of Motion to Strike" were sent by first class mail, postage prepaid, to the parties on the attached list.



\_\_\_\_\_  
Jennifer L. Hoh

\* Via hand delivery.

Larry Strickling\*  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 500  
Washington, DC 20554

ITS, Inc.\*  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20036

Yog R. Varma\*  
Deputy Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 500  
Washington, DC 20554

Jane Jackson\*  
Common Carrier Bureau  
Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, NW  
Room 518  
Washington, DC 20554

Tamara Preiss\*  
Common Carrier Bureau  
Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, NW  
Room 518  
Washington, DC 20554

R. Michael Senkowski  
Gregory J. Vogt  
Bryan N. Tramont  
Attorneys for GTE  
WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, D.C. 20006

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge  
HQE03J27  
Irving, Texas 75038

Janet S. Livengood  
Hyperion Telecommunications, Inc.  
DDI Plaza Two  
500 Thomas Street  
Suite 400  
Bridgeville, PA 15017

Dana Frix  
Michael W. Fleming  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, DC 20007