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December 17, 1999

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SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building - Filing Room (B-18)
Post Office Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition for Approval of an Interconnection Agreement Between
GTE North Incorporated and Fibernet Telecommunications of
Pennsylvania, LLC, under Section 252(e) of the Telecommunications Act
of 1996

Dear Mr. McNulty:

In its December 3, 1999, Order in the above-captioned matter, the Commission approved the adoption by Fibernet Telecommunications of Pennsylvania, LLC, of the interconnection agreement between GTE North Incorporated and Hyperion Susquehanna Telecommunications approved by the Commission at Docket No. A-310547F0002. The Commission also ordered that a true and correct copy of the interconnection agreement be filed with the Commission within thirty (30) days of the date of entry of its Order.

Enclosed you will find a copy of the subject interconnection agreement to be filed, pursuant to the Commission's Order.

If you have any questions, please feel free to contact me.

Very truly yours,

Craig R. Burgraff
Craig R. Burgraff

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enclosures

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INTERCONNECTION, RESALE AND UNBUNDLING AGREEMENT

BETWEEN

GTE NORTH, INCORPORATED

AND

HYPERION SUSQUEHANNA TELECOMMUNICATIONS

(PENNSYLVANIA)

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APPENDIX 42A GTE TERMS

APPENDIX 42B CLEC - PRIME TERMS

This Interconnection, Resale and Unbundling Agreement (the "Agreement"), is made effective as of _____, 199__, by and between GTE North, Incorporated, with its address for purposes of this Agreement at 212 Locust Street, Harrisburg Pennsylvania 17108 ("GTE"), and Hyperion Susquehanna Telecommunications, a general partnership of which Hyperion Telecommunications of Pennsylvania, Inc., a Delaware corporation, and Susquehanna Fiber Systems, Inc., a Delaware corporation, are the general partners, ("Hyperion") in its capacity as a certified provider of local dial-tone service, with its address for this Agreement at Boyce Plaza III, 2570 Boyce Plaza Road, Pittsburgh, Pennsylvania 15241 (GTE and Hyperion being referred to collectively as the "Parties" and individually as a "Party"). This Agreement covers services in the state of Pennsylvania (the "State").

WHEREAS, interconnection between competing Local Exchange Carriers ("LECs") is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network; and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon points of interconnection; and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties;

WHEREAS, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations on LECs with respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights-of-way and, in certain cases, the offering of certain unbundled network elements and physical collocation of equipment in LEC premises; and

WHEREAS, GTE is entering, under protest, into certain aspects of this Agreement that incorporate adverse results from the arbitrated agreements approved by the Commission in this state and is doing so in order to avoid the expense of arbitration while at the same time preserving its legal positions, rights and remedies; and Hyperion is entering, under protest, into certain aspects of this Agreement in order to enter into an Interconnection Agreement with GTE and to avoid the expense of arbitration;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GTE and Hyperion hereby covenant and agree as follows:

ARTICLE I SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end user customers, and reciprocal access to their poles, ducts, conduits and rights-of-way. This

Agreement also governs the purchase by Hyperion of certain telecommunications services provided by GTE in its franchise areas for resale by Hyperion, the purchase by Hyperion of certain unbundled network elements from GTE, and the terms and conditions of the collocation of certain equipment of Hyperion in the premises of GTE. This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. This Agreement will be submitted to the Pennsylvania Public Utilities Commission (the "Commission") for approval. The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement. GTE's execution of this Agreement is not a concession or waiver in any manner concerning its position that certain of the rates, terms and conditions contained herein are unlawful, illegal and improper.

The services and facilities to be provided to Hyperion by GTE in satisfaction of this Agreement may be provided pursuant to GTE tariffs and then current practices. Should GTE file a tariff which becomes effective reflecting a Commission order or directive, judicial review, or other governmental action instituting rates, terms or conditions, which if applied to the scope of this Agreement would modify a provision of this Agreement in one or more material respects, then the order or tariff shall modify this Agreement as of the effective date of the order or tariff, and the parties will work together in good faith to incorporate such modifications in the rates, terms and conditions of this Agreement. Notwithstanding any provision in this Agreement, GTE's right to develop and to price retail services in its sole and exclusive discretion (including the filing of tariffs associated with retail services) shall be unrestricted by this Agreement. GTE and Hyperion shall use their best efforts to obtain approval of this contract by any regulatory body having jurisdiction over this Agreement.

ARTICLE II DEFINITIONS

1. General Definitions.

Except as otherwise specified herein, the following definitions shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in this Article II and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.

- 1.1 An "Affiliate" of a Party means a person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party. For purposes of this definition, the term "own" means to have a majority ownership interest in, or have voting control of a majority of the ownership interests in, such corporation or other legal entity.
- 1.2 "Automatic Number Identification" or "ANI" refers to the number transmitted through the network identifying the calling party.
- 1.3 "Bellcore" means an organization owned jointly by the Bell regional holding companies and that may in the future be owned partially or totally by other persons, that conducts research and development projects for its owners, including development of new telecommunications services. Bellcore also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.
- 1.4 "Bill-and-Keep Arrangement" means a compensation arrangement whereby the Parties do not render bills to each other for the termination of traffic specified in this Agreement.
- 1.5 "Business Day" shall mean Monday through Friday, except for holidays on which the U.S. mail is not delivered.
- 1.6 "Central Office Switch" means a switch used to provide telecommunications services including (i) "End Office Switches" which are Class 5 switches from which end user Exchange Services are directly connected and offered, and (ii) "Tandem Office Switches" which are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).
- 1.7 "CLLI Codes" means Common Language Location Identifier Codes.
- 1.8 "Collocation" has the meaning as set forth in Article IX of this Agreement.

- 1.9 "Common Channel Signaling" or "CCS" means a high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries addressed signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.
- 1.10 "Competitive Local Exchange Carrier" or "CLEC" means any company or person authorized to provide local exchange services in competition with an ILEC.
- 1.11 "Compliance" as it pertains to environmental provisions. Environmental and safety laws and regulations are based upon a federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety compliance program may include review of applicable laws/regulations, development of written procedures, training of employees and auditing.
- 1.12 "Customer" may mean GTE or CLEC depending on the context and which Party is receiving the service from the other Party.
- 1.13 "DS-1" is a digital signal rate of 1.544 Mbps.
- 1.14 "DS-3" is a digital signal rate of 44.736 Mbps.
- 1.15 "Electronic File Transfer" refers to a system or process which utilizes an electronic format and protocol to send/receive data files.
- 1.16 "Exchange Message Record" or "EMR" means the standard used for exchange of telecommunications message information among LECs for billable, unbillable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bellcore document that defines industry standards for exchange message records.
- 1.17 "Exchange Service" refers to all basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network ("PSTN"), and which enable such end users to place or receive calls to all other stations on the PSTN.
- 1.18 "EIS" or "Expanded Interconnection Service" means a service that provides interconnecting carriers with the capability to terminate basic fiber optic transmission facilities, including optical terminating equipment and multiplexers, at GTE's wire centers and access tandems and interconnect those facilities with the facilities of GTE. Microwave is available on a case-by-case basis where feasible.
- 1.19 "FCC" means the Federal Communications Commission.

- 1.20 "Facility" All buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same persons or person.
- 1.21 "Generator" Under Resource Conservation Recovery Act (RCRA), the person whose act produces a hazardous waste (40 CFR 261) or whose act first causes a hazardous waste to become subject to regulation. The generator is legally responsible for the proper management and disposal of hazardous wastes in accordance with regulations.
- 1.22 "Guide" means the GTE Customer Guide for CLEC Establishment of Services - Resale and Unbundling, which contains GTE's operating procedures for ordering, provisioning, trouble reporting and repair for resold services and unbundled elements. A copy of the Guide has been provided to Hyperion.
- 1.23 "Hazard Communications (Hazcom)" Under 29 CFR 1910.1200, employers must develop, implement and maintain a written hazard communication program which must include a system for labels, Material Safety Data Sheets (MSDS) and employee information and training for employees working with hazardous chemicals.
- 1.24 "Hazardous Chemical" As defined in the U.S. Occupational Safety and Health (OSHA) hazard communication standard (29 CFR 1910.1200), it is any chemical which is a health hazard or physical hazard.
- 1.25 "Hazardous Waste" As described in RCRA, a solid waste(s) which may cause, or significantly contribute to an increase in mortality or illness or pose a substantial hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed because of its quantity, concentration or physical or chemical characteristics.
- 1.26 "Imminent Danger" As described in the Occupational Safety and Health Act and expanded for environmental matters, any conditions or practices at a facility which are such that a danger exists which could reasonably be expected to cause death or serious harm or significant damage to the environment or natural resources.
- 1.27 "Incumbent Local Exchange Carrier" or "ILEC" means any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. 69.601(b) of the FCC's regulations.
- 1.28 "Interconnection" means the physical connection of separate pieces of equipment, transmission facilities, etc., within, between and among networks, for the transmission and routing of Exchange Service and Exchange Access. The architecture of interconnection may include collocation and/or mid-span meet arrangements.

- 1.29 "Interconnection Point" or "IP" means the physical point on the network where the two parties interconnect. The "IP" is the demarcation point between ownership of the transmission facility.
- 1.30 "IXC" or "Interexchange Carrier" means a telecommunications service provider authorized by the FCC to provide interstate long distance communications services between LATAs and are authorized by the State to provide long distance communications services.
- 1.31 "ISDN" or "Integrated Services Digital Network" means a switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data.
- 1.32 "ISUP" means a part of the SS7 protocol that defines call setup messages and call takedown messages.
- 1.33 "Line Side" refers to an end office switch connection that has been programmed to treat the circuit as a local line connected to an ordinary telephone station set. Line side connections offer only those transmission and signaling features appropriate for a connection between an end office and an ordinary telephone set.
- 1.34 "Local Exchange Carrier" or "LEC" means any company certified by the Commission to provide local exchange telecommunications service. This includes the Parties to this Agreement.
- 1.35 "Local Exchange Routing Guide" or "LERG" means the Bellcore reference customarily used to identify NPA-NXX routing and homing information, as well as network element and equipment designation.
- 1.36 "Local Traffic" means traffic that is originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS."
- 1.37 "MDF" or "Main Distribution Frame" means the distribution frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.
- 1.38 "Meet-Point Billing" or "MPB" refers to an arrangement whereby two LECs jointly provide the transport element of a switched access service to one of the LEC's end office switches, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective access tariffs.

- 1.39 "MECAB" refers to the *Multiple Exchange Carrier Access Billing* ("MECAB") document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs, or by one LEC in two or more states within a single LATA.
- 1.40 "MECOD" refers to the *Multiple Exchange Carriers Ordering and Design* ("MECOD") *Guidelines for Access Services - Industry Support Interface*, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECOD document, published by Bellcore as Special Report SR-STS-002643, establish methods for processing orders for access service which is to be provided by two or more LECs.
- 1.41 "Mid-Span Fiber Meet" means an Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed-upon POI.
- 1.42 "NANP" means the "North American Numbering Plan", the system of telephone numbering employed in the United States, Canada, and the Caribbean countries that employ NPA 809.
- 1.43 "Network Element" has the meaning as set forth in Article VI of this Agreement.
- 1.44 "NID" or "Network Interface Device" means the point of demarcation between the end user's inside wiring and GTE's facilities.
- 1.45 "Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. This is the three digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas. 800, 900, 700, and 888 are examples of Non-Geographic NPAs.
- 1.46 "NXX", "NXX Code", "Central Office Code" or "CO Code" is the three digit switch entity indicator which is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers. Historically, entire NXX code blocks have been assigned to specific individual local exchange end office switches.

- 1.47 "Owner and Operator" As used in OSHA regulations, owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building or facility. As used in the Resource Conservation and Recovery Act (RCRA), operator means the person responsible for the overall (or part of the) operations of a facility.
- 1.48 "PQI" means Point of Interconnection.
- 1.49 "Pole Attachment" has the meaning as set forth in Article X and Appendix I of this Agreement.
- 1.50 "Provider" means GTE and "Customer" means Hyperion with respect to those services performed by GTE pursuant to Article IV and any services for resale or unbundled network elements provided by GTE pursuant to Articles V and VI. Hyperion shall be referred to as Provider and GTE shall be referred to as Customer with respect to those services performed by Hyperion pursuant to Article IV.
- 1.51 "PSAP" means Public Safety Answering Points.
- 1.52 "Rate Center" means the specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX Codes that have been assigned to a LEC for its provision of Exchange Services. The geographic point is identified by a specific V&H coordinate that is used to calculate distance-sensitive end user traffic to/from the particular NPA-NXXs associated with the specific Rate Center.
- 1.53 "Right-of-way" or "ROW" has the same meaning as set forth in Appendices I and J of this Agreement.
- 1.54 "Routing Point" denotes a location that a LEC has designated on its network as the homing (routing) point for traffic that terminates to Exchange Services provided by the LEC that bear a certain NPA-NXX designation. The Routing Point is used to calculate airline mileage for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Bellcore Practice BR795-100-100, the Routing Point may be an end office location, or a "LEC Consortium Point of Interconnection." *The Routing Point must be in the same LATA as the associated NPA-NXX.*
- 1.55 "Service Control Point" or "SCP" is the node in the signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from the SSP, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.
- 1.56 "Service Switching Point" or "SSP" means a Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific customer services.

- 1.57 "Signaling Point" or "SP" means a node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.
- 1.58 "Signaling System 7" or "SS7" means the signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute ("ANSI") standards.
- 1.59 "Signal Transfer Point" or "STP" means a packet switch in the CCS network that is used to route signaling messages among SSPs, SCPs and other STPs in order to set up calls and to query databases for advanced services. GTE's network includes mated pairs of local and regional STPs. STPs are provided in pairs for redundancy. GTE STPs conform to ANSI T1.111-8 standards.
- 1.60 "Spill or Release" As described under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), it includes, but is not limited to: spilling, leaking, dumping or disposing into the environment of any hazardous chemical, extremely hazardous substance or CERCLA hazardous substance.
- 1.61 "Subsidiary" of a Party means a corporation or other legal entity that is majority owned by such Party.
- 1.62 "Synchronous Optical Network" or "SONET" means synchronous electrical ("STS") or optical channel ("OC") connections between LECs.
- 1.63 "Switched Access Service" means the offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service customers in a given area pursuant to a switched access tariff. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 800 access and 900 access services.
- 1.64 "Trunk Side" refers to a central office switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to a private branch exchange ("PBX") or another central office switch. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.
- 1.65 "Vertical Features" (including "CLASS Features") means vertical services and switch functionalities provided by GTE, including: Automatic Call Back; Automatic Recall; Call Forwarding Busy Line/Don't Answer; Call Forwarding Don't Answer; Call Forwarding Variable; Call Forwarding - Busy Line; Call Trace; Call Waiting; Call Number Delivery Blocking Per Call; Calling Number Blocking Per Line; Cancel Call Waiting; Distinctive Ringing/Call Waiting; Incoming Call Line Identification Delivery; Selective Call Forward; Selective Call Rejection; Speed Calling; and Three Way Calling/Call Transfer.

1.66 "Wire Center" means a building or space within a building that serves as an aggregation point on a LEC's network, where transmission facilities and circuits are connected or switched.

ARTICLE III
GENERAL PROVISIONS

1. Scope of General Provisions. Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or ix shall control, these General Provisions apply to all Articles and ices of this Agreement.

2. Term and Termination.
 - 2.1 Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be two (2) years from the effective date referenced in the first paragraph of this Agreement and shall continue in effect for consecutive one (1) year terms until either Party gives the other Party at least ninety (90) calendar days' written notice of termination, which termination shall be effective at the end of the then-current term.

 - 2.2 Post-Termination Arrangements. Except in the case of termination as a result of either Party's default or a termination upon sale, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue without interruption under (a) a new arrangement voluntarily executed by the Parties; (b) standard terms and conditions approved and made generally effective by the Commission, if any; or (c) tariff terms and conditions made generally available to all competitive local exchange carriers.

 - 2.3 Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; *provided however*, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof. Default is defined to include:
 - (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

 - (b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation any of the material terms or conditions of this Agreement.

 - 2.4 Termination Upon Sale. Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof of such Party if such Party sells or otherwise transfers the area or portion thereof. The Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.

- 2.5 Liability Upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.
3. Amendments. Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.
4. Assignment. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.
5. Authority. Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
6. Responsibility for Payment. All charges for Services provided under this Agreement will be billed to Hyperion, including all applicable taxes and surcharges, as well as the End User Common Line (EUCL) Charge from GTE. Hyperion is responsible for payment of charges billed regardless of any billing arrangements or situation between Hyperion and its end user customer.
7. Billing and Payment.
- 7.1 Dispute. If Customer disputes a billing statement, Customer shall notify Provider in writing regarding the nature and the basis of the dispute within thirty (30) calendar days of the statement date or the dispute shall be waived. Provider and Customer shall diligently work toward resolution of all billing issues.
- 7.2 Late Payment Charge. If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider may charge, and Customer agrees to pay, interest on the past due balance at a rate equal to the lesser of one and one-half percent (1½%) per month or the maximum nonusurious rate of interest under applicable law. Late payment charges shall be included on the next statement.
- 7.3 Due Date. Payment is due thirty (30) calendar days from the bill date or twenty (20) calendar days from receipt of bill whichever is later.

- 7.4 Audit Rights. Hyperion shall have the right to audit bills rendered by GTE pursuant to this Agreement, verifying the accuracy of items, including but not limited to, the services being provided on a wholesale basis pursuant to this Agreement, usage recording and provisioning, and nonrecurring charges on terms agreed to by the Parties.
8. Taxes. Provider shall charge and collect from Customer, and Customer agrees to pay to Provider, appropriate federal, state, and local taxes, except to the extent Customer notifies Provider and provides to Provider appropriate documentation that Customer qualifies for a full or partial exemption.
9. Binding Effect. This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.
10. Compliance with Laws and Regulations. Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.
11. Confidential Information.
- 11.1 Identification. Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within twenty (20) calendar days after oral or visual disclosure.

Notwithstanding the foregoing, all orders for Services or network elements placed by Hyperion pursuant to this Agreement, and information that would constitute customer proprietary network information of Hyperion end user customers pursuant to the Act and the rules and regulations of the FCC, as well as recorded usage information with respect to Hyperion end users, whether disclosed by Hyperion to GTE or otherwise acquired by GTE in the course of its performance under this Agreement, and where GTE is the NANP Number Plan Administrator, Hyperion information submitted to GTE in connection with such responsibilities shall be deemed Confidential Information of Hyperion for all purposes under this Agreement whether or not specifically marked or designated as confidential or proprietary.

- 11.2 Handling. In order to protect such Confidential Information from improper disclosure, each Party agrees:

(a) That all Confidential Information shall be and shall remain the exclusive property of the source;

(b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement;

(c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;

(d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source;

(e) To return promptly any copies of such Confidential Information to the source at its request; and

(f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

11.3 Exceptions. These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.

11.4 Survival. The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

12. Consent. Where consent, approval, or mutual agreement is required of a Party, it shall not be unreasonably withheld or delayed.

13. Cooperation on Fraud Minimization. Hyperion assumes responsibility for all fraud associated with its end user customers and accounts. GTE shall have no responsibility, is not required to investigate and is not required to make any adjustments to Hyperion's account in cases of fraud. The Parties agree that they shall cooperate with one another to resolve cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

14. Dispute Resolution.

- 14.1 Alternative to Litigation. Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 14.2 Negotiations. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.
- 14.3 Arbitration. If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in a mutually agreed upon location. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. In determining the award, the arbitrator will be guided by principles of law and equity as applied to the facts found at the Arbitration Hearing. The arbitrator is not authorized to award punitive damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon

the award rendered by the arbitrator may be entered in any court having jurisdiction.

- 14.4 Expedited Arbitration Procedures. If the issue to be resolved through the negotiations referenced in Section 14.2 directly and materially affects service to either Party's end user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).
- 14.5 Costs. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.
- 14.6 Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations (including making payments in accordance with Article VIII, Section 4) in accordance with this Agreement.
15. Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
16. Expenses. Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
17. Force Majeure. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered by reason of fire, flood, earthquake or likes acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); *provided* however, that the Party so affected shall use

diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

18. Good Faith Performance. In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be unreasonably delayed, withheld or conditioned.
19. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the state where the Services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.
20. Headings. The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.
21. Independent Contractor Relationship. The persons provided by each Party will be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.
22. Law Enforcement Interface.
 - 22.1 Except to the extent not available in connection with GTE's operation of its own business, GTE shall provide seven day a week/twenty-four hour a day assistance to law enforcement persons for emergency traps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services, including, without limitation, call traces requested by Hyperion.
 - 22.2 GTE agrees to work jointly with Hyperion in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for Hyperion Customers will be billed to Hyperion.
 - 22.3 GTE will, in non emergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc. is a Hyperion Customer and shall refer them to Hyperion.

23. Liability and Indemnity.

- 23.1 Indemnification. Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.
- 23.2 End User and Content-Related Claims. Customer agrees to release, indemnify, defend, and hold harmless Provider, its affiliates, and any third-party provider or operator of facilities involved in the provision of Services, unbundled network elements or facilities under this Agreement (collectively, the "Indemnified Parties") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by Customer's end users against an Indemnified Party arising from Services, unbundled network elements or facilities. Customer further agrees to release, indemnify, defend, and hold harmless the Indemnified Parties from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by Customer or Customer's end users, or any other act or omission of Customer or Customer's end users. The provisions of this section 23.2 shall not exculpate the Indemnified Party from judgment for liability arising out of its willful misconduct.
- 23.3 DISCLAIMER. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, UNBUNDLED NETWORK ELEMENTS OR FACILITIES

PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

- 23.4 Limitation of Liability. Provider's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the pro rata portion of the monthly charges for the Services, Unbundled Network Elements or Facilities for the time period during which the Services, Unbundled Network Elements or Facilities provided pursuant to this Agreement are inoperative, not to exceed in total Provider's monthly charge to Customer. Under no circumstance shall Provider be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, the Parties recognize that Provider may, from time to time, provide advice, make recommendations, or supply other analysis related to the Services, unbundled network elements or facilities described in this Agreement, and, while Provider shall use diligent efforts in this regard, Customer acknowledges and agrees that this limitation of liability shall apply to provision of such advice, recommendations, and analysis.
- 23.5 Intellectual Property. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including but not limited to software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.
24. Multiple Counterparts. This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.
25. No Offer. Submission of this Agreement for examination or signature does not constitute an offer by Provider for the provision of the products or services described herein. This Agreement will be effective only upon execution and

delivery by both Parties and approval by the Commission in accordance with Section 252 of the Act.

26. No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.
27. Notices. Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to GTE: GTE North, Incorporated
 Attention: Regulatory/Governmental Affairs Director
 212 Locust Street
 Suite 600
 Harrisburg, PA 17108
 Facsimile number: (717) 234-1456

If to Hyperion: Hyperion Susquehanna Telecommunications
 Attention: David Martin
 Boyce Plaza III
 2570 Boyce Plaza Road
 Pittsburgh, PA 15241
 Facsimile number: (412) 221-6642

28. Protection.
- 28.1 Impairment of Service. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").
- 28.2 Resolution. If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature

and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

29. Publicity. Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of services, unbundled network elements or facilities pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both GTE and Hyperion.
30. Regulatory Agency Control. This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications Commission and/or the State Commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency. Notwithstanding the date set forth in the first paragraph of this Agreement, if this Agreement is subject to advance approval of a regulatory agency, this Agreement shall not become effective until five (5) Business Days after receipt by the Parties of written notice of such approval. Such date (i.e., five Business Days after the Parties receive the written notice of approval) shall become the "effective date" of this Agreement for all purposes.
31. Changes in Legal Requirements. GTE and Hyperion further agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time the Agreement was produced. Any modifications to those requirements will be deemed to automatically supersede any terms and conditions of this Agreement.
32. Regulatory Matters. Each Party shall be responsible for obtaining and keeping in effect all their own FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. Hyperion shall reasonably cooperate with GTE in obtaining and maintaining any required approvals for which GTE is responsible, and GTE shall reasonably cooperate with Hyperion in obtaining and maintaining any required approvals for which Hyperion is responsible.
33. Rule of Construction. No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.
34. Section References. Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.
35. Severability. If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement

shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

36. Subcontractors. Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement.
37. Subsequent Law. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline.
38. Taxes. Any state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes, except to the extent that the obligated Party notifies the collecting Party and provides to the collecting Party appropriate documentation that qualifies the obligated Party for a full or partial exemption. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the other Party.
39. Trademarks and Trade Names. Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever.
40. Waiver. The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

41. Environmental Responsibility.

- 41.1 GTE and Hyperion agree to comply with applicable federal, state and local environmental and safety laws and regulations including U.S. Environmental Protection Agency (EPA) regulations issued under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Superfund Amendments and Reauthorization Act and the Toxic Substances Control Act and OSHA regulations issued under the Occupational Safety and Health Act of 1970. Each Party has the responsibility to notify the other if compliance inspections occur and/or citations are issued that impact any aspect of this Agreement such as occurring on a LEC facility or involving Hyperion potential employee exposure.
- 41.2 GTE and Hyperion shall provide notice of known and recognized physical hazards or hazardous chemicals that must include providing Material Safety Data Sheets (MSDSs) for materials existing on site or brought on site to the facility. Each Party is required to provide specific notice for potential imminent danger conditions which could include, but is not limited to, a defective utility pole or significant petroleum contamination in a manhole.
- 41.3 GTE will make available additional environmental control or safety procedures for Hyperion to review and follow when working at a GTE facility. Providing these procedures, beyond government regulatory compliance requirements, is the decision of GTE. These practices/procedures will represent the regular work practices required to be followed by the employees and contractors of GTE for safety and environmental protection.
- 41.4 Any materials brought, used or remaining at the facility by Hyperion are owned by Hyperion. Hyperion will indemnify GTE for these materials. No substantial new safety or environmental hazards can be created or new hazardous materials can be used at a GTE facility. Hyperion must demonstrate adequate emergency response capabilities for its materials used or remaining at the GTE facility.
- 41.5 When third party contamination is discovered at a GTE facility, the Party uncovering the condition must notify the proper safety or environmental authority, if required under applicable laws or regulations. Hyperion must also notify GTE of third party contamination it discovers at GTE facilities. The cost causer (requiring access) will become the generator, as owner or operator, of any waste materials such as petroleum contaminated water, sewage or manhole sediment.
- 41.6 Hyperion should obtain and use its own environmental permits, if necessary. If GTE's permit or EPA identification number must be used, Hyperion must comply with all of GTE's environmental processes including environmental "best management practices (BMP)" and/or selection of disposition vendors and disposal sites.

- 41.7 Hyperion visitors must comply with GTE security, fire safety, safety, environmental and building practices/codes including equivalent employee training when working in GTE facilities.
- 41.8 GTE and Hyperion shall coordinate plans or information required to be submitted to government agencies, such as emergency response plans and community reporting. If fees are associated with filing, GTE and Hyperion must develop a cost sharing procedure.
- 41.9 Notwithstanding Section 23, with respect to environmental responsibility under this section 41, GTE and Hyperion shall indemnify, defend and hold harmless the other party from and against any claims (including, without limitation, third party claims for personal injury or real or personal property damage), judgments, damages (including direct and indirect damage, and punitive damages), penalties, fines, forfeitures, cost, liabilities, interest and losses proximately caused by the indemnifying party's negligence or wilful misconduct regardless of form of pleading, or in connection with the violation or alleged violation of any applicable requirement with respect to the presence or alleged presence of contamination arising out of the indemnifying party's negligent or willful acts or omissions concerning its operations at the facility.
- 41.10 Activities impacting safety or the environment of a Right of Way must be harmonized with the specific agreement and the relationship between GTE and the private land owner. This could include limitations on equipment access due to environmental conditions (e.g., wetland area with equipment restrictions).
42. Amendment of Certain Rates, Terms and Conditions. The Parties agree as follows with respect to modification of the rates, terms and conditions initially provided for herein:

The rates, terms and conditions that are specified in Appendix 42A (the "GTE Terms") may be replaced by the rates, terms and conditions from that particular Commission-approved arbitrated Interconnection, Resale and Unbundling Agreement between GTE and an individual CLEC which Hyperion elects to refer to for such rates, terms and conditions (hereafter "CLEC-Prime") (the "CLEC-Prime" Agreement), respectively, that are specified in Appendix 42B (the "CLEC-Prime" Terms") if and when the CLEC-Prime Agreement becomes effective after approval by order of the Commission in Case No. _____. The rates, terms and conditions that are specified in Appendix 42B (the "CLEC-Prime Terms") shall not take effect for purposes of this Agreement until thirty (30) days following GTE's receipt of written notice of Hyperion's election to replace the specified "GTE Terms" with the specified "CLEC-Prime Terms" (or such prior date within that 30-day period as GTE is able to complete the technical preparations for the substitution of terms), which notice may be given no earlier than the date the AT&T Agreement is approved by the Commission and effective. GTE and Hyperion agree that if the "CLEC-Prime Terms" are deemed to be unlawful, or are stayed, enjoined or otherwise modified, in whole or in part, by a court or commission of competent jurisdiction, then this Agreement shall be deemed to

have been amended accordingly, by modification of the "CLEC-Prime Terms" or, as appropriate, the substitution of "GTE Terms" for all stayed or enjoined "CLEC-Prime Terms," and such amendment shall be effective retroactive to the Effective Date of the "CLEC-Prime Terms."

GTE asserts and Hyperion acknowledges GTE's assertion that the terms and conditions of this Agreement reflect certain requirements of the FCC's First Report and Order in CC Docket No. 96-98. Without acknowledging which terms and conditions those are, Hyperion agrees that the terms and conditions of this Agreement shall be subject to any and all actions by any court or other governmental authority that invalidate, stay, vacate or otherwise modify the FCC's First Report and Order, in whole or in part. To the extent required by any such subsequent action, the parties agree to modify, in writing, the affected rates, terms and conditions of this Agreement to bring them into compliance with the subsequent action. Hyperion acknowledges that GTE may seek to enforce such subsequent action before a commission or court of competent jurisdiction. GTE does not waive any position GTE may take regarding the illegality or inappropriateness of the FCC's First Report and Order.

The rates, terms and conditions (including rates which may be applicable under true-up) specified in both the "GTE Terms" and the "CLEC-Prime Terms" are further subject to amendment, retroactive to the Effective Date of the Agreement, to provide for charges or rate adjustments resulting from future Commission or other proceedings or any appeal or other litigation, including (but not limited to) proceedings, appeals or other litigation concerning the establishment of a competitively neutral universal service system, and generic proceedings to determine permanent rates, rate adjustments or rebalancing, and cost recovery. Hyperion acknowledges that GTE may assert in such proceedings its right to GTE's claimed unrecovered costs, and that such unrecovered costs include (but are not limited to) GTE's historic costs, contribution, undepreciated reserve deficiency, or similar unrecovered GTE costs (including GTE's end user surcharge). GTE acknowledges that Hyperion may assert in such proceedings that the unrecovered costs specified above should not be awarded under existing law.

If the Commission (or any other commission or federal or state court) in reviewing this Agreement pursuant to applicable state or federal laws, including Section 252(e) of the Telecommunications Act of 1996, deletes or modifies in any way this Section 42, then the Parties agree that they will reopen negotiations within ten (10) days after receipt of the final decision making such deletion or modification in order to attempt to craft the new provision that will provide substantially the same protections to GTE and Hyperion as this Section 42. If the Parties cannot reach agreement on such a provision within twenty (20) calendar days thereafter, the Parties agree that this entire paragraph 42 is void and will not become effective, and Hyperion agrees to withdraw this paragraph 42 and Appendices 42A and 42B from consideration by the Commission (or any other commission or federal or state court). In such event, each Party shall urge the Commission to expedite approval of the Agreement without this paragraph

42 (if not already approved), and also shall have 25 days following the close of the 20-day negotiation period within which to file a petition for arbitration before the Commission under Section 252(e) of the Telecommunications Act of 1996 of the issues that remain in dispute after the voiding of this paragraph 42, and that 25th day shall be deemed to be day 160 of the arbitration period set out in Section 252(e).

ARTICLE IV
INTERCONNECTION AND TRANSPORT AND TERMINATION OF TRAFFIC

1. Services Covered by This Article.
 - 1.1 Types of Services. This Article governs the provision of internetwork facilities (i.e., physical interconnection services and facilities), meet point billing by GTE to Hyperion or by Hyperion to GTE and the transport and termination of Local Traffic between GTE and Hyperion. The services and facilities described in this Article shall be referred to in this Article IV as the "Services."
 - 1.2 Service Locations for Interconnection Services and Facilities. Appendix A, Service Matrix, attached to this Agreement and made a part hereof, sets forth the Services and each location in the State where a Service shall be provided (the "Service Locations") and the Interconnection Point ("IP") for such Services. The Parties shall update Appendix A whenever a new Service or a new Service Location is added to this Agreement in accordance with Section 1.3.
 - 1.3 Additional Services or Service Locations. If, during the term of this Agreement, GTE desires to provide to Hyperion and Hyperion desires to purchase from GTE, or Hyperion desires to provide to GTE and GTE desires to purchase from Hyperion, additional services in the State, or existing Services in new locations in the State, the Parties shall execute an amendment to this Agreement substantially in the form of Appendix B attached to this Agreement and made a part hereof, incorporating the additional locations and/or any additional terms necessary for the additional services. Upon the effective date of the amendment, and continuing through the remaining term of this Agreement, the new services shall be deemed part of the Services provided pursuant to this Article and/or the new locations shall be deemed part of the Service Locations.
2. Billing and Rates.
 - 2.1 Rates and Charges. Customer agrees to pay to Provider the rates and charges for the Services set forth in the applicable Appendices to this Agreement. GTE's rates and charges are set forth in Appendix C attached to this Agreement and made a part hereof. Hyperion's separate rates and charges are also set forth in Appendix C.
 - 2.2 Billing. Provider shall render to Customer a bill for interconnection services on a current basis. Charges for physical facilities and other nonusage sensitive charges shall be billed in advance, except for charges and credits associated with the initial or final bills. Usage sensitive charges, such as charges for termination of Local Traffic, shall be billed in arrears. Charges for traffic that has been, for whatever reason, routed over a jurisdictionally inappropriate trunk group (e.g., local traffic carried over trunks used for Switched Access Traffic) shall be handled as a post-billing adjustment to bills rendered. Additional matters relating to billing are included in Appendix G attached to this Agreement and made a part hereof.

3. Transport and Termination of Traffic.

3.1 Types of Traffic. The Parties shall reciprocally terminate Local Traffic originating on each other's networks utilizing either direct or indirect network interconnections as provided in this Article IV. To this end, the Parties agree that there will be interoperability between their networks. Only traffic originated by the Parties' end user customers is to be exchanged. Neither Party is to send cellular traffic or traffic of any third party unless an agreement specific to that arrangement has been made.

3.2 Audits. Either Party may conduct an audit of the other Party's books and records, no more frequently than once per twelve (12) month period, to verify the other Party's compliance with provisions of this Article IV. Any audit shall be performed as follows: (i) following at least ten (10) days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

3.3 Compensation For Exchange Of Traffic.

3.3.1 Mutual Compensation. Subject to section 3.3.2 of this Agreement, the Parties shall compensate each other for the exchange of Local Traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Charges for the transport and termination of intraLATA toll, optional EAS arrangements and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.

3.3.2 Bill-and-Keep. The Parties shall assume that Local Traffic is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, on an end office by end office basis, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may request that mutual compensation commence pursuant to section 3.3.1 of this Agreement. Furthermore, regardless of the results of any traffic study or the request of or failure to request a traffic study by either or both Parties, either Party may terminate the Bill-and-Keep Arrangement established pursuant to this section with twelve months notice. Nothing in this section 3.3.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the Bill-and-Keep Arrangement described in this section 3.3.2.

3.3.3 Sharing of Access Charges on Calls to Ported Numbers. Until permanent number portability is implemented, the Parties agree that switched access termination to a ported number will be billed by the party providing interim number portability and that the party billing the switched access will share the switched access revenue with the other party. After permanent number portability is implemented, the Parties agree to renegotiate sharing of access charges to ported numbers in accordance with permanent number portability requirements. In lieu of actual measurements of minutes and/exchange of billing records for this traffic the Parties agree that the Party providing the ported number will pay the other Party the rate per line/per month as specified in Appendix D.

- (a) The number of lines/talk paths per ported number that are subject to compensation will be determined at the time the end user customer's local service is changed from one party to the other. The number of lines per number eligible for the shared revenue arrangement described in this section will be limited to the number of lines in service on the date of conversion plus a 10% growth margin. After conversion the number of lines per number available for compensation can only be increased by mutual consent of the parties.
- (b) The Parties agree that the compensation rate in paragraph 3.3.3 may change as a result of changes in access rates, traffic volume or for other reasons and agree to renegotiate the rate if a significant event occurs. At a minimum, the parties agree to reevaluate the rate on an annual basis.
- (c) The Parties agree that terminating switched access calls ported via interim number portability may appear to the receiving party to be a local call and that the implementation of reciprocal compensation for terminating local calls may result in overcompensation for ported switched access calls. Therefore, the Parties agree to renegotiate the terminating shared access compensation rate if reciprocal compensation for local calls is implemented.

3.4 Reciprocal Compensation Arrangements for Call Termination. Reciprocal compensation arrangements for call termination shall be as provided in Appendix K attached hereto.

3.5 Tandem Switching Services. The Parties will provide tandem switching for traffic between the Parties' end offices subtending each other's access tandem, as well as for traffic between either Party's end users and any Third Party which is interconnected to the other Party's access tandems as follows:

3.5.1 The originating Party will compensate the tandem Party for each minute of originated tandem switched traffic which terminates to third party (e.g.,

other CLEC, ILEC, or wireless service provider. The applicable rate for this charge is identified in Appendix C.

3.5.2 The originating Party also assumes responsibility for compensation to the company which terminates the call.

3.5.3 Services Provided. Tandem switching services provided pursuant to this Section 3.5 shall include the following:

(a) signaling;

(b) screening and routing;

(c) recording;

(d) access to AIN functionality, in accordance with the terms and conditions of Article IV and Article VI of this Agreement;

(e) access to operator services and directory assistance, in accordance with the terms and conditions of Article V and Article VII of this Agreement;

(f) support of all trunk interconnections;

(g) access to PSAPs, in accordance with the terms and conditions of Article VII of this Agreement; and

(h) transit of traffic to and from third parties in accordance with the terms and conditions of this section.

3.6 Inter-Tandem Switching. The Parties agree that they will not use inter-tandem switching for the transport and termination of traffic originating on each other's network. The Parties may, however, use inter-tandem switching for the transport and termination of traffic originating on each other's network at and after such time as either (i) Hyperion has agreed to and fully implemented an existing intraLATA toll compensation mechanism such as IntraLATA Terminating Access Compensation (ITAC) or a functional equivalent thereof or (ii) generally accepted industry signaling standards and AMA record standards support the recognition of multiple tandem switching events.

4. Direct Network Interconnection.

4.1 Network Interconnection Architecture. Where the Parties mutually agree to directly interconnect their respective networks, interconnection will be as specified in the following subsections. The Interconnection Point (IP) shall be set forth in Appendix A attached to this Agreement and made a part hereof. Inter-network connection and protocol must be based on industry standards developed consistent with Section 256 of the Telecommunications Act of 1996.

4.1.1 Subject to mutual agreement, the Parties may use the following types of network facility interconnection, using such interface media as are (i) appropriate to support the type of interconnection requested and (ii) available at the facility at which interconnection is requested. For each IP set forth in Appendix A, the Parties shall specify the type of interconnection used at that IP.

(a) A Mid-Span Fiber Meet within an existing GTE exchange area whereby the Parties mutually agree to jointly plan and engineer their facility meet-point at a designated manhole or junction location. The meet point is the demarcation between ownership of the fiber transmission facility. Each party is individually responsible for its incurred costs in establishing this arrangement.

(b) A Virtual EIS/Physical Collocation ("Collocation") arrangement at a GTE wire center subject to the rates, terms, and conditions contained in GTE's applicable tariffs.

(c) A special access arrangement and/or switched transport terminating at a GTE wire center subject to the rates, terms, and conditions contained in GTE's applicable tariffs. These facilities will meet the standards set forth in such tariffs.

4.1.2 Collocation arrangements are governed by appropriate GTE tariffs. Except as provided in Article IX, section 1.3, GTE shall not permit direct connections (optical patch panel) or cross-connection ("DSX") between any Collocation arrangements at the same wire center location. However, this Agreement does not preclude Hyperion from acquiring GTE special access service to connect a Collocation arrangement to a distant GTE wire center or connect between Collocation arrangements in different wire centers.

4.2 Compensation. The Parties agree to the following compensation for internetwork facilities, depending on facility type.

4.2.1 Mid-Span Fiber Meet: GTE will charge special access (flat rated) transport from the applicable intrastate access tariff and will rate charges between the POI and GTE's interconnection switch. Charges will be reduced to reflect the proportionate share of the facility that is used for transport of traffic originated by GTE. Hyperion will charge flat rated transport to GTE for Hyperion facilities used by GTE. Hyperion will apply charges based on the lesser of; (i) the airline mileage from the POI to the Hyperion switch; or (ii) the airline mileage from the GTE switch to the serving area boundary.

4.2.2 Collocation: GTE will charge Collocation rates from the applicable GTE tariff. Hyperion will charge GTE flat rated transport to reflect the proportionate share of the facility that is used for transport of traffic

originated by GTE. Hyperion will apply charges based on the lesser of; (i) the airline mileage from the POI to the Hyperion switch; or (ii) two (2) times the airline mileage from the GTE switch to the serving area boundary.

4.2.3 Special Access and/or Switched Access: GTE will charge special access and/or switched access rates from the applicable GTE intrastate access tariff. Charges will be reduced to reflect the proportionate share of the facility that is used for transport of traffic originated by GTE.

5. Trunking Requirements.

5.1 The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, 911 routing switches, and directory assistance/operator service switches. The Parties will mutually agree where one-way or two-way trunking will be available.

5.2 Hyperion shall make available to GTE trunks over which GTE shall terminate to end users of Hyperion-provided Exchange Services, Local Traffic and intraLATA toll or optional EAS traffic originated from end users of GTE-provided Exchange Service.

5.3 Hyperion and GTE shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Hyperion and GTE will support the provisioning of trunk groups that carry combined or separate Local Traffic and intraLATA toll and optional EAS traffic. GTE requires separate trunk groups from Hyperion to terminate interLATA calls and to provide Switched Access Service to IXCs. To the extent Hyperion desires to have any interexchange carriers (IC) terminate traffic to Hyperion's IC transiting trunks, Hyperion will arrange for such IC to issue an ASR to GTE instructing GTE to route such traffic over the appropriate trunk group. Until GTE receives and processes such ASRs, the traffic will be blocked.

5.3.1 Each Party agrees to route traffic only over the proper jurisdictional trunk group.

5.3.2 Each Party shall only deliver traffic over the local interconnection trunk groups to the other Party's access tandem for those publicly-dialable NXX Codes served by end offices that directly subtend the access tandem or to those wireless service providers that directly subtend the access tandem.

5.3.3 Neither party shall route Switched Access Service traffic over local interconnection trunks, or local traffic over Switched Access Service trunks.

- 5.4 Hyperion and GTE will reciprocally provide PLU factors to each other on a quarterly basis to identify the proper jurisdiction of each call type that is carried over the required trunks.
- 5.5 Reciprocal traffic exchange arrangement trunk connections shall be made at a DS-1 or multiple DS-1 level, DS-3, (SONET where technically available) and shall be jointly-engineered to an objective P.01 grade of service.
- 5.6 Hyperion and GTE agree to use diligent efforts to develop and agree on a Joint Interconnection Grooming Plan prescribing standards to ensure that the reciprocal traffic exchange arrangement trunk groups are maintained at consistent P.01 or better grades of service. Such plan shall also include mutually-agreed upon default standards for the configuration of all segregated trunk groups.
- 5.7 Signaling System 7 (SS7) Common Channel Signaling will be used to the extent that such technology is available.
- 5.8 The Parties agree to offer and provide to each other B8ZS Extended Superframe Format ("ESF") facilities, where available, capable of voice and data traffic transmission.
- 5.9 The Parties will support intercompany 64kbps clear channel where available.
6. Network Redesigns Initiated by GTE. GTE will not charge Hyperion when GTE initiates its own network redesigns/reconfigurations.
7. Indirect Network Interconnection.
 - 7.1 Neither Party shall deliver traffic destined to terminate at the other Party's end office via another LEC's end office.
 - 7.2 The Parties agree to exchange traffic destined to terminate at any of the GTE's end offices which subtend the another LEC where GTE does not have its own tandem and Hyperion has an interconnection arrangement with the tandem company but not with GTE.
 - 7.3 The Parties will insure compensation arrangements specific to such scenarios have been made between the originating Party and the tandem company and any other third party carriers.
8. Number Resources.
 - 8.1 Number Assignment. Nothing in this Agreement shall be construed to, in any manner, limit or otherwise adversely impact Hyperion's right to employ or to request and be assigned any NANP number resources including, but not limited to, Central Office (NXX) Codes pursuant to the Central Office Code Assignment Guidelines. Any request for numbering resources by Hyperion shall be made

directly to the NANP Number Plan Administrator. Except with respect to those areas in which GTE is the NANP Number Plan Administrator, GTE shall not be responsible for the requesting or assignment of number resources to Hyperion. The Parties agree that disputes arising from numbering assignment shall be arbitrated by the NANP Number Plan Administrator. Hyperion shall not request number resources to be assigned to any GTE switching entity.

- 8.2 Rate Centers. For purposes of compensation between the Parties and the ability of GTE to appropriately apply its toll tariff to its end user customers, Hyperion shall adopt the Rate Center areas and Rate Center points that the Commission has approved for the incumbent LEC and shall assign whole NPA-NXX codes to each Rate Center.
- 8.3 Routing Points. Hyperion will also designate a Routing Point for each assigned NXX code. Hyperion may designate one location within each Rate Center as a Routing Point for the NPA-NXX associated with that Rate Center; alternatively Hyperion may designate a single location within one Rate Center to serve as the Routing Point for all the NPA-NXXs associated with that Rate Center and with one or more other Rate Centers served by Hyperion within an existing GTE exchange area. Hyperion shall use diligent efforts to designate at least one Routing Point in GTE's exchange area for all NPA-NXXs associated with GTE's Rate Centers.
- 8.4 Code and Numbers Administration. The Parties will comply with code administration requirements as prescribed by the FCC, the Commission, and accepted industry guidelines. Where GTE is the NANP Number Plan Administrator, GTE will administer number resources, and charge for such administration in accord with applicable rules and regulations. GTE will administer numbering resources in a competitively neutral manner, and process requests for NXX codes in a timely manner and in accord with industry standards. The Parties shall execute a nondisclosure agreement to protect Hyperion proprietary information that may be submitted to GTE in connection with GTE's responsibilities as NANP Number Plan Administrator.
- 8.5 Programming Switches. It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide ("LERG") guidelines to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities.
9. Interim Number Portability (INP). Each Party shall provide the other Party with INP for the purpose of allowing end user customers to change service-providing Parties without changing their telephone number. GTE shall provide its INP to Hyperion using remote call forwarding ("RCF"). The GTE rates for INP service using RCF are set out in Appendix D attached to this Agreement and made a part hereof. If Hyperion wishes to use Direct Inward Dialing ("DID") to provide INP to its end users, Hyperion may purchase DID service from GTE at the GTE

tariff rate. Hyperion shall provide INP to GTE at the rates specified for Hyperion in Appendix D.

10. Meet-Point Billing.

10.1 Meet-Point Arrangements.

- 10.1.1 Hyperion may establish Meet-Point Billing ("MPB") arrangements with GTE in order to provide Switched Access Services to third parties (or to Hyperion if acting as an IXC) via a GTE access tandem in accordance with the MPB guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents, except as modified herein.
- 10.1.2 Except in instances of capacity limitations, GTE shall permit and enable Hyperion to sub-tend the GTE access tandem(s) nearest to the Hyperion Rating Point(s) associated with the NPA-NXX(s) to/from which the Switched Access Services are homed. In instances of capacity limitation at a given access tandem, Hyperion shall be allowed to subtend the next-nearest GTE access tandem in which sufficient capacity is available.
- 10.1.3 Interconnection for the MPB arrangement shall occur at the POI.
- 10.1.4 Common Channel Signaling shall be utilized in conjunction with MPB arrangements to the extent such signaling is resident in the GTE access tandem switch.
- 10.1.5 Hyperion and GTE will use diligent efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and/or provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 10.1.6 As detailed in the MECAB document, Hyperion and GTE will, in a timely fashion, exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by Hyperion and GTE via the meet-point arrangement. Information shall be exchanged in Electronic Message Record ("EMR") format, on magnetic tape or via a mutually acceptable electronic file transfer protocol.
- 10.1.7 Hyperion and GTE shall work cooperatively to coordinate rendering of Meet-Point bills to customers, and shall reciprocally provide each other usage data and related information at an appropriate charge.

10.2 Compensation

- 10.2.1 Initially, billing to third parties for the Switched Access Services jointly provided by Hyperion and GTE via the MPB arrangement shall be according to the multiple-bill/multiple-tariff method.
- 10.2.2 Subsequently, Hyperion and GTE may mutually agree to implement one of the following options for billing to third parties for the Switched Access Services jointly provided by Hyperion and GTE via the MPB arrangement: single-bill/single tariff method, single-bill/multiple tariff method, multiple-bill/single tariff method, or to continue the multiple-bill/multiple tariff method. Should Hyperion prefer to change among these billing methods, Hyperion shall notify GTE of such a request in writing, ninety (90) days in advance of the date on which such change is desired to be implemented.

11. Common Channel Signaling.

- 11.1 Service Description. The Parties will provide Common Channel Signaling ("CCS") to one another via Signaling System 7 ("SS7") network interconnection, where and as available, in the manner specified in FCC Order 95-187, in conjunction with all traffic exchange trunk groups. SS7 signaling and transport services shall be provided by GTE in accordance with the terms and conditions of this section 11 of this Article and Appendix H attached to this Agreement and made a part hereof. The Parties will cooperate on the exchange of all appropriate SS7 messages for local and intraLATA call set-up signaling, including ISUP and Transaction Capabilities Application Part ("TCAP") messages to facilitate full interoperability of all CLASS Features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon.
- 11.2 Signaling Parameters. All SS7 signaling parameters will be provided in conjunction with traffic exchange trunk groups, where and as available. These parameters include Automatic Number Identification ("ANI"), Calling Party Number ("CPN"), Privacy Indicator, calling party category information, originating line information, charge number, etc. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter ("CIP"), wherever such information is needed for call routing or billing.
- 11.3 Privacy Indicators. Each Party will honor all privacy indicators as required under applicable law.
- 11.4 Connection Through STP. Hyperion must interconnect with the GTE STP(s) serving the state in which the traffic exchange trunk groups are interconnected. Additionally, all interconnection to GTE's 800/888 database and GTE's LIDB shall, consistent with this section and Appendix H attached hereto, take place only through appropriate STP pairs.

- 11.5 Third Party Signaling Providers. Hyperion may choose a third-party SS7 signaling provider to transport messages to and from the GTE SS7 network. In that event, that third-party provider must present a letter of agency to GTE, prior to the testing of the interconnection, authorizing the third party to act on behalf of Hyperion in transporting SS7 messages to and from GTE. The third-party provider must interconnect with the GTE STP(s) serving the state in which the traffic exchange trunk groups are interconnected.
- 11.6 Multi-Frequency Signaling. In the case where CCS is not available, in band Multi-Frequency ("MF"), wink start, E & M channel associated signaling with ANI will be provided by the Parties. Network signaling information, such as CIC/OZZ, will be provided wherever such information is needed for call routing or billing.
12. Service Quality and Performance. Each Party shall provide Services under this Article to the other Party that are equal in quality to that the Party provides to itself, its Affiliates or any other entity. "Equal in quality" shall mean that the Service will meet the same technical criteria and performance standards that the providing Party uses within its own network for the same Service at the same location under the same terms and conditions.
13. Network Outages. GTE shall work with Hyperion to establish reciprocal responsibilities for network outages and reporting. Each party shall be responsible for network outage as a result of termination of its equipment in GTE wire center or access tandem. Hyperion shall be responsible for notifying GTE of significant outages which could impact or degrade GTE switches and services.
14. Technical Descriptions and Forecasts. GTE and Hyperion will periodically exchange technical descriptions and forecasts of their interconnection and traffic requirements in sufficient detail to assure traffic completion to and from all customers within the appropriate calling areas.

ARTICLE V
RESALE OF SERVICES

1. General. The purpose of this Article V is to define the Exchange Services and related Vertical Features and other Services (collectively referred to for purposes of this Article V as the "Services") that may be purchased from GTE and resold by Hyperion and the terms and conditions applicable to such resold Services. Except as specifically provided otherwise in this Agreement, provisioning of Exchange Services for resale will be governed by the GTE Customer Guide for Hyperion Establishment of Services - Resale and Unbundling (the "Guide"). GTE will make available to Hyperion for resale any Telecommunications Service that GTE currently offers, or may offer hereafter, on a retail basis to subscribers that are not telecommunications carriers, except as qualified by Section 2.2 below.

2. Terms and Conditions.

2.1 Quality and Performance. The standards of services that GTE provides to Hyperion shall be equal in quality and performance standards to the same standards for those Services as such Services are provided by GTE to its own end user customers.

2.2 Restrictions on Resale. The following restrictions shall apply to the resale of retail services by Hyperion.

2.2.1 Hyperion shall not resell Basic Exchange Residential Service.

2.2.2 Hyperion shall not resell to one class of customers a service that is offered by GTE only to another class of customers in accordance with State requirements (e.g., R-1 to B-1, disabled services or Lifeline services to non-qualifying customers).

2.2.3 Hyperion shall not resell public pay telephone lines.

2.2.4 Hyperion shall not resell semi-public pay telephone lines.

2.2.5 Hyperion shall not resell promotional offerings.

3. Restrictions on Discount of Retail Services. The discount specified in Section 7.3 herein shall apply to all retail services except for the following:

3.1 Hyperion shall resell services that are provided at a volume discount in accordance with terms and conditions of applicable tariff. Hyperion shall not aggregate end user traffic in order to qualify for volume discount.

3.2 Hyperion shall resell ICB/Contract services without a discount and only to end user customers that already have such services.

3.3 Hyperion shall resell COCOT coin or coinless line but no discount applies.

- 3.4 Hyperion shall resell Lifeline services and services for the disabled but no discount shall apply and they shall only be resold to end user customers who qualify under GTE's tariffs and state/Commission rules, orders and regulations.
- 3.5 Hyperion shall resell special access but no discount applies.
- 3.6 Hyperion shall resell Operator Services and Directory Assistance as specified in Section 7.6 herein however no discount applies.
4. Resale to Other Carriers. Services available for resale may not be used by Hyperion to provide access to the local network as an alternative to tariffed switched and special access by other carriers, including, but not limited to; interexchange carriers, wireless carriers, competitive access providers, or other retail telecommunications providers.
5. Ordering and Billing.
- 5.1 Local Service Request. Orders for resale of Services will be placed utilizing a standard Local Service Request ("LSR") form. A complete and accurate LSR (containing the requisite end user information as described in the Guide) must be provided by Hyperion before a request can be processed.
- 5.2 Certificate of Operating Authority. When ordering, Hyperion must represent and warrant to GTE that it is a certified provider of local dial-tone service. Hyperion will provide a copy of its Certificate of Operating Authority or other evidence of its status to GTE upon request.
- 5.3 Letter of Authorization. A Letter of Authorization ("LOA") will be required before resold Services will be provided in cases in which the subscriber currently receives Exchange Service from GTE or from a local service provider other than Hyperion. Such LOA may be a blanket LOA or such other form as agreed upon between GTE and Hyperion, provided, however, that Hyperion complies with the requirements for a signed LOA from the end user as specified in Section 5.5 when requesting information from GTE end user customer accounts.
- 5.4 Directory Assistance Listings. GTE shall include a Hyperion customer listing in its Directory Assistance database as part of the Local Service Request ("LSR") process. GTE will honor Hyperion Customer's preferences for listing status, including non-published and unlisted, as noted on the LSR and will enter the listing in the GTE database which is used to perform Directory Assistance functions as it appears on the LSR.
- 5.5 Services Ordered. Hyperion shall specify each specific GTE Service ordered for each Hyperion end user customer: i.e., GTE will not transfer Services "as is." GTE will not release information to Hyperion on GTE end user customer accounts unless Hyperion first provides to GTE a written Letter of Authorization, signed by the end user customer, authorizing the release of such information to Hyperion.

- 5.6 Nonrecurring Charges. Hyperion shall be responsible for the payment of all nonrecurring charges ("NRCs") applicable to resold Services (e.g., installation, changes, ordering charges) in accordance with the appropriate tariff referenced on Appendix E. No discount applies to nonrecurring charges.
- 5.7 Transfers Between Hyperion and Another Reseller of GTE Services. When Hyperion has obtained an end user customer from another reseller of GTE services, Hyperion will inform GTE of the transfer by submitting a standard LSR to GTE.
- 5.8 Responsibility for Payment. All charges for Services provided for resale under this agreement will be billed to Hyperion, including all applicable taxes and surcharges, as well as the End User Common Line ("EUCL") Charge from GTOC Tariff FCC No. 1. Hyperion is responsible for payment of charges billed, regardless of any billing arrangement or situation between Hyperion and its end user customer.
- 5.9 Fraud. Hyperion assumes responsibility for all fraud associated with its end user customers and accounts. GTE shall have no responsibility for, nor is it required to investigate or make adjustments to Hyperion's account in cases of fraud. The Parties agree that they shall cooperate with one another to resolve cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 5.10 Local Calling Detail. Except for those Services and in those areas where measured rate local service is available to end users, monthly billing to Hyperion does not include local calling detail.
- 5.11 Procedures. An overview of the procedures for preordering, ordering, provisioning and billing for resold services are outlined in Appendix G, attached hereto and made a part hereof.
- 5.12 LIDB. For resale services, GTE's service order will generate updates to the LIDB for validation of calling card, collect, and third number billed calls.
- 5.13 "OLN". Upon request, GTE will update the database to provide Originating Line Number ("OLN") Screening which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).
- 5.14 Customer Contact and Referral. Hyperion will provide GTE with an 800-number for referral of inquiries from Hyperion end user customers. GTE will refer to Hyperion all inquiries or other calls from Hyperion's end user customers. GTE will also provide Hyperion with an 800-number for referral of inquiries from GTE end user customers, to which Hyperion will refer all inquiries or other calls from GTE's end user customers.

6. Maintenance.

6.1 Maintenance, Testing and Repair. GTE will provide repair and maintenance services to Hyperion and its end user customers for resold Services in accordance with the same standards used for such services provided to GTE end user customers. GTE will not initiate a maintenance call or take action in response to a trouble report until such time as trouble is reported to GTE by Hyperion. Hyperion must provide to GTE all end user information necessary for the installation, repair and servicing of any facilities used for resold Services according to the procedures described in the Guide.

6.2 Specifics and Procedures for Maintenance. An overview of the procedures for maintenance of resold services and additional matters agreed to by the Parties concerning maintenance are set forth in Appendix G.

7. Services Available for Resale.

7.1 Description of Local Exchange Services Available for Resale. Resold basic Exchange Service includes, but is not limited to, the following elements:

- (a) Voice Grade Local Exchange Access Line - includes a telephone number and dial tone.
- (b) Local Calling - at local usage measured rates if applicable to the end user customer.
- (c) Access to long distance carriers
- (d) E-911 Emergency Dialing
- (e) Access to Special Access Codes - e.g., 800, 888, 900
- (f) Use of AIN Services (those currently available to end users)
- (g) End User Private Line Services
- (h) Listing of telephone number in appropriate "white pages" directory; and
- (i) Copy of "White Pages" and "Yellow Pages" directories for the appropriate GTE service area

7.2 List of Services Available for Resale. The type of Services listed on Appendix E, attached hereto and made a part of this Agreement, are available for resale by Hyperion. Subject to the limitations on resale enumerated in this Article, any new services that GTE offers in the future at retail to customers who are not telecommunications carriers shall also be available to Hyperion for resale under the same terms and conditions contained in this Agreement. Additional regulations, terms and conditions relating to the type of Services listed on

Appendix E can be found in the appropriate intrastate local, toll and access tariffs referenced on Appendix E and in Article VIII of this Agreement. Terms, conditions and other matters concerning rate applications, technical parameters, provisioning capability, definitions and feature interactions contained in such tariffs are applicable to the type of Services offered under this Agreement and are incorporated herein by reference. Modifications to Services listed on Appendix E shall be provided to Hyperion in accordance with GTE's practices and procedures.

7.3 Rates. The prices charged to Hyperion for Local Services shall be calculated as follows:

- (a) The Avoided Cost Discount specified in Appendix E of this Agreement shall apply to all retail services except those services listed in Section 2.2 and Section 3 herein.
- (b) The discount dollar amount calculated under Step 1 above will be deducted from the retail rate to which the Avoided Cost Discount will apply.
- (c) The resulting rate is the Wholesale Rate.
- (d) This discount dollar amount in Step 2 above shall not change during the Term of this Agreement, even though GTE may change its retail rates.

For resold business lines, GTE shall assess Hyperion a charge for lost contribution associated with intraLATA toll if GTE does not provide the intraLATA toll associated with the line.

7.4 Grandfathered Services. Services identified in GTE Tariffs as grandfathered in any manner are available for resale only to end user customers that already have such grandfathered service. An existing end user customer may not move a grandfathered service to a new service location.

7.5 Access. GTE retains all revenue due from other carriers for access to GTE facilities, including both switched and special access charges.

7.6 Operator Services (OS) and Directory Assistance (DA). Where GTE provides access to GTE Operator Services for local and toll assistance (for example, call completion, busy line verification and emergency interruption) and Directory Assistance (e.g., 411 calls routed to GTE's DA operator centers) as an element of Exchange Services offered for resale, Hyperion will be billed in accordance with Appendix E. GTE will provide its existing OS and DA to a Hyperion at the same quality and in a nondiscriminatory manner as the service GTE's end users receive.

7.6.1 Where Customized Routing is available and Hyperion so requests, GTE will offer unbranded OS and DA or rebranded OS and DA with the

Hyperion brand. GTE will provide such unbranding or rebranding on a switch-by-switch basis, subject to capability and capacity limitations. Upon receipt of an order for unbranding or rebranding, GTE will implement within 90 Business Days when technically capable.

- 7.6.2 Hyperion will be billed for unbranding or rebranding and Customized Routing at rates specified in Appendix F.
- 7.6.3 For those offices that Hyperion has requested GTE to rebrand and/or unbrand OS and DA, Hyperion shall continue exclusively to use GTE rebranded and/or unbranded OS and DA for the duration of the Agreement. Live operators handling OS and DA calls from Hyperion local service customers will identify themselves as Hyperion operators; where such rebranding is not technically feasible, live operator response will be provided on an unbranded basis. Hyperion agrees to withdraw its request for branding of OS and DA for calls that are handled by automated systems until these systems are capable of rebranding.

ARTICLE VI
UNBUNDLED NETWORK ELEMENTS

1. General. The purpose of this Article VI is to define the unbundled network elements that may be leased by Hyperion from GTE. Unless otherwise specified in this Agreement, provisioning of unbundled network arrangements will be governed by the GTE Customer Guide for Hyperion Establishment of Services - Resale and Unbundling. Additional procedures for preordering, ordering, provisioning and billing of unbundled network elements are outlined in Appendix G.
2. Unbundled Network Elements.
 - 2.1 Categories. There are several separate categories of Network Components that shall be provided as unbundled network elements by GTE:
 - (a) Network Interface Device or NID
 - (b) Loop Elements
 - (c) Port Elements
 - (d) Transport Elements
 - (e) Signaling Elements
 - (f) Data Switching
 - (g) Digital Cross Connect System (DCS)
 - 2.2 Prices. Individual unbundled network elements and prices are identified on Appendix F attached to this Agreement and made a part hereof, or under the appropriate GTE tariff as referenced in this Article. Nonrecurring charges relating to unbundled elements are also listed on Appendix F. The port element consists of two components, termination and usage (i.e. minutes of use). Additional switch features may be leased in bulk at a price to be agreed upon by the Parties, or switch features may be purchased individually as Services pursuant to Article V.
 - 2.3 Interconnection to Unbundled Elements. Hyperion may lease and interconnect to whichever of these unbundled network elements Hyperion chooses, and may combine these unbundled elements with any facilities or services that Hyperion may itself provide, pursuant to the following terms:
 - 2.3.1 Interconnection shall be achieved via expanded interconnection/ collocation arrangements Hyperion shall maintain at the wire center at which the unbundled services are resident.

- 2.3.2 Hyperion may order transport pursuant to Section 6 below from the wire center at which the unbundled elements (e.g., loop, port) are located to the GTE wire center where Hyperion has established an interconnection/ collocation arrangement.
- 2.3.3 Each loop or port element shall be delivered to the Hyperion collocation arrangement over a loop/port connector applicable to the unbundled services as listed on Appendix F.
- 2.3.4 Hyperion shall combine unbundled network elements with its own facilities. Hyperion may not combine such network elements to provide solely interexchange service or solely access service to an interexchange carrier, nor can GTE resold services be replicated solely through the purchase of unbundled elements.
- 2.4 Service Quality. To the degree possible, all service attributes, grades-of-service and installation, maintenance and repair intervals which apply to the bundled service will apply to unbundled network elements. Notwithstanding the foregoing, GTE shall not be responsible for impacts on service attributes, grades of service, etc., resulting from Hyperion's specific use of or modification to any unbundled network element.
3. Network Interface Device.
- 3.1 Direct Connection. Hyperion shall be permitted to connect its own Loop directly to GTE's Network Interface Device or NID in cases in which Hyperion uses its own facilities to provide local service to an end user formerly served by GTE, as long as such direct connection does not adversely affect GTE's network. In order to minimize any such adverse effects, Hyperion shall follow the procedures in Sections 3.1.1 and 3.1.2 below.
- 3.1.1 When connecting its own loop facility directly to GTE's NID for a residence or business customer, Hyperion must make a clean cut on the GTE drop wire at the NID so that no bare wire is exposed. Hyperion shall not remove or disconnect GTE's drop wire from the NID or take any other action that might cause GTE's drop wire to be left lying on the ground.
- 3.1.2 At multi-tenant customer locations, Hyperion must remove the jumper wire from the distribution block (i.e. the NID) to the GTE cable termination block. If Hyperion cannot gain access to the cable termination block, Hyperion must make a clean cut at the closest point to the cable termination block. At Hyperion's request and discretion, GTE will determine the cable pair to be removed at the NID in multi-tenant locations. Hyperion will compensate GTE for the trip charge necessary to identify the cable pair to be removed.
- 3.1.3 GTE agrees to offer NIDs for lease to Hyperion but not for sale. Hyperion may remove GTE identification from any NID which it connects to an

Hyperion loop, but Hyperion may not place its own identification on such NID.

- 3.2 NID to NID Connection. Rather than connecting its loop directly to GTE's NID, Hyperion may also elect to install its own NID and effect a NID to NID connection to gain access to the end user's inside wiring.
- 3.3 Removal of Cable Pairs. Removal of existing cable pairs required for Hyperion to terminate service is the responsibility of Hyperion.
- 3.4 Maintenance. When Hyperion provides its own loop and connects directly to GTE's NID, GTE does not have the capability to perform remote maintenance. Hyperion can perform routine maintenance via its loop and inform GTE once the trouble has been isolated to the NID and GTE will repair (or replace) the NID, or, at Hyperion's option, it can make a NID to NID connection, using the GTE NID only to gain access to the inside wire at the customer location.
4. Loop Elements.
 - 4.1 Service Description. A "Loop" is an unbundled component of Exchange Service. In general, it is the transmission facility (or channel or group of channels on such facility) which extends from a Main Distribution Frame ("MDF") or functionally comparable piece of equipment in a GTE end office or wire center to a demarcation or connector block in/at a subscriber's premises. Traditionally, Loops were provisioned as 2-wire or 4-wire copper pairs running from the end office MDF to the customer premises. However, a loop may be provided via other media, including radio frequencies, as a channel on a high capacity feeder/distribution facility which may, in turn, be distributed from a node location to the subscriber premises via a copper or coaxial drop facility, etc.
 - 4.2 Categories of Loops. There are three general categories of loops:
 - 4.2.1 "2-wire analog voice grade" loops will support analog transmission of 300-3000 Hz, repeat loop start or ground start seizure and disconnect in one direction (toward the end office switch), and repeat ringing in the other direction (toward the end user). This loop is commonly used for local dial tone service;
 - 4.2.2 "4-wire analog voice grade" loops conform to the characteristics of a 2-wire voice grade loop and, in addition, can support the simultaneous independent transmission of information in both directions;
 - 4.2.3 "DS-3" loops will support the transmission of isochronous bipolar serial data at a rate of 44.736 Mbps. This DS-3 type of loop provides the equivalent of 28 DS-1 channels.
 - 4.3 Loops for Digital Services. Hyperion may also lease 2-wire or 4-wire Loops that have been conditioned to transmit the digital signals needed to provide services

such as ISDN, DSL, HDSL and DS-1 level signals, subject to the limitations indicated in Sections 4.6 and 4.7. The price for such conditioned Loops shall be the price for the basic 2-wire or 4-wire loop, as applicable, that is listed in Appendix F, plus the applicable charge for the special conditioning as provided for in the appropriate GTE intrastate special access tariff. Prices for DS-3 grade Loops are the prices set forth in the appropriate GTE intrastate special access tariff.

4.4 Features, Functions, Attributes, Etc. To the degree possible, all transport-based features, functions, service attributes, grades-of-service, installation, maintenance and repair intervals that apply to the bundled services will apply to unbundled loops.

4.4.1 GTE will not perform routine testing of the unbundled loop for maintenance purposes. Hyperion will be required to provision a loop testing device either in its CO, Network Control Center or in its collocation arrangement to test the unbundled loop. GTE will perform repair and maintenance once trouble is identified by Hyperion.

4.4.2 All Loop facilities furnished by GTE on the premises of Hyperion's end users and up to the network interface or functional equivalent are the property of GTE. GTE must have access to all such facilities for network management purposes. GTE employees and agents may enter said premises at any reasonable hour to test and inspect such facilities in connection with such purposes or, upon termination or cancellation of the Loop facility, to remove such facility.

4.4.3 GTE will provide loop transmission characteristics to Hyperion end users which are equal to those provided to GTE end users.

4.4.4 If Hyperion leases loops which are conditioned to transmit digital signals, as a part of that conditioning, GTE will test the loop and provide recorded test results to Hyperion. In maintenance and repair cases, if loop tests are taken, GTE will provide any recorded readings to Hyperion at time the trouble ticket is closed in the same manner as GTE provides to itself and its end users.

4.4.5 GTE will design its loop feeder network within industry designed parameters.

4.5 Digital Loop Carrier. Where GTE utilizes integrated digital loop carrier ("IDLC")* technology to provision the Loop element, GTE will take the necessary affirmative steps to provide unbundled Loops. The basic Loop provided will support voice grade services. Loop capabilities beyond voice grade (i.e., ISDN, ADSL, etc.) will be provided under the terms and conditions, and at the prices indicated in Section 4.3.

* See Bellcore TR-TSY-000008, Digital Interface Between the SLC-96 Digital Loop Carrier System and Local Digital Switch and TR-TSY-000303, Integrated Digital Loop Carrier (IDLC) Requirements, Objectives and Interface.

4.5.1 GTE will permit Hyperion to collocate digital loop carriers and associated equipment in conjunction with collocation arrangements Hyperion maintains at a GTE wire center for the purpose of interconnecting to unbundled Loop elements.

4.6 Unbundled Loop Facility Certification.

4.6.1 Before deploying any service enhancing copper cable technology (e.g., HDSL, ISDN, etc.) over unbundled 2-wire analog voice grade loops leased from GTE, Hyperion shall notify GTE of such intentions to enable GTE to assess the loop transport facilities to determine whether there are any existing copper cable loop transport technologies (e.g., analog carrier, etc.) deployed within the same cable sheath that would be interfered with if Hyperion deployed the proposed service enhancing copper cable technology. If there are existing copper cable loop transport technologies already deployed within the same cable sheath, or if GTE already has existing near term (within 18 months of the date of facility certification) plans to deploy copper cable loop transport technologies that would be interfered with as described above, GTE will so inform Hyperion and Hyperion shall not be permitted to deploy such service enhancing copper cable technologies. GTE will charge Hyperion the applicable engineering, time and labor costs to perform the certification.

4.6.2 If Hyperion fails to notify GTE of its plans to deploy service enhancing copper cable technology and obtain prior certification from GTE of the facilities, if Hyperion's deployment of such technology is determined to have caused interference with existing or planned copper cable loop transport technologies deployed by GTE in the same cable sheath, Hyperion will immediately remove such service enhancing copper cable technology and shall reimburse GTE for all incurred expense related to this interference.

4.7 Unbundled Loop Facility Notification.

4.7.1 GTE reserves the right to deploy within its network at its sole discretion any and all copper cable loop transport technologies. If GTE plans to deploy copper cable loop transport technology within a cable sheath in which such technology was not previously deployed, GTE will provide notice to Hyperion of such planned deployment, indicating all service enhancing copper cable technologies that would cause interference with the technology to be deployed, or that would be interfered with by the deployment of such technology. Such notice will be provided at least ninety (90) days in advance of the planned deployment. If Hyperion has deployed any technologies within the same cable sheath that would

interfered with, or be interfered with, by the technology GTE plans to deploy, Hyperion shall remove such interfering technology.

4.7.2 If Hyperion fails to comply with GTE's notification and remove the interfering technology, and Hyperion's deployment of such technology is determined to have actually caused interference with the copper cable loop transport technologies deployed by GTE in the same cable sheath, a second notification will be sent to Hyperion. If Hyperion fails to comply with such second notification by immediately removing such service enhancing copper cable technology, GTE will take the necessary action to isolate the interfering technology from its network. In that event, Hyperion shall reimburse GTE for all incurred expense related to these activities.

4.8 Subloops.

4.8.1 GTE will provide as separate items the loop distribution, loop concentrator and loop feeder on a case-by-case basis pursuant to a bona fide request, when technically feasible and when Hyperion pays the cost of such separate provision.

4.8.1.1 GTE shall provide subloops elements from the mandated point of termination ("MPOT") to an existing GTE point of demarcation at the wire center/central office.

4.8.2 GTE will design and construct loop access facilities (including loop feeders and loop concentration/multiplexing systems) in accordance with standard industry practices as reflected in applicable tariffs and/or as agreed to by GTE and Hyperion.

4.8.3 Transport for loop concentrators/multiplexers services not supported by embedded technologies will be provided pursuant to applicable tariffs or as individually agreed upon by GTE and Hyperion. The Parties understand that embedded loop concentrators/multiplexers are not necessarily capable of providing advanced and/or digital services.

4.8.4 GTE will provide Hyperion end users with loop transmission characteristics equal to that provided to GTE end users.

5. Port and Local Switching Elements.

5.1 Port. Port is an unbundled component of Exchange Service that provides for the interconnection of individual loops or trunks to the switching components of GTE's network. In general, it is a line card or trunk card and associated peripheral equipment on GTE end office switch that serves as the hardware termination for the end user's Exchange Service on that switch and generates dial tone and provides the end user access to the public switched telecommunications network. The port does not include such features and functions which are provided as part of local switching. Each line-side port is

typically associated with one (or more) telephone number(s), which serve as the end user's network address.

- 5.2 Ports Available as Unbundled Network Elements. There are four types of Ports available as unbundled network elements;
- 5.2.1 "2-wire analog line" Port is a line side switch connection employed to provide basic residential and business type Exchange Service.
- 5.2.2 "2-wire ISDN digital line" Port is a Basic Rate Interface (BRI) line side switch connection employed to provide ISDN Exchange Services.
- 5.2.3 "DS-1 digital trunk" Port is a direct inward dialing (DID) trunk side switch connection employed to provide the equivalent of 24 analog incoming trunk type Exchange Services.
- 5.2.4 "4-wire ISDN digital DS-1 trunk" Port is a Primary Rate Interface (PRI) trunk side switch connection employed to provide the ISDN Exchange Services
- 5.3 Port Prices. Prices for 2-wire analog and DS-1 Ports are listed in Appendix F. 2-wire ISDN line side Ports and 4-wire ISDN trunk side Ports shall be provided at a price agreed to by the Parties.
- 5.4 Future Interfaces. GTE will make available as unbundled network elements any interfaces that are deployed within its switches and which it provides to its own end user customers. GTE will interface with Hyperion using standard industry interfaces and support future interfaces that are deployed within the GTE switch.
- 5.5 Local Switching. Local switching provides the basic switching functions to originate, route and terminate traffic and any signaling deployed in the switch. GTE will not offer individual core switch functions and features on an a la carte basis. Vertical features and CLASS services are not part of Local Switching. GTE will only provide switch features and functions of which the particular switch is capable and inherent to the particular switching platform used (e.g., DMS, 5ESS, GTD5).
- 5.6 Purchase of Local Switching. Hyperion must purchase Local Switching with the line-side Port or trunk-side Port, if applicable.
- 5.7 Hyperion Responsibility. Hyperion shall only order unbundled elements in accordance with Section 2.3 herein and it will be the responsibility of Hyperion to make arrangements for the delivery of interexchange traffic and routing of traffic over interoffice transmission facilities, if applicable.
- 5.8 Tandem Switching. GTE will provide tandem switching capability at GTE access tandems for traffic between Hyperion and GTE end offices subtending the GTE access tandem and for traffic between Hyperion and non-GTE end offices

subtending GTE access tandems. GTE will provide features and functions that are centralized in tandem switches including but not limited to call recording, the routing of calls to operator services when technically feasible, and signaling conversion features.

6. Transport Facility.

6.1 Service Description. Transport is an unbundled component of Exchange Service. In general, it is the transmission facility (or channel or group of channels on such facility) which extends from a Main Distribution Frame (MDF) or functionally comparable piece of equipment in a GTE end office or access tandem to either (i) another MDF or functionally comparable piece of equipment in a GTE end office or access tandem, or (ii) a meet point with transport facilities of Hyperion or another carrier. Transport may be provided over a variety of media, including, but not limited to, copper cables, radio frequencies or channels on a high capacity facility.

6.2 Categories/Types. Unbundled transport is provided under rates, terms and conditions of the applicable GTE special access tariff or local private line tariff.

7. SS7 Transport and Signaling. SS7 signaling and transport services in support of Hyperion's local exchange services shall be provided in accordance with the terms and conditions of Appendix H attached to this Agreement and made a part hereof.

7.1 GTE will provide interconnection with its SS7 at the STPs but not at other points.

8. LIDB Services. Access to GTE's LIDB shall be provided in accordance with the rates, terms and conditions of GTE's switched access tariff, GTOC Tariff FCC No. 1, Section 8.

9. Database 800/888 Services. Access to GTE's 800/888 database shall be provided in accordance with the rates, terms and conditions of GTE's switched access tariff, GTOC Tariff FCC No. 1, Section 8.

10. Data Switching

10.1 Access. GTE will provide unbundled access to GTE data switches to Hyperion at the user network interface ("UNI") and network to network interface ("NNI") level subject to mutual agreement on technical standards.

10.2 Nondiscrimination. Data switching features and functionalities provided to Hyperion will be without discrimination with respect to the way GTE provides them to GTE end users. In the event of overflow or congestion conditions on the data switching network, Hyperion's data traffic carried on GTE facilities will be equal priority to GTE data traffic.

- 10.3 Interface. To the extent a standard interface is available in a GTE switch, it will be made available to Hyperion.
- 10.4 Testing, Monitoring, Administration and Maintenance. Testing, monitoring, administration and maintenance will be performed by GTE in a nondiscriminatory manner.
11. Digital Cross Connect System (DCS)
- 11.1 Access. GTE will provide unbundled access to the DCS element, which shall provide automated cross-connection (with CNC), facility grooming, bridging (MJU-digital), point to multipoint connections (DMB-analog), broadcast and automated facility test capabilities. These functionalities will be provided consistent with that which is provided to GTE end users. Hyperion shall submit a service order to GTE specifying these functionalities.
- 11.2 Optional Characteristics. The DCS element may include multiplexing, format conversion, signaling conversion and manual cross connection wiring.
- 11.3 Alternate Provisioning. Where no automated DCS capability exists, the cross connection function will be provided manually through the combination of DSX patch panels and D4 banks or DS0 (or higher capacity) equipment.
- 11.4 Elements. Hyperion will have access to the following DCS elements:
- (a) DS0 with DS1 interface (CNC)
 - (b) DS1/VT1.5 with DS1, DS3 and SONET interfaces (CNC and Titan 5500)
- 11.5 Capabilities. The DCS elements will provide the following capabilities:
- (a) Real-time configuration (with CNC)
 - (b) Real-time access to integrated test equipment (with React and Customer Service)
 - (c) SONET asynchronous gateway functionality (with Titan 5500 only)
 - (d) Compliance with Bellcore and industry standards.
- 11.6 Protection and Performance. The unbundled DCS elements provided to Hyperion will have equipment/interface protection, redundant power supply and/or battery backup and performance/availability consistent with that provided to GTE end users.
- 11.7 Provisioning, Administration and Maintenance. GTE will provide provisioning, administration and maintenance of the DCS elements at parity with GTE as well as real time access to performance monitoring and alarm data affecting Hyperion

traffic (with CNC). GTE is not required to keep software updated to the "current available release" in every instance.

11.8 Operator Services (OS) and Directory Assistance (DA). GTE will provide OS and DA to Hyperion in accordance with the terms set forth as follows:

11.8.1 Where Customized Routing is available and Hyperion so requests, GTE will offer unbranded OS and DA or rebranded OS and DA with the Hyperion brand. GTE will provide such unbranding or rebranding on a switch-by-switch basis, subject to capability and capacity limitations. Upon receipt of an order for unbranding or rebranding, GTE will implement within 90 Business Days when technically capable.

11.8.2 Hyperion will be billed an element charge for OS and DA and for unbranding or rebranding at rates specified in Appendix F. Customized Routing will be provided in accordance with the terms and conditions and rates defined below.

11.8.3 For those offices that Hyperion has requested GTE to rebrand and/or unbrand OS and DA, Hyperion shall continue exclusively to use GTE rebranded and/or unbranded OS and DA for the duration of the Agreement. Live operators handling OS and DA calls from Hyperion local service customers will identify themselves as Hyperion operators; where such rebranding is not technically feasible, live operator response will be provided on an unbranded basis. Hyperion agrees to withdraw its request for branding of OS and DA for calls that are handled by automated systems until these systems are capable of rebranding.

11.9 Customized Routing. Where technically feasible and upon receipt of written request from Hyperion, GTE agrees to provide customized routing for the following types of calls:

0-

0+Local

0+411

1+411

0+HNPA-555-1212 (intraLATA, only when intraLATA presubscription is not available)

1+HNPA-555-1212 (intraLATA, only when intraLATA presubscription is not available)

11.9.1 GTE will provide Hyperion a list of switches that can provide customized routing using line class codes or similar method (regardless of current capacity limitations). Hyperion will return a list of these switches ranked in priority order. GTE will return to Hyperion a schedule for customized routing in the switches with existing capabilities and capacity.

- 11.9.2 Hyperion will be billed for Customized Routing at rates specified in Appendix F.
- 11.9.3 Subject to the above provisions, GTE will choose the method of implementing customized routing of OS and DA calls.
- 11.9.4 The use of customized routing will require the purchase of a trunk side port and dedicated facilities between the GTE end office and the designated OS/DA platform. The rates for these elements will be billed in accordance with Appendix F.
- 12. Advanced Intelligent Network Access (AIN). GTE will provide Hyperion access to GTE AIN functionality from GTE's AIN SCP via GTE's local switch or Hyperion's local switch.
- 13. Advance Notification of Network and Technology Changes. GTE will establish quarterly reviews of network and technology plans and will notify Hyperion six (6) months in advance of changes that would impact Hyperion's provision of services.
- 14. Liability. GTE agrees to provide unbundled network elements in a timely manner considering the need and volume of requests.
 - 14.1 Time Frame. No specific time frame or deployment plan shall be imposed on GTE for offering unbundled network elements, nor shall remedial measures be levied against GTE.

ARTICLE VII
ADDITIONAL SERVICES AND COORDINATED SERVICE ARRANGEMENTS

1. Bona Fide Request Process.

1.1 Intent. The Bona Fide Request process is intended to be used when Hyperion requests customized Service Orders for certain services, features, capabilities or functionality defined and agreed upon by the Parties as services to be ordered as Bona Fide Requests.

1.2 Process.

1.2.1 A Bona Fide Request shall be submitted in writing by Hyperion and shall specifically identify the need to include technical requirements, space requirements and/or other such specifications that clearly define the request such that GTE has sufficient information to analyze and prepare a response.

1.2.2 Although not expected to do so, Hyperion may cancel a Bona Fide Request in writing at any time prior to Hyperion and GTE agreeing to price and availability. GTE will then cease analysis of the request.

1.2.3 Within two (2) Business Days of its receipt, GTE shall acknowledge in writing the receipt of the Bona Fide Request and identify a single point of contact and any additional information needed to process the request.

1.2.4 Except under extraordinary circumstances, within ten (10) Business Days of its receipt of a Bona Fide Request, GTE shall provide a proposed price and availability date, or it will provide a detailed explanation as to why GTE is not able to meet Hyperion's request. If extraordinary circumstances prevail, GTE will inform Hyperion as soon as it realizes that it cannot meet the ten (10) Business Day response due date. Hyperion and GTE will then determine a mutually agreeable date for receipt of the request.

1.2.5 Unless Hyperion agrees otherwise, all proposed prices shall be consistent with the pricing principles of the Act, FCC and/or the Commission. Payments for services purchased under a Bona Fide Request will be made upon delivery, unless otherwise agreed to by Hyperion, in accordance with the applicable provisions of the Agreement.

1.2.6 Upon affirmative response from GTE, Hyperion will submit in writing its acceptance or rejection of GTE's proposal. If at any time an agreement cannot be reached as to the terms and conditions or price of the request, the Dispute resolution procedures described above in this Article may be used by a Party to reach a resolution.

- 1.2.7 If GTE responds that it cannot or will not offer the requested item in the Bona Fide Request and Hyperion deems the item essential to its business operations, and deems GTE's position to be inconsistent with the Act, FCC or Commission regulations and/or the requirements of this Agreement, the Dispute resolution procedures described above in this Article may be used by a Party to reach a resolution.
2. Transfer of Service Announcements. When an end user customer transfers service from GTE to Hyperion, or from Hyperion to GTE, and does not retain its original telephone number, the Party formerly providing service to the end user will provide, upon request, a referral announcement on the original telephone number. This announcement will provide the new number of the customer.
3. Misdirected Calls. The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.).
- 3.1 To the extent the correct provider can be determined, each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to provide the end user the correct contact telephone number, at no charge and in a courteous manner.
- 3.2 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit end users or to market services.
4. 911/E911 Arrangements.
- 4.1 Description of Service. Hyperion will install a minimum of two dedicated trunks to GTE's 911/E911 selective routers (i.e., 911 tandem offices) that serve the areas in which Hyperion provides Exchange Services, for the provision of 911/E911 services and for access to all subtending PSAPs. The dedicated trunks shall be, at minimum, DSO level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) tones that will deliver ANI with the voice portion of the call. GTE will provide Hyperion with the appropriate CLLI codes and specifications of the tandem office serving area and the 10-digit POTS number of each PSAP. If an Hyperion central office serves end users in an area served by more than one GTE 911/E911 selective router, Hyperion will install a minimum of two dedicated trunks in accordance with this section to each of such 911/E911 selective routers.
- 4.2 Transport. If Hyperion desires to obtain transport from GTE to the GTE 911 selective routers, Hyperion may purchase such transport from GTE at the rates set forth in GTE's intrastate switched access tariff or in GTE's intrastate special access tariff.
- 4.3 Cooperation and Level of Performance. The Parties agree to provide access to 911/E911 in a manner that is transparent to the end user. The Parties will work

together to facilitate the prompt, reliable and efficient interconnection of Hyperion's systems to the 911/E911 platforms, with a level of performance that will provide the same grade of service as that which GTE provides to its own end users. To this end, GTE will provide documentation to Hyperion showing the correlation of its rate centers to its E911 tandems.

- 4.4 Updates to MSAG. It shall be the responsibility of Hyperion to ensure that the address of each of its end users is included in the Master Street Address Guide ("MSAG") via information provided on Hyperion's Local Service Request ("LSR") or via a separate feed established by Hyperion pursuant to section 3.5 of this Article.
- 4.5 Updates to Database. GTE and Hyperion will work together to develop the process by which the 911/E911 database will be updated with Hyperion's end user 911/E911 information.
- 4.6 Compensation. In situations in which GTE is responsible for maintenance of the 911/E911 database and can be compensated for maintaining Hyperion's information by the municipality, GTE will seek such compensation from the municipality. GTE will seek compensation from Hyperion only if and to the extent that GTE is unable to obtain such compensation from the municipality. GTE shall charge Hyperion a portion the cost of the shared 911/E911 port.
5. Information Services Traffic.
 - 5.1 Routing. Each Party shall route traffic for information services (e.g. 900, 976, N11, weather lines, sports lines, etc.) that originates on its network to the appropriate information services platforms connected to the other Party's network over the Local/IntraLATA trunks.
 - 5.2 Recording. The Party on whose network the information services traffic originated (the "Originating Party") shall provide the recorded call detail information to the Party to whose information platform the information services traffic terminated (the "Terminating Party").
 - 5.3 Rating. The Terminating Party shall provide to the Originating Party all rating information necessary to bill the information services traffic to the Originating Party's end users pursuant to the Terminating Party's agreements with each information provider.
 - 5.4 Billing and Collection. The Originating party shall bill and collect such information service charges and shall remit the amounts collected to the Terminating Party less:
 - (a) a mutually agreed upon fee for providing billing and collection of the information service charges; and

(b) any uncollectibles reserve, which shall be calculated based on the uncollectibles reserve in the Terminating Party's billing and collection agreement with the applicable information services provider; and

(c) any customer adjustment provided by the Originating Party.

5.5 Blocking. Nothing in this Agreement shall restrict either Party from offering to its end user customers the ability to block the completion of information service traffic.

6. Directory Assistance (DA) and Operator Services. Where Hyperion is providing local service with its own switch, upon Hyperion's request GTE will provide to Hyperion GTE directory assistance services and/or operator services pursuant to separate contracts to be negotiated in good faith between the Parties. If Hyperion so requests directory assistance services and/or operator services, such contracts shall provide for the following:

6.1 Directory Assistance Calls. GTE directory assistance centers shall provide number and addresses to Hyperion end users in the same manner that number and addresses are provided to GTE end users. If information is provided by an automated response unit ("ARU"), such information shall be repeated twice in the same manner in which it is provided to GTE end users. Where available, GTE will provide call completion to Hyperion end users in the same manner that call completion is provided to GTE end users. GTE will provide its existing services to Hyperion end users consistent with the service provided to GTE end users.

6.2 Operator Services Calls. GTE operator services provided to Hyperion end users shall be provided in the same manner GTE operator services are provided to GTE end users. In accordance with GTE practices and at GTE rates, GTE will offer to Hyperion end users collect, person-to-person, station-to-station calling, third party billing, emergency call assistance, TLN calling card services, credit for calls, time and charges, notification of the length of call, and real time rating. GTE will not provide the ability to quote Hyperion rates. GTE will provide its existing services to Hyperion end users consistent with the service provided to GTE end users.

7. Directory Assistance Listings. GTE shall accept listings for Hyperion end users in the same geographic area as GTE provides directory assistance for GTE end users. Hyperion agrees to supply GTE, on a regularly scheduled basis and in the format utilized by GTE (*i.e.*, a separate feed from the LSR process), with such listings. Updating priority of GTE directory assistance data base with Hyperion end user listings will occur consistent with updating with GTE end user listings.

8. Directory Listings and Directory Distribution. Subject to execution of a separate agreement between Hyperion and GTE (the "Directories Agreement"), GTE shall offer the following to Hyperion:

- 8.1 Directory Listings (White Pages). Hyperion's end users' primary listings shall be included in the appropriate GTE white pages directory at no charge to Hyperion or Hyperion's end users. Foreign listings will be charged to Hyperion at tariffed or mandated discount rates.
- 8.2 Directory Listings (Yellow Pages). Hyperion's business end users' listings also will receive a single standard listing in all appropriate GTE "yellow pages" or classified directories under the classified heading that most accurately reflects the nature of the end user's business at no charge to Hyperion or Hyperion's business end users for this listing. GTE will supply Hyperion with a list of authorized classified headings. Hyperion agrees to supply GTE, on a regularly scheduled basis and in the format utilized by GTE, with a classified heading assignment for each Hyperion end user who wishes to receive this listing.
- 8.3 Listing Information. Hyperion agrees to supply GTE, on a regularly scheduled basis and in the format utilized by GTE, all listing information for Hyperion end users who wish to be listed in the white pages of the GTE published directory for that subscriber area. Listing information will consist of names, addresses (including city and ZIP code) and telephone numbers. GTE shall employ the listing information for the production of GTE-published white and yellow page directories and for other reasonable purposes. Listing inclusion in a given directory will be in accordance with directory configuration, scope, and schedules established by GTE.
- 8.4 Directory Distributions. Directories will be provided to Hyperion's end users in accordance with the Directories Agreement. More specifically, GTE will not charge Hyperion or Hyperion's end users for annual distribution of directories. GTE will charge Hyperion for secondary distribution of directories, including distribution to new Hyperion end users, at the same rate GTE is charged for such secondary distribution. Currently, GTE is charged \$2.49 per directory volume for secondary distribution. Hyperion will supply GTE in a timely manner with all required subscriber mailing information including non-listed and non-published subscriber mailing information, to enable GTE to perform its distribution responsibilities.
- 8.5 Critical Customer Contact Information. GTE will list in the information pages of the appropriate white pages directories Hyperion's critical customer contact numbers (i.e., customer service, business office, repair service, billing) at no charge to Hyperion in accordance with the terms and conditions in the Directories Agreement. GTE shall list Competitive Local Exchange Carrier critical customer contact information on an alphabetical basis.
- 8.6 Promotional, Marketing or Description of Services Materials. In addition to the provisions set forth in the separate Directories Agreement, at its option Hyperion may purchase one page in GTE white pages directories for inclusion of Hyperion promotional, marketing or description of services materials, for which Hyperion shall be charged sixty-five percent (65%) of the Yellow Pages full page

advertising rate then in effect for the specific directory. Hyperion brands and logos may appear only on this page of GTE white pages directories.

9. Busy Line Verification and Interrupt. Each Party shall establish procedures whereby its operator assistance bureau will coordinate with the operator assistance bureau of the other Party to provide Busy Line Verification ("BLV") and Busy Line Verification and Interrupt ("BLVI") services on calls between their respective end users. Each Party shall route BLV and BLVI inquiries over separate inward operator services trunks. Each Party's operator assistance bureau will only verify and/or interrupt the call and will not complete the call of the end user initiating the BLV or BLVI. Each Party shall charge the other for the BLV and BLVI services at the rates contained in Appendix E, or if there is no applicable rate listed in Appendix E, at the rates in their respective tariffs.

ARTICLE VIII
GENERAL RULES GOVERNING RESOLD SERVICES AND UNBUNDLED
ELEMENTS

1. General. General regulations, terms and conditions governing rate applications, technical parameters, service availability, definitions and feature interactions, as described in the appropriate GTE intrastate local, toll and access tariffs, apply to retail services made available by GTE to Hyperion for resale and unbundled network elements provided by GTE to Hyperion, when appropriate, unless otherwise specified in this Agreement. As applied to services or network elements offered under this Agreement, the term "Customer" contained in the GTE Retail Tariff shall be deemed to mean "Hyperion" as defined in this Agreement.
2. Liability of GTE.
 - 2.1 Inapplicability of Tariff Liability. GTE's general liability, as described in the GTE Retail Tariff, does not extend to Hyperion's customers or any other third party. Liability of GTE to Hyperion resulting from any and all causes arising out of services, facilities, network elements or any other items relating to this Agreement shall be governed by the liability provisions contained in this Agreement and no other liability whatsoever shall attach to GTE. GTE shall be liable for the individual services, facilities or elements that it separately provides to Hyperion and shall not be liable for the integration of components combined by Hyperion.
 - 2.2 Hyperion Tariffs or Contracts. Hyperion shall use best efforts to include and, if necessary, secure Commission approval of provisions in its tariffs or other contracts for services provided to its end users using services, facilities or network elements obtained from GTE, providing that in no case shall GTE be liable to Hyperion's end users or any third parties for any indirect, special or consequential damages, including, but not limited to, economic loss or lost business or profits, whether foreseeable or not, and regardless of notification by Hyperion of the possibility of such damages and Hyperion shall indemnify and hold GTE harmless from any and all claims, demands, causes of action and liabilities based on any reason whatsoever from its customers as provided in this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship with Hyperion's end users.
 - 2.3 No Liability for Errors. GTE is not liable for mistakes that appear in GTE's listings, 911 and other information databases, or for incorrect referrals of end users to Hyperion for any ongoing Hyperion service, sales or repair inquiries, and with respect to such mistakes or incorrect referrals, Hyperion shall indemnify and hold GTE harmless from any and all claims, demands, causes of action and liabilities whatsoever, including costs, expenses and reasonable attorney's fees incurred on account thereof, by third parties, including Hyperion's end users or employees. For purposes of this Section 2.3, mistakes and incorrect referrals

shall not include matters arising out of the willful misconduct of GTE or its employees or agents.

3. Unauthorized Changes.

3.1 Procedures. If Hyperion submits an order for resold services or unbundled elements under this Agreement in order to provide service to an end user that at the time the order is submitted is obtaining its local services from GTE or another LEC using GTE resold services or unbundled elements, and the end user notifies GTE that the end user did not authorize Hyperion to provide local exchange services to the end user, Hyperion must provide GTE with written documentation of authorization from that end user within three (3) Business Days of notification by GTE. If Hyperion cannot provide written documentation of authorization within such time frame, Hyperion must within three (3) Business Days thereafter:

- (a) notify GTE to change the end user back to the LEC providing service to the end user before the change to Hyperion was made; and
- (b) provide any end user information and billing records Hyperion has obtained relating to the end user to the LEC previously serving the end user; and
- (c) notify the end user and GTE that the change back to the previous LEC has been made; and
- (d) pay GTE fifty dollars (\$50.00) per affected line to compensate GTE for switching the end user back to the original LEC.

3.2 Option to Restrict Changes Without Evidence of Authorization. Hyperion's or GTE's end users may request GTE to permit changes of their provider of local exchange services only upon written end user notification to GTE that the end user wishes to change the end user's provider of local exchange services. In such a situation, GTE will not change an end user's provider of local exchange services without such written notification.

4. Impact of Payment of Charges on Service. Hyperion is solely responsible for the payment of all charges for all services, facilities and elements furnished under this Agreement, including, but not limited to, calls originated or accepted at its or its end users' service locations. If Hyperion fails to pay when due any and all charges billed to Hyperion under this Agreement, including any late payment charges (collectively, "Unpaid Charges"), and any or all such charges remain unpaid more than forty-five (45) days after the due date of such Unpaid Charges, GTE shall notify Hyperion in writing that it must pay all Unpaid Charges to GTE within seven (7) Business Days. If Hyperion disputes the billed charges, it shall, within said seven (7) day period, inform GTE in writing of which portion of the Unpaid Charges it disputes, including the specific details and reasons for the dispute, immediately pay to GTE all undisputed charges, and shall pay disputed charges into an interest bearing escrow account. If Hyperion and GTE are

unable, within thirty (30) days thereafter, to resolve issues related to the disputed charges, then either Hyperion or GTE may file a complaint with the Commission to resolve those issues. The Commission may direct the release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to GTE and or Hyperion. If Hyperion fails to pay any undisputed Unpaid Charges, Hyperion shall, at its sole expense, within five (5) Business Days notify its end users that their service may be disconnected for Hyperion's failure to pay Unpaid Charges, and that its end users must select a new provider of local exchange services. If Hyperion fails to provide such notification or any of Hyperion's end users fail to select a new provider of services within the applicable time period, GTE will provide local exchange services to Hyperion's end users under GTE's applicable end user tariff at the then current charges for the services being provided. In this circumstance, otherwise applicable service establishment charges will not apply to Hyperion's end user, but will be assessed to Hyperion. GTE may discontinue service to Hyperion upon failure to pay undisputed charges as provided in this Section 4, and shall have no liability to Hyperion or Hyperion's end users in the event of such disconnection.

5. Unlawful Use of Service. Services, facilities or unbundled elements provided by GTE pursuant to this Agreement shall not be used by Hyperion or its end users for any purpose in violation of law. Hyperion, and not GTE, shall be responsible to ensure that Hyperion and its end users use of services, facilities or unbundled elements provided hereunder comply at all times with all applicable laws. GTE may refuse to furnish service to Hyperion or disconnect particular services, facilities or unbundled elements provided under this Agreement to Hyperion or, as appropriate, Hyperion's end user when (i) an order is issued by a court of competent jurisdiction finding that probable cause exists to believe that the use made or to be made of the service, facilities or unbundled elements is prohibited by law or (ii) GTE is notified in writing by a law enforcement agency acting within its jurisdiction that any facility furnished by GTE is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of law. Termination of service shall take place after reasonable notice is provided to Hyperion, or as ordered by the court. If facilities have been physically disconnected by law enforcement officials at the premises where located, and if there is not presented to GTE the written finding of a court, then upon request of Hyperion and agreement to pay restoral of service charges and other applicable service charges, GTE shall promptly restore such service.

6. Timing of Messages. With respect to measured rate local service or other usage sensitive services provided under this Agreement, chargeable time begins when a connection is established between the calling station and the called station. Chargeable time ends when the calling station "hangs up", thereby releasing the network connection. If the called station "hangs up" but the calling station does not, chargeable time ends when the network connection is released by automatic timing equipment in the network.

7. Procedures For Preordering, Ordering, Provisioning, Etc. Certain procedures for preordering, ordering, provisioning, maintenance and billing and electronic interfaces for many of these functions are described in Appendix G. All costs and expenses for

any new or modified electronic interfaces Hyperion requires that GTE determines are technically feasible and GTE agrees to develop will be paid by Hyperion. The schedule for implementation of any new or modified electronic interfaces will be developed by GTE according to industry standards and will be based upon the amount of work needed to design, test and implement the new or modified interface.

ARTICLE IX
COLLOCATION

1. Physical Collocation. GTE shall provide to Hyperion physical collocation of equipment necessary for interconnection or for access to unbundled network elements, provided that GTE may provide virtual collocation in place of physical collocation, or in some cases deny a particular collocation request entirely, if GTE demonstrates that *physical collocation, or perhaps even virtual collocation, is not practical because of technical reasons or space limitations, as provided in Section 251(c)(6) of the Act.* GTE will provide such collocation for purposes of interconnection or access to unbundled network elements pursuant to the terms and conditions in the applicable GTE federal and state collocation tariffs. In addition, GTE agrees that the terms and conditions set forth in this section 1 shall apply to physical collocation provided to Hyperion.

1.1 Space Planning. In addition to such provisions for space planning and reservation as may be set forth in the applicable GTE federal and state collocation tariffs, the parties agree to the following terms and conditions.

1.1.1 GTE has the right to reserve space within its central offices for its own use based on a 5-year planning horizon.

1.1.2 GTE will notify Hyperion if it plans to build an addition to a central office where Hyperion has collocated facilities, if such addition would result in a material increase of space available for collocation.

1.1.3 Should Hyperion submit to GTE a two-year forecast for space planning for collocated facilities in a central office, GTE will, in good faith, consider and discuss such forecast with Hyperion when considering space planning or utilization decisions for such central office; provided, however that any final space planning or utilization decision shall be made by GTE in its sole discretion in light of GTE requirements.

1.1.4 *Subject to technical feasibility and space limitations, GTE will make available at applicable federal and state collocation tariffs such intraoffice facilities as may be necessary to accommodate projected volumes of Hyperion traffic.*

1.2 Connection to Customer Loops and Ports. Facilities for cross-connection to unbundled loops and ports shall be provided under the applicable GTE federal tariff for Switched Access Cross Connect, until such time as a local tariff applicable to the facilities used for such cross-connection is filed.

1.3 Connection to Other Collocated Carriers. Subject to technical feasibility and space limitations, Hyperion may interconnect with other carriers collocated at a GTE central office at which Hyperion has collocated facilities; provided, however, that Hyperion and such other carriers must be collocated at the GTE central office for the primary purpose of interconnecting with GTE or accessing GTE's unbundled network elements. If Hyperion wants to interconnect with other

carriers collocated at a GTE central office, Hyperion must provide GTE with thirty days' prior written notice, during which time GTE may elect to provide the facilities necessary to accomplish such interconnection. Hyperion and the other collocated carriers may provide the necessary interconnection facilities only if GTE elects not to provide such facilities or fails to so elect within the thirty day notice period. If GTE elects to provide interconnection facilities under this section, GTE will provide this cross connection under the GTE federal tariff for Switched Access Cross Connect, until such time as a local tariff applicable to the facilities used for such interconnection facilities is filed.

- 1.4 Choice of Vendor. Hyperion may use the vendor of its choice to install, maintain and repair equipment within Hyperion's collocated space. Access by the employees, agents or contractors of such vendor shall be subject to the same restrictions on access by employees, agents or contractors of Hyperion imposed under the applicable GTE federal and state collocation tariffs, including but not limited to certification and approval by GTE.
- 1.5 Monitoring. Subject to technical feasibility and space limitations, Hyperion may extend its own facilities for remote monitoring of its collocated equipment to its collocated space. Hyperion may request that GTE provide the facilities necessary for such remote monitoring, at which time GTE and Hyperion will negotiate in good faith the price, terms and conditions of remote monitoring by GTE.
- 1.6 Phone Service. Upon ordering collocated space, Hyperion may order that its collocation cage be provided with plain old telephone service (POTS) commencing at such time as GTE has completed construction of the collocated space. Hyperion shall pay separately for any ordered POTS service.
- 1.7 Intraoffice Diversity. At Hyperion's request, GTE will provide diversity for ingress/egress fiber and power cables where such diversity is available and subject to technical feasibility and space limitations.
- 1.8 Hyperion Proprietary Information. GTE will protect all Hyperion proprietary information to the extent required under non-disclosure agreements existing as of the date GTE completes construction of a physical collocation space at Hyperion's request.
- 1.9 Notification of Modifications. GTE will notify Hyperion of modifications to collocation space in accord with the terms of applicable GTE state and federal collocation tariffs. Additionally, GTE shall notify Hyperion when major upgrades are made to the power plants supporting Hyperion's collocation space. The following shall constitute such major upgrades:
 - (a) replacement of a rectifier;
 - (b) addition or replacement of a new fusing module;

- (c) addition or replacement of a power distribution unit frame; or
- (d) addition or replacement of modular rectifiers.

1.10 Drawings. When Hyperion orders collocated space, GTE and Hyperion will hold a GTE/Customer meeting in accord with applicable GTE state and federal collocation tariffs. At such meeting, GTE will provide such drawings of GTE's central office facility as may be necessary to adequately depict Hyperion's proposed collocation space.

1.11 Construction of Space. GTE will construct Hyperion's collocation space in accord with the terms and conditions set forth in the applicable GTE state and federal collocation tariff. Additionally, GTE agrees to the following terms and conditions regarding construction of collocated space:

1.11.1 Space will be constructed in 100 square foot increments, and shall be designed so as to prevent unauthorized access.

1.11.2 A standard 100 square foot cage shall have the following standard features:

- (a) eight-foot high, nine gauge chain link panels;
- (b) three of the panels listed at (a) above shall measure eight by ten feet, the fourth panel shall measure eight by seven feet;
- (c) the door to the cage shall measure eight by three feet and shall also consist of nine gauge chain link;
- (d) the cage shall be provided with one padlock set, with GTE retaining one master key;
- (e) one ac electrical outlet;
- (f) one charger circuit system;
- (g) one electrical sub-panel;
- (h) such additional lighting as may be necessary;
- (i) one fire detection requirement evaluation;
- (j) grounding for the cage consistent with COEI.

1.11.3 Modifications to the standard configuration set forth in section 1.11.2 can be made on an individual case basis. If modifications are agreed upon and made by the Parties, GTE will work with Hyperion to implement such additional modifications as may be necessary to

ensure that Hyperion's collocated space is protected from unauthorized access.

- 1.11.4 At such time as construction of Hyperion's collocation space is approximately 50 percent completed, GTE will give Hyperion notification, and such notification shall include scheduled completion and turnover dates.
- 1.11.5 Upon completion of construction of collocated space, GTE will conduct a walk through of the collocated space with Hyperion. Should Hyperion note any deviations from the plan agreed upon by GTE and Hyperion at the customer meeting, if such deviations are due to the negligence of GTE, GTE shall correct such deviations at its own expense within 5 days.
- 1.12 Connection Equipment. Hyperion may provision equipment for the connection of Hyperion termination equipment to GTE equipment using either of the following methods:
 - 1.12.1 Hyperion may extend an electrical or optical cable from the terminal within Hyperion's collocation cage and terminate that cable at GTE's network.
 - 1.12.2 Hyperion may install a patch panel within its collocation cage and then hand the cabling to GTE to extend to and have GTE terminate that cable at GTE's network.
- 1.13 Access to Hyperion Collocation Space. The terms and conditions of access to Hyperion's collocation space shall be as set forth in applicable GTE state and federal collocation tariffs. Additionally, GTE agrees that the following terms and conditions shall apply to access:
 - 1.13.1 GTE shall implement adequate measures to control access to collocation cages.
 - 1.13.2 Collocation space shall comply with all applicable fire and safety codes.
 - 1.13.3 Doors with removable hinges or inadequate strength shall be monitored by an alarm connected to a manned site. All other alarms monitoring Hyperion collocation space provided by GTE shall also be connected to a manned site. Hyperion may, at its option, provide its own intrusion alarms for its collocated space.
 - 1.13.4 GTE shall control janitorial access to collocation cages, and restrict such access to approved and certified employees, agents or contractors.

- 1.13.5 GTE shall establish procedures for access to collocation cages by GTE and non-GTE emergency personnel, and shall not allow access by security guards unless such access comports with this section and is otherwise allowed under applicable GTE state and federal collocation tariffs.
- 1.13.6 GTE shall retain a master key to Hyperion's collocation space for use only in event of emergency as detailed in applicable GTE state and federal tariffs. At Hyperion's option, the Parties shall review key control procedures no more frequently than once in any twelve month period. At any time, Hyperion may elect to change keys if it suspects key control has been lost, provided, however, that GTE will be provided with a master key in accord with this section.
- 1.13.7 Not more frequently than once a year, Hyperion may audit the security and access procedures and equipment applicable to its collocated space and the central office housing the collocation space. Access by personnel necessary to conduct such an audit shall be limited as set forth in applicable GTE state and federal collocation tariffs. Should Hyperion identify deficiencies in security and access procedures and equipment as a result of such audit, the cost, terms and conditions of the correction of such deficiencies shall be negotiated in good faith between the parties.

2. Virtual Collocation. Subject to section 1 of this Article, GTE will provide virtual collocation for purposes of interconnection or access to unbundled network elements pursuant to the terms and conditions in the applicable GTE federal and state collocation tariffs. In addition, GTE agrees that the terms and conditions set forth in this section 2 shall apply to virtual collocation provided to Hyperion.

2.1 Existing Virtual Collocation. If, on the effective date of this Agreement, Hyperion is virtually collocated in a GTE premise, Hyperion may (i) elect to retain its virtual collocation arrangement in that premise or (ii) unless it is not practical for technical reasons or because of space limitations, convert its virtual collocation arrangement at that premise to physical collocation. If Hyperion elects the latter option, Hyperion's request shall be treated as a new physical collocation request and Hyperion shall pay GTE at the applicable tariff rates for construction and rearrangement of Hyperion's equipment as well as all applicable tariffed physical collocation recurring charges.

2.2 Conversion from Physical to Virtual. Unless it is not practical for technical reasons or because of space limitations, Hyperion may convert a physical collocation arrangement to a virtual collocation arrangement. Hyperion's request to do so shall be treated as a new virtual collocation request and Hyperion shall pay GTE at the applicable tariff rates for construction and rearrangement of Hyperion's equipment as well as all applicable tariffed virtual collocation recurring charges. If Hyperion elects to change to a virtual collocation

arrangement pursuant to this section, GTE will not refund previous payments for physical collocation received from Hyperion.

- 2.3 Vendors. Choice of vendors for equipment used for virtual collocation shall be under the terms and conditions set forth in the applicable GTE federal and state collocation tariff. Upon request by Hyperion, GTE shall provide a list of locally qualified vendors approved the type of equipment to be collocated.
- 2.4 Inspection. Upon provision of virtual collocation by GTE, the Parties shall agree on a mutually acceptable schedule whereby Hyperion may inspect the equipment in its virtual collocation space.

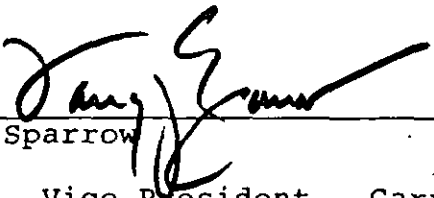
ARTICLE X
ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY

To the extent required by the Act, GTE and Hyperion shall each afford to the other access to the poles, ducts, conduits and rights of way it owns or controls on terms, conditions and prices comparable to those offered to any other entity pursuant to each Parties tariffs and/or standard agreements. Accordingly, GTE and Hyperion shall execute pole attachment and conduit occupancy agreements in the form set forth in Appendices I and J.

IN WITNESS WHEREOF, each Party has executed this Agreement by signature of a person duly authorized to bind the Party, to be effective as of the date first above written.

GTE North Incorporated

By
Name:


Larry Sparrow

Title: Vice President - Carrier
Markets

~~By~~

~~Name:~~

~~Christopher D. Owens~~

~~Title: Vice President - Regulatory and
Governmental Affairs~~

Date:

6/16/97

Hyperion Susquehanna

Telecommunications, a general partnership of which Hyperion Telecommunications of Pennsylvania, Incorporated, a Delaware corporation, and Susquehanna Fiber Systems, Incorporated, a Delaware corporation, are the general partners

By:

Hyperion Telecommunications of Pennsylvania, Incorporated

Name: 
Randolph Fowler

Title: Senior Vice-President of Hyperion Telecommunications of Pennsylvania, Incorporated, Managing Partner

Date:

6/3/97

APPROVED AS TO FORM BY
LEGAL DEPARTMENT



APPENDIX A
SERVICE MATRIX

Service Location (identified by tandem serving area)	Interconnection Point (identified by CLLI code)	Services
York, PA	YORKPAXMW03	Collocation Interconnection

APPENDIX B
INTERCONNECTION, TELECOMMUNICATIONS SERVICES
AND FACILITIES AGREEMENT

BETWEEN

GTE _____ INCORPORATED

AMENDMENT NO. _____

THIS AMENDMENT (herein so called) is made effective as of _____, 199____, by and between GTE _____ Incorporated ("GTE") and _____ ("Hyperion"). GTE and Hyperion are sometimes referred to herein collectively as the "Parties" and individually as a "Party." Either GTE or Hyperion may be referred to as "Provider" or "Customer" as the context requires.

WHEREAS, Provider is providing to Customer and Customer is purchasing from Provider those Services described in that certain Interconnection, Telecommunications Services and Facilities Agreement for the State of _____ by and between GTE and Hyperion dated effective as of _____, 199____ (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement as provided in this Amendment.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Amendment, the Parties agree as follows:

1.

2. **Additional Services [if applicable]**

- a. Provider agrees to provide to Customer and Customer agrees to purchase from Provider the following services under the terms and conditions set forth in the Agreement and within the service attachment listed below and attached to this Amendment:

Service Attachment _____ - _____

- b. As of the effective date of this Amendment, and continuing through

the remaining term of the Agreement, _____ is made a part of the Services provided under the Agreement and Service Attachment _____ shall be deemed to be a Service Attachment to the Agreement.

- c. As of the effective date of this Amendment, and continuing through the remaining term of the Agreement, Appendix A, Service Matrix, to the Agreement is hereby deleted and Appendix A, Service Matrix, to this Amendment is hereby inserted in lieu thereof to reflect the additional Services and related Service Locations.

3. Service Locations [if applicable]

- a. Provider agrees to provide to Customer and Customer agrees to purchase from Provider the following Services in the following locations:

Service Location (identified by tandem serving area)	Interconnection Point (identified by CLLI code)	Services (identified by Service Attachment Number)
--	---	--

- b. As of the effective date of this Amendment, the locations set forth in Section 3.1 above shall be deemed Service Locations under the Agreement.
- c. As of the effective date of this Amendment, and continuing through the remaining term of the Agreement, Appendix A, Service Matrix, to the Agreement is hereby deleted and Appendix A, Service Matrix, to this Amendment is hereby inserted in lieu thereof to reflect additional Service Locations.

4. Interpretation

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

5. **Effect**

Except as modified herein, the Agreement shall remain in full force and effect.

6. **Authority**

Each person whose signature appears below represents and warrants that he or she has the authority to bind the Party on whose behalf he or she has executed this Amendment.

7. **Multiple Counterparts**

This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

8. **No Offer**

Submission of this Amendment for examination or signature does not constitute an offer by Provider for the provision of the products or services described herein. This Amendment will be effective only upon execution by both Provider and Customer.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date or dates written below effective as of the date first above written.

GTE _____ INCORPORATED

By

Name

Title

Date

By

Name

Title

Date

APPENDIX D
RATES AND CHARGES FOR LOCAL NUMBER PORTABILITY USING RCF
PENNSYLVANIA

General. The rates contained in this Appendix D are as defined in Article IV, Section 9, and are subject to change resulting from future Commission or other proceedings, or any appeal or other litigation, including (but not limited to) proceedings, appeals or other litigation concerning the establishment of a competitively neutral universal service system, and generic proceedings to determine permanent rates, rate adjustments or rebalancing, and cost recovery.

In addition, as defined in Article IV, Section 3.3.3, the Party providing the ported number will pay the other Party the rate per line per month for each ported business line and the rate per line per month for each ported residential line for the sharing of Access Charges on calls to ported numbers.

Rate Per Line Per Month: \$2.00

Simultaneous Call Capability - Per Additional Path: \$0.75

Non-Recurring Charge: 10.50

Shared Access for Ported Numbers. The Party providing RCF will pay the other Party \$5.81 for each ported residence line and \$8.94 for each ported business line.

Note: Nonrecurring Charge is a charge per order. One customer per order any number of lines.

APPENDIX E

SERVICES AVAILABLE FOR RESALE

PENNSYLVANIA

General. The rates contained in this Appendix E are based upon an avoided cost discount from GTE's retail rates as provided in Article V, Section 7.3 of the Agreement to which this Appendix E is attached and are subject to change resulting from future Commission or other proceedings, or any appeal or other litigation, including (but not limited to) proceedings, appeals or other litigation concerning the establishment of a competitively neutral universal service system, and generic proceedings to determine permanent rates, rate adjustments or rebalancing, and cost recovery. In addition, GTE shall assess the Hyperion a charge for lost contribution associated with intraLATA toll service from a resold business line if GTE does not provide the intraLATA toll associated with the line.

The Avoided Cost Discount rate is 12.05%.

The services available for resale are those listed in the attached Exhibits A, B, C and D to Appendix E, listing GTE retail tariffed Products and Services (pp. 1-24, pp. 1-27, pp. 1-26, and pp. 1-27 respectively), except for those listed products and services that are excluded from resale under Article V of the Agreement to which this Appendix E is attached.

APPENDIX F

PRICES FOR UNBUNDLED ELEMENTS

PENNSYLVANIA

General. The rates contained in this Appendix F are the rates as defined in Article VIII and are subject to change resulting from future Commission or other proceedings, or any appeal or other litigation, including (but not limited to) proceedings, appeals or other litigation concerning the establishment of a competitively neutral universal service system, and generic proceedings to determine permanent rates, rate adjustments or rebalancing, and cost recovery.

Network Interface Device: \$1.50

Unbundled Loop:

2 - Wire Basic Loop: \$27.17

4 - Wire Loop (Excl. Electronics) : \$43.47

Unbundled Port:

2 - Wire Basic Port: \$7.20

4 - Wire DS1 Port: \$91.50

Local Switching

Originating: \$0.0041551

Terminating: \$0.0041551

GTE will assess a per minute charge the other Party for all non local (intraLATA toll, interLATA toll) traffic that traverses the port that would incur access charges in today's environment from the appropriate state access tariffs.

GTE rates for unbranding, rebranding and customized routing TBD.

APPENDIX G
SERVICE ORDERING, PROVISIONING, BILLING AND MAINTENANCE

1. Service Ordering, Service Provisioning, and Billing Systems Generally.
The following describes generally the operations support systems that GTE will use and the related functions that are available for ordering, provisioning and billing for resold services, interconnection facilities and services and unbundled network elements. Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance shall be governed by the GTE Customer Guide for CLEC Establishment of Services ("Guide"). Before orders can be taken, Hyperion will provide GTE with its Operating Company Number ("OCN") and Company Code ("CC") as follows:
 - (a) The ALEC must provide their OCN/CC (four-digit alpha-numeric assigned by NECA) on the ALEC Profile. The GTE Guide provides the necessary information for the ALEC to contact NECA to obtain the OCN/CC. There are no optional fields on the Profile.
 - (b) Before the Local Service Request ("LSR") and Directory Service Request ("DSR") order forms can be processed Hyperion must provide the Company Code CC field when the Customer Carrier Name Abbreviation ("CCNA") is populated with CUS (Customer) and the customer has an industry assigned code, otherwise CC is an optional field.
- a. Operations Support Systems for Trunk-Side Interconnection
 - i. Hyperion will be able to order trunk-side interconnection services and facilities from GTE through a direct electronic interface over the GTE Network Data Mover ("NDM") in a nondiscriminatory manner. Orders for trunk-side interconnection will be initiated by an Access Service Request ("ASR") sent electronically by Hyperion over the NDM. ASRs for trunk-side interconnection will be entered electronically into GTE's Carrier Access Management System ("CAMS") to validate the request, identify any errors, and resolve any errors back to Hyperion. CAMS is a family of GTE systems comprised primarily of EXACT/TUF, SOG/SOP, and CABS.
 - ii. The use of CAMS to support Hyperion's requests for trunk-side interconnection will operate in the following manner:

GTE will route the ASR through its data center to one of two National Access Ordering Centers ("NAOC"). The ASR will be entered electronically into the EXACT/TUF system for validation and correction of errors. Errors will be referred back to Hyperion. Hyperion then will correct any errors that GTE has identified and resubmit the request to GTE electronically through a supplemental ASR, without penalty or charge (e.g., order modification charge) to Hyperion. Similarly, errors committed by GTE subsequent to the receipt of a valid ASR from Hyperion will be expeditiously identified and corrected by GTE without the need for Hyperion's submission of a supplemental ASR. GTE then will translate the ASR into a service order for provisioning and billing. In order to convert the ASR into a service order, GTE personnel must apply the necessary elements to provision the service and include the billable elements necessary for GTE to bill Hyperion for the services provided. This application also requires a determination of the access tandem to end office relationships with the service requested.

- iii. At the next system level, translated service orders will be distributed electronically through the SOG/SOP systems to several destinations. The SOG/SOP system will begin the actual provisioning of the service for Hyperion. Other GTE provisioning systems are CNAS and ACES. The GTE Database Administrative Group ("DBA") and the Special Services Control Center ("SSCC") will be the two most important destinations at this level. The DBA location will identify codes for the appropriate GTE switch in order to provide the functions required by the ASR. The SSCC will provide the engineering for the facilities over which the services will be handled. Information from these two groups (and others) then will be transmitted electronically to GTE's field service personnel (Customer Zone Technicians or "CZTs") who will establish the trunks and facilities, thus connecting the GTE facilities to a connecting company, if one is required, and to Hyperion. GTE's CZTs also will contact Hyperion directly to perform testing, and upon acceptance by Hyperion, will make the necessary entries into the GTE system to complete the order. The completed orders then will pass to GTE's Carrier Access Billing System ("CABS") which will generate the bill to Hyperion. The billing

process under CABS requires coordination with several other systems.

- iv. Billing for transport and termination services cannot be accomplished without call records from GTE's central office switches. Records of usage will be generated at GTE's end office switches or the access tandems. Call usage records will be transmitted electronically from GTE's switches through GTE's Billing Intermediate Processor ("BIP"). This system will collect the call records, perform limited manipulations to the record and transfer them to a centralized data center where they will be processed through the Universal Measurement System ("UMS") to determine the validity and accuracy of the records. UMS also will sort the records and send them to the CABS billing system, from which GTE will produce a bill and send it to Hyperion.

b. Operations Support Systems for Resold Services and Unbundled Elements

- i. Hyperion will also be able to order services for resale and unbundled network elements, as well as interim number portability, directly from GTE through an electronic interface. To initiate an order for these services or elements, Hyperion will submit a Local Service Request ("LSR") from its data center to GTE's Data Center using the same electronic NDM interface used for trunk-side interconnection. If no NDM interface exists or if the Hyperion chooses to establish a separate NDM interface, Hyperion must request an NDM facility. For new entrants that elect not to interface electronically, GTE will accommodate submission of LSR orders by facsimile, E-mail, Internet or a dial NDM arrangement. An LSR is very similar to an ASR, except that it will be used exclusively for line-side interconnection requests. GTE will transfer LSRs to GTE's NOMC centralized service order processing center electronically.
- ii. Most LSRs will be used either to transfer an existing GTE customer to Hyperion or to request service for a new customer who is not an existing GTE customer. Depending on the situation, different information will be required on the LSR. LSRs for a conversion of a GTE local customer to

Hyperion must include information relating to all existing, new and disconnected services for that customer, including the customer's name, type of service desired, location of service and features or options the customer desires. Hyperion will be able to obtain this customer information after GTE has received the customer's written consent as specified in Article VI.3.3. For service to a new customer who is not an existing GTE customer, the LSR must contain the customer's name, service address, service type, services, options, features and ALEC data. If known, the LSR should include the telephone number and due date/desired due date.

- iii. While Hyperion would have its own customer information and may have the SAG/GTE products on tape from GTE, Hyperion would not have the due date or new telephone number for new customers since that information is contained in GTE's systems. Therefore, a process is required to provide this information to Hyperion. GTE itself does not have uniform access to this information electronically. Until GTE and Hyperion have agreed and established electronic interfaces, Hyperion agrees that an 800 number is the method that will be used. The 800 telephone number will connect Hyperion directly to GTE's NOMC service representatives. When Hyperion receives a request for basic services from a new local service customer, Hyperion will call GTE's NOMC through the 800 number, and, while the new customer is on hold, GTE will provide the due date for service and the new telephone number for that customer. At the same time, Hyperion will give GTE the new customer's name, service address and type of requested service (i.e., R1, B1). GTE will enter that information into its SORCES or SOLAR service ordering systems to be held in suspense until Hyperion sends the confirming LSR. Hyperion will then return to its customer holding on the line and provide the due date and new telephone number.
- iv. After concluding the telephone call with the new customer, Hyperion will complete a confirming LSR for the new service and send it electronically to GTE's data center for processing. Upon receipt, GTE will match the LSR with the service order suspended in GTE's system, and if there is a

match, GTE will process the LSR. After the LSR is processed, GTE will transmit confirmation electronically to Hyperion through the NDM that the LSR has been processed, providing a record of the telephone number and due date. Hyperion will be required to submit the confirming LSR by 12:00 p.m. each day local time, as defined by the location of the service address. If Hyperion fails to submit the LSR in a timely manner, the suspended LSR will be considered in jeopardy, at which time GTE will assign a new due date upon receipt of the delayed LSR for such customer requests and notify Hyperion of the change.

- v. Number assignments and due date schedules for services other than single line service and hunt groups up to 12 lines will be assigned within approximately twenty-four (24) hours after GTE's receipt of the LSR using the standard Firm Order Confirmation ("FOC") report sent electronically to Hyperion over the NDM, thereby providing a record of the newly established due date. An exception would be a multi-line hunt group for 12 lines or fewer. The other numbers then will be provided through the normal electronic confirmation process.
- vi. The processing of specifically requested telephone numbers (called "vanity numbers") is as follows. GTE will work with Hyperion on a real time interface to process vanity numbers while Hyperion's customer is still on the line. If a number solution can be established expeditiously, it will be done while the customer is still on the line. If extensive time will be required to find a solution, GTE service representatives will work with Hyperion representatives off line as GTE would for its own customers. For all of this, the basic tariff guidelines for providing telephone numbers will be followed.
- vii. Once the order for line-side interconnection service is established, it is moved for provisioning to the next system level. Here, GTE will validate and process the LSR to establish an account for Hyperion and, if GTE continues to provide some residual services to the customer, GTE will maintain a GTE account. In GTE's system, GTE's account is called the Residual Account and Hyperion's account is referred to as the Hyperion Account. If any engineering for the service is necessary, the account would be distributed to

the SSCC. Otherwise, it will be distributed for facility assignment.

- viii. With the account established and any engineering and facility assignment complete, GTE then will transmit electronically a record to GTE's CZT field personnel if physical interconnection or similar activity is required. The CZTs will provision the service and then electronically confirm such provision in the SOLAR/SORCES system when completed. The accounts then will be transmitted to GTE's Customer Billing Services System ("CBSS"). GTE shall provide to Hyperion a service completion report. Call records for actual service provided to Hyperion's customers on GTE facilities will be transmitted from GTE's switches through some usage rating systems (BIP, UMS), screened and eventually delivered to CBSS for the generation of bills.
- ix. CBSS is a different system than CABS, and it is the one that GTE will utilize to produce the required bills for resold services, unbundled elements and local number portability. CBSS will create a bill to Hyperion for resold services and unbundled elements along with a summary bill master. Daily unrated records for intraLATA toll usage and local usage (incollect usage data will be provided on rated basis) on Hyperion's accounts will be generated and transmitted electronically to Hyperion.
- x. On resold accounts, GTE will provide usage in EMR/EMI format per existing file exchange schedules. The usage billing will be in agreed upon level of detail for Hyperion to issue a bill to its end users.
- xi. GTE will provide Hyperion with detailed monthly billing information in a paper format until an agreed upon Electronic Data Interchange 811 electronic bill format is operational.
- xii. State or sub-state level billing will include up to ten (10) summary bill accounts.
- xiii. GTE accepts Hyperion's control reports and agrees to utilize industry standard return codes for unbillable messages. Transmission will occur via the NDM. Tape data will conform to Attachment "A" of the LRDTR. Data will be delivered

Monday through Friday except for Holidays as agreed. Data packages will be tracked by invoice sequencing criteria. GTE contacts will be provided for sending/receiving usage files.

- xiv. GTE will retain data backup for 45 Business Days. To the extent this retention is exclusively for Hyperion, Hyperion shall reimburse GTE for all expenses related to this retention.
- xv. In addition to the LSR delivery process, Hyperion will distribute directory assistance and directory listing information (together sometimes referred to hereafter as "DA/DL information") to GTE via the LSR ordering process over the NDM. GTE will provide listings service via its "listing continuity" offering.
- xvi. Charges and credits for PIC changes ordered via an LSR will appear on the wholesale bill. As Hyperion places a request for a PIC change via LSR, the billing will be made on Hyperion account associated with each individual end user. GTE will process all PIC changes from IXCs that are received for Hyperion end users by rejecting back to the IXC with the Hyperion OCN. Detail is provided so that Hyperion can identify the specific charges for rebilling to their end user.
- xvii. CMDS. The parties will provide for the distribution of intraLATA CMDS incollect messages and/or selected local measured service messages as follows:
 - (1) Messages to be Screened. GTE receives CMDS I transmissions containing intraLATA incollect messages from the state RBOC CMDS host each business day. Per Hyperion's request, GTE will screen the incollects by NPA and line number and accumulate the Collect, Third Number Billed and Credit Card (collectively called incollects) messages in a data file. The screening will be for end users who have chosen Hyperion as their local service provider through a Resale or Unbundled Network arrangement. The screened incollect messages and any Local Measured Service (LMS) usage will be

accumulated and forwarded to Hyperion. The Parties will mutually agree on the frequency of the data exchange and the method of transmission (i.e., magnetic tape or direct electronic transmission). GTE will forward the screened messages in the industry standard EMR format. GTE intraLATA toll messages that are recorded by GTE and dialed on a one plus or zero plus basis are not part of this section and will not be screened.

(2) Compensation. GTE will bill Hyperion monthly for all services related to the screening, accumulating, processing and transmitting of incollect messages and LMS usage, if applicable, per Appendix C. In addition, any message processing fee associated with Hyperion's incollect messages that are charged to GTE by the CMDS Host will be passed on to Hyperion on the monthly statement. All revenue, surcharges, taxes and any other amounts due to the CMDS Host for Hyperion's incollect messages will be billed on the monthly statement. It is Hyperion's responsibility to bill and collect all incollect and LMS amounts due from its end users. The incollect and LMS revenue amounts that are listed on the monthly invoice are payable to GTE in total. The Parties agree that the arrangement for invoicing the incollect and LMS revenue amounts due GTE is not a settlement process with Hyperion.

(3) Administration. The Parties agree to develop a process whereby Hyperion's end user information is available in a timely manner to allow GTE to build tables to screen the CMDS incollect files and LMS files on behalf of Hyperion.

xviii. Backbilling. GTE shall bill Hyperion on a timely basis. In no case shall GTE bill Hyperion for previously unbilled charges that are for more than one year prior to the current bill date except for charges resulting from resolution of an audit pursuant to Article III.7.4.

c.

Order Processing:

- i. Order Expectations. Hyperion agrees to warrant to GTE that it is a certified provider of telecommunications service. Hyperion will document its Certificate of Operating Authority on the Hyperion Profile and agrees to update this CLEC Profile as required to reflect its current certification. The Parties agree to exchange and to update end user contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government. The Parties also agree to exchange and to update internal order, repair and billing point of contacts. Prior to submitting an order under this Agreement, Hyperion shall obtain such documentation as may be required by state and federal laws and regulations.
- ii. GTE shall provide Hyperion with a specified customer contact center for purposes of placing service orders and coordinating the installation of services. These activities shall be accomplished by telephone call or facsimile until electronic interface capability has been established. The Parties adopt the OBF LSR and DSR forms for the ordering, confirmation and billing of resale and unbundled services. The Parties adopt the OBF ASR forms for the ordering, confirmation and billing of trunk-side interconnection.
- iii. GTE will process such service orders during normal operating hours, at a minimum on each Business Day between the hours of 8 a.m. to 8 p.m. Eastern Time and shall implement service orders within the same time intervals used to implement service orders for similar services for its own users.
- iv. GTE will provide current GTE customer proprietary network information (name, address, telephone number and description of services provided by GTE including PIC and white page directory listing information) as provided in Article VI, Section 3. The return of customer information will be via facsimile or via electronic transmission.
- v. Although in most circumstances the end user's current telephone number may be retained by the end user when

switching local service providers, if an end user service has been temporarily disconnected for non-payment, the end user's previous telephone number will not be made available to Hyperion until the end user's outstanding balance has been paid.

- vi. Transfer Between Local Service Providers - GTE will provide a displacement/out service report to a Local Service Provider (LSP) whenever an end user leaves that LSP and procures service from another LSP. When a Hyperion end user changes to another LSP, GTE will notify Hyperion when such activity occurs the day after completion or within 48 hours of such disconnect.

2. Maintenance Systems.

a. General Overview

- i. If Hyperion requires maintenance for its local service customers, Hyperion will initiate a request for repair (sometimes referred to as a "trouble report") by calling GTE's Customer Care Repair Center. During this call, GTE service representatives will verify that the end-user is a Hyperion customer and will then obtain the necessary information from Hyperion to process the trouble report. While the Hyperion representatives are still on the line, GTE personnel will perform an initial analysis of the problem and remote line testing for resale services. If engineered services are involved, the call will be made to the GTE SSCC for handling. If no engineering is required and the line testing reveals that the trouble can be repaired remotely, GTE personnel will correct the problem and close the trouble report while Hyperion representatives are still on the line. If on-line resolution is not possible, GTE personnel will provide Hyperion representatives a commitment time for repair and a trouble ticket number, and the GTE personnel then will enter the trouble ticket into the GTE service dispatch queue. Hyperion's repair service commitment times will be within the same intervals as GTE provides to its own end users. Maintenance and repair of GTE facilities is the responsibility of GTE and will be performed at no incremental charge to Hyperion. If, as a result of a Hyperion-initiated trouble report, trouble is found to be the responsibility of Hyperion

(e.g., non-network cause) GTE will charge Hyperion for trouble isolation. Hyperion will have the ability to report trouble for its end users to appropriate trouble reporting centers 24 hours a day, 7 days a week. Hyperion will be assigned a customer contact center when initial service agreements are made.

- ii. Repair calls to the SSCC for engineered services will be processed in essentially the same manner as those by the GTE Customer Care Center. GTE personnel will analyze the problem, provide the Hyperion representative with a commitment time while they are still on the line, and then place the trouble ticket in the dispatch queue.
- iii. GTE then will process all Hyperion trouble reports in the dispatch queue along with GTE trouble reports in the order they were filed (first in, first out), with priority given to out-of-service conditions. If, at any time, GTE would determine that a commitment time given to Hyperion becomes in jeopardy, GTE service representatives will contact Hyperion by telephone to advise of the jeopardy condition and provide a new commitment time.
- iv. Trouble reports in the dispatch queue will be transmitted electronically to GTE CZT service technicians who will repair the service problems and clear the trouble reports. For cleared Hyperion trouble reports, GTE service technicians will make a telephone call to Hyperion directly to clear the trouble ticket. GTE service technicians will make the confirmation call to the telephone number provided by Hyperion. If Hyperion is unable to process the call or places the GTE technician on hold, the call will be terminated. To avoid disconnect, Hyperion may develop an answering system, such as voice mail, to handle the confirmation calls expeditiously.
- v. GTE will provide electronic interface access to operation support systems functions which provide the capability to initiate, status and close a repair trouble ticket. GTE will not provide to Hyperion real time testing capability on Hyperion end user services. GTE will not provide to Hyperion an interface for network surveillance (performance monitoring).

- vi. GTE will resolve repair requests by or for Hyperion local service customers using GTE's existing repair system in parity with repair requests by GTE end users. GTE will respond to service requests for Hyperion using the same time parameters and procedures that GTE uses. Hyperion then would call GTE's Customer Care Center or SSCC while the customers were on hold.

- b. Network Management Controls.
 - i. Network Maintenance and Management. The Parties will work cooperatively to install and maintain a reliable network.
 - ii. Neither Party shall be responsible to the other if necessary changes in network configurations render any facilities of the other obsolete or necessitate equipment changes.
 - iii. Network Management Controls. Each Party shall provide a 24-hour contact number for Network Traffic Management issues to the other's network surveillance management center. A fax number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they shall work cooperatively that all such events shall attempt to be conducted in such a manner as to avoid degradation or loss of service to other end users. Each Party shall maintain the capability of respectively implementing basic protective controls such as "Cancel To" and "Call Gap."

- 3. Electronic Interface. The Parties shall work cooperatively in the implementation of electronic gateway access to GTE operational support systems functions in the long-term in accordance with established industry standards. Hyperion shall compensate GTE for the full costs including but not limited to design, development, testing, implementation and deployment, for access to GTE's Operational Support System functions. Where subsequent parties request use of GTE's operation support systems, cost recovery for such electronic interface systems shall be allocated among all requesting users.
 - a. Hyperion shall have immediate access to the following OSS electronic interfaces that will provide functionality to enable Hyperion to service customers in an equal and non-discriminatory manner:

- i. Pre-Order functions, e.g., TN Assignment, DD Reservation, Address Validation, Product Availability, that are available on a dial-up or dedicated basis using the Secure Integrated Gateway System (SIGS).
 - ii. Order functions that are available on a dial-up or dedicated basis using CONNECT: Mail file transfer.
 - iii. Repair functions, e.g., trouble report repair functions, to allow Hyperion to determine status and close trouble reports.
 - iv. Electronic transfer of the Hyperion bill in electronic data interchange 811 format.
 - b. *Hyperion may migrate to fully interactive system to system interconnectivity. GTE, with input from Hyperion and other carriers, shall provide general interface specifications for electronic access to this functionality. These specifications will be provided to enable Hyperion to design system interface capabilities. Development will be in accordance with applicable national standards committee guidelines. Such interfaces will be available as expeditiously as possible.*
 - c. All costs and expenses for any new or modified electronic interfaces exclusively to meet Hyperion requirements that GTE determines are technically feasible and GTE agrees to develop will be paid by Hyperion. Costs for development of systems intended for common use by competing carriers will be assessed based on a mutually agreed method of cost recovery.
 - d. Hyperion shall be responsible for modifying and connecting any of its pre-ordering and ordering systems with GTE provided interfaces as described in this Appendix.
4. GTE Initiated Electronic System Redesigns. GTE will not charge Hyperion when GTE initiates its own electronic system redesigns/reconfigurations.

APPENDIX H
SS7 SERVICES

ARTICLE 1.
DEFINITIONS

In addition to the definitions contained elsewhere in the Agreement to which this Appendix H is attached and made a part, for purposes of this Appendix H the following terms shall have the following meanings.

- a. "A" Link: An access signaling link that connects SPs and/or SSPs to STPs.
- b. "B" Link: A bridge signaling link that connects two (2) sets or pairs of STPs, not the STPs within a mated pair, but on the same hierarchical level.
- c. Compatibility Testing: Certification testing performed by representatives of GTE and Hyperion to ensure proper interconnection of CCS network facilities for accurate transmission of system signals and messages. This certification testing shall be performed in accordance with the following ANSI documents:
 - T1.234 Telecommunications - Signaling System Number 7 (SS7) - MTP Levels 2 and 3 Compatibility Testing (ATIS)
 - T1.235 Telecommunications - Signaling System Number 7 (SS7) - SCCP Class 0 Compatibility Testing (ATIS)
 - T1.236 Telecommunications - Signaling System Number 7 (SS7) - ISDN User Part Compatibility Testing (ATIS)
- d. Service: The service described in Article 2 of this Appendix.
- e. Signaling Link: An end-to-end high-capacity data link (56 kbps) that transmits supervision and control signals from one network SS7 node to another in a CCS network. The link type identifies the functionality of the signaling link sets. The two link types associated with the Service are "A" Links and "B" Links.
- f. Signaling Point Code (SPC): A code that identifies the Signaling Point address in the CCS network. Signaling Point Codes consist of three (3) segments of three (3) digits each, identifying the network ID, network cluster, and cluster member, respectively.

- g. Signaling Point of Interface (SPOI): The point at which GTE hands off signaling information to Hyperion.

**ARTICLE 2.
SERVICE DESCRIPTION**

- a. Provision. Subject to the terms and conditions of this Appendix, GTE agrees to provide the Service to Hyperion.
- b. Interconnection. This Agreement is for Hyperion's interconnection with GTE at GTE's _____ STPs to support local exchange services. Hyperion shall not submit signaling messages in support of interexchange services.
- c. Service. The "Service" consists of the following:
- (a) Interconnection of GTE's CCS/SS7 network to Hyperion's CCS/SS7 network is via an "A" Link connection between Hyperion's SP or SSP and GTE's STP. The "A" Link connection is made by a dedicated 56 kbps channel between the SP or SSP and the STP. Any connection from an SSP or an SP to an STP pair will have a link to each individual STP (i.e., two (2) links). Hyperion and GTE shall mutually agree upon the location of the SPOI.
- (b) Interconnection of GTE's CCS/SS7 network to Hyperion's CCS/SS7 network via a "B" Link connection between Hyperion's STPs and GTE's STPs. The "B" Link connection is a dedicated 56 kbps channel. Connections between two (2) pairs of STPs will have four (4) connections; i.e., one (1) link from each individual STP to each individual STP. Hyperion and GTE shall mutually agree upon the location of the SPOI.
- (c) Local and IntraLATA call set-up signaling, allowing Hyperion to use the out-of-band trunk signaling provided by GTE's CCS/SS7 network to carry its calls on the intraLATA toll network.
- (d) The Service shall include access to: (1) all switching systems served by a given STP which have been converted to SS7 signaling, including switching systems owned by other local service providers; (2) databases directly connected to a given STP, with the exception of 800/888 databases which can be accessed through any STP; (3) other local service provider STPs on an intraLATA basis; and (4) other third party local service provider STPs on an intraLATA basis.

- (e) It is the responsibility of Hyperion to populate the "privacy indicator" portion of all SS7 signaling messages forwarded to GTE's network. GTE agrees to deliver the information forwarded by Hyperion in the SS7 signaling message. Hyperion, by entering into this Agreement, agrees to deliver "privacy indicator" information forwarded by GTE in its signaling message.
- (f) Hyperion acknowledges that call set-up times may be greater when Hyperion employs intermediate access tandems (IATs) in its network.
- (g) If selected on the order form attached to this Appendix, the Service shall also include IXC call set-up signaling service (ISUP) as described in Article 2.4 of this Appendix. Additional charges shall be at GTE's tariffed rates.
- d. ISUP Service Charge. This is an optional service that allows Hyperion to utilize SS7 signaling to an SS7 capable interexchange carrier (IXC) for Feature Group D access service and other intraLATA interexchange services. The ISUP service is a monthly charge.
 - (a) The rate for ISUP signaling is per connection in situations when GTE does not provide any underlying call messages for Hyperion on GTE's network trunks. The rate for ISUP signaling shall be at GTE's tariffed rates.
 - (b) Where GTE has a mated pair of STPs and has CCS/SS7 interconnection facilities to an IXC within the same LATA, for interexchange telecommunications services, GTE shall provide call set-up signaling between Hyperion and the IXC.
 - (c) Hyperion agrees to provide to GTE such information as deemed necessary by GTE for network planning in connection with this offering and as may be requested by GTE from time to time.
 - (d) Hyperion must provide the Signaling Point Codes of the IXCs for which it is providing call setup via GTE's SS7 signaling network, so that GTE screening and translation tables can be updated.
- e. Technical Specifications. The technical specifications for the Services described above are defined in Bellcore TR-TSV-000905. GTE will provide SS7 via OR-394-SS7 and/or OR-317-SS7 format(s).

- f. Other Services. If Hyperion desires to order SS7-related services other than the Service, such services will be governed by separate agreements.
- g. Applicable Traffic. The Service applies to the traffic of Hyperion and its subtending LECs only. Hyperion must provide GTE with thirty (30) calendar days' written notice and a letter of agency before the traffic of any party other than Hyperion or its subtending LECs may be transmitted through Hyperion's facilities on to GTE's SS7 network.

**ARTICLE 3.
MANNER OF PROVISIONING**

- a. Link Facilities. The link facilities to GTE STPs in the same LATA can be either:
 - (a) "A" Link sets from Hyperion's SP or SSP. A minimum of two (2) links is required, one (1) from the SP or SSP to each STP; or,
 - (b) "B" Link sets from Hyperion's STPs that are connected to GTE's mated pairs of STPs. A minimum of four (4) links is required between the two (2) pairs of STPs.
- b. Port Termination. An STP port termination is required for each 56 kbps access link utilized for the Service. STP locations are set forth in the National Exchange Carrier Association, Inc. (NECA) Tariff, F.C.C. No. 4.
- c. Signaling Point Codes. GTE shall install all applicable Signaling Point codes for each signaling link at each of GTE's interconnecting STPs.
- d. Protocol. GTE shall provision the Service in accordance with ANSI T1.226 Telecommunications - Operations, Administration, Maintenance, and Provisioning (OAM&P) -Management of functions for Signaling System No. 7 (SS7) Network Interconnections (ATIS) with the exception of references to OMAP protocol elements. The Service cannot be established until Compatibility Testing has been successfully completed between Hyperion and GTE.
- e. 56 kbps Channel. Unless Hyperion elects to provide such links,

GTE shall provide two (2) or four (4) 56 kbps circuits as link facilities at rates set forth in Article 4 herein. If approved by GTE, Hyperion may utilize a 56 kbps channel of an intraLATA DS1 (1.544 mbps) facility, which is in place at the time of ordering, as an "A" Link or a "B" Link, for the STP access connection between the SPOI and GTE's STP. **WHEN THIS OPTION IS CHOSEN, Hyperion UNDERSTANDS AND ACCEPTS THAT THE SERVICE PERFORMANCE STANDARDS AS OUTLINED IN BELLCORE DOCUMENT TR-TSV-000905 MAY NOT BE MET IN THE PROVISION OF THE TOTAL SERVICE.** If such a channel is not utilized, Hyperion must order DS1 (1.544 Mbps) service.

- f. Multiplexing. Where technically required, GTE shall provide multiplexing arrangements to Hyperion at no charge.
- g. Diversity. Where technically feasible and not unreasonably economically burdensome, GTE agrees to allow interoffice and intraoffice diversity.

ARTICLE 4. RATES AND CHARGES

- a. Payment. Hyperion agrees to pay to GTE for the Service at GTE's tariffed rates.
- b. Period. Subject to Article 4.3 below, the rates and charges shall remain in effect and are firm for a period of twelve (12) months from the effective date of this Appendix. Thereafter, GTE shall give Hyperion sixty (60) calendar days' notice of any price change. If the new prices are not acceptable to Hyperion, Hyperion may terminate this Appendix upon thirty (30) calendar days' advance written notice without penalties for either Party.
- c. Rate Basis. The rates are based upon rates and charges reflected in GTE's approved CCS/SS7 interconnection tariffs. To the extent that tariff rates are adjusted, rates and charges for similar rate elements in this Appendix will be adjusted accordingly on the date the new tariff rates become effective. If a state or federal regulatory agency requires, or GTE elects, to offer the Service by tariff, the tariff shall supersede this Appendix. If the Service becomes tariffed, Hyperion has the right to terminate this Appendix upon sixty (60) calendar days' advance written notice effective on the effective date of such tariff, without penalty to either Party.

- d. Mileage. Mileage is calculated on the airline distance between the locations involved, using the V&H coordinates method, as set forth in the National Exchange Carrier Association, Inc. Tariff, F.C.C. No. 4.
- e. Rates and Charges. Rates and charges for each component of the Service are described as follows:
- (a) "A" Link connection - Charges for the "A" Link connection to GTE's CCS/SS7 network consist of the STP port termination charges.
- (1) The STP port termination charges are for the termination of a 56 kbps channel at each STP from Hyperion's SSP or SP.
- (2) Hyperion will lease facilities between its SSPs/SPs and GTE's STPs.
- (b) "B" Link connection - Charges for the "B" Link connection to GTE's CCS/SS7 network consist of the STP port termination charges.
- (1) The STP port termination charges are for the termination of a 56 kbps channel at each STP from Hyperion's STPs.
- (2) Hyperion and GTE shall mutually agree upon the rates for "B" Link interconnections within thirty (30) calendar days of the execution of this Agreement.
- (c) STP Interconnection nonrecurring charge - STP interconnection nonrecurring charge shall apply for each "A" Link and "B" Link interconnection to GTE's SS7 network.
- f. Rearrangement. Charges for rearrangement of the Service that are not specifically addressed will be determined by GTE on an individual case basis.
- g. Applicable Traffic. The rates apply only to the traffic of Hyperion and its subtending LECs. Any traffic from any other party will be subject to additional charges.

**ARTICLE 5.
ORDERING THE SERVICE**

- a. Order. To order the Service, Hyperion shall submit a completed CCS/SS7 Order Form to GTE. Hyperion may change its Service order by submitting a new Order Form which shall be effective when executed by both Parties. Service shall be implemented for Hyperion thirty (30) calendar days after the execution of this Agreement by both Parties.

- b. Port Terminations. GTE shall reserve STP port terminations only upon receipt of a fully executed copy of this Agreement and the Order Form referred to in this Appendix. GTE shall reserve ports on a first come, first served basis. Should Hyperion fail to use a port within sixty (60) Business Days of availability, GTE may reassign the port and, Hyperion must resubmit an Order Form for interconnection.

**ARTICLE 6.
RESPONSIBILITIES OF GTE**

- a. Managing the Network. GTE is responsible for managing the network provided by GTE as part of the Service and applying protective controls which it can invoke as a result of occurrences including, but not limited to, failure or overload of GTE or Hyperion facilities due to natural disasters, mass calling or national security demands.

- b. Performance Standards. GTE is responsible for meeting service performance standards as outlined in Bellcore TR-TSV-000905 except as otherwise provided herein.

- c. Invoice. GTE shall include with the monthly invoice such data GTE and Hyperion mutually agree is necessary for Hyperion to verify the accuracy of the billing it receives from GTE for the Service.

**ARTICLE 7.
RESPONSIBILITIES OF Hyperion**

- a. Signaling Link. Hyperion shall provision the signaling links from its premises to the SPOs in a manner technically compatible to the GTE network.

- b. Privacy Indicator. Hyperion shall populate the "privacy indicator" portion of the CCS/SS7 initial address message forwarded to GTE's network for call processing.
- c. Accuracy of Information. Hyperion shall verify the accuracy of information provided by Hyperion concerning the Service ordered by Hyperion.
- d. Forecast. Hyperion shall furnish to GTE, at the time the Service is ordered and annually thereafter, an updated three year forecast of usage for the 56 kbps channel and the STP port termination for each STP pair. The forecast shall include total annual volume and busy hour busy month volume. GTE shall utilize the forecast in its own efforts to project further facility requirements.
- e. Changes. Hyperion agrees to inform GTE in writing at least thirty (30) Business Days in advance of any change in its use of the Service that alters by ten percent (10%) or more for any thirty (30) day period the volume of signaling transactions to be forwarded to GTE's CCS/SS7 network. Hyperion will provide the reason for the change in volume by individual SS7 service.

ARTICLE 8. SIGNALING POINT CODES

- a. Interconnection. Hyperion may utilize either the GTE CCS/SS7 network SPC or its own SPC for interconnection purposes when interconnecting its SPs or SSPs at the "A" Link level. Hyperion shall utilize its own SPC when interconnecting its STP at the "B" Link level. Hyperion agrees to obtain its own initial SPC if it has short or long range plans to provide its own STPs.
- b. SPC. When the SPC is utilized, GTE shall be responsible for Hyperion code assignment. When Hyperion obtains its own SPC, Hyperion shall be responsible for code assignments and shall be responsible for notifying GTE and other CCS/SS7 network providers of such assignments.
- c. SPC Change. Due to the complexities and potential Hyperion signaling network downtime required for changing working SPCs, Hyperion agrees to give GTE a written notice of an SPC change as soon as possible but no later than thirty (30) Business Days prior to the effective date of the SPC change.

**ARTICLE 9.
MONTHLY BILLING**

Billing statements shall be rendered monthly by GTE to Hyperion. The monthly charge shall be the total of all monthly rate element charges associated with the Service. Payment to GTE for bills rendered to Hyperion shall be due thirty (30) calendar days after receipt of the invoice and Hyperion agrees to pay all billed amounts. Beginning the day after the due date of the bill, interest charges of twelve per cent (12%) per annum or the maximum allowed by law, whichever is less, shall be added to Hyperion's bill. Payments shall be applied to the oldest outstanding amounts first.

**ARTICLE 10.
LIABILITY AND INDEMNIFICATION**

- a. Release from Liability. Each Party releases the other from any liability for loss or damage arising out of errors, interruptions, defects, failures, delays, or malfunctions of the Service, including any and all associated equipment and data processing systems, not caused by gross negligence or willful misconduct. Any losses or damages for which either Party is held liable under this Agreement shall in no event exceed the amount of the charges for the Service during the period beginning at the time notice of the error, interruption, defect, failure, or malfunction is received, to the time Service is restored.

- b. Limitation of Liability. IN ADDITION TO THE LIMITATION OF LIABILITY SET FORTH AT SECTION 22.4 OF ARTICLE III OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF REVENUE OR PROFIT OR FOR ANY LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR OUT OF THE USE OF THE CCS OR ANY OF THE SERVICES PROVIDED UNDER THIS AGREEMENT THAT IS SUFFERED BY THE OTHER PARTY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

- c. Third Parties. Each Party agrees to release, defend, indemnify, and hold harmless the other Party from and against any and all losses, damages, or other liability, including reasonable attorneys'

fees, that it may incur as a result of claims, demands, wrongful death actions, or other suits brought by third parties, arising out of the use of the Service and resulting from the gross negligence or willful misconduct by the indemnifying Party, its employees, agents, or contractors in the performance of this Agreement. In addition, to the extent that the Parties' interests do not conflict, Hyperion shall defend GTE against all end users' claims just as if Hyperion had provided such service to its end users with its own employees. In any event, Hyperion shall assert its tariff limitation of liability for the benefit of both GTE and Hyperion.

- d. Infringement. Each Party agrees to release, defend, indemnify, and hold harmless the other Party from and against any claim, demands or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by the indemnifying Party's employees or equipment associated with provision of the Service. This includes, but is not limited to, suits arising from disclosure of any customer-specific information associated with either the originating or terminating numbers used to provision the Service.
- e. No Warranties. IN ADDITION TO THE DISCLAIMER SET FORTH AT SECTION 22.3 OF ARTICLE III OF THE AGREEMENT, NEITHER GTE NOR Hyperion MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER OR TO ANY THIRD PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES PROVIDED UNDER OR IN CONNECTION WITH THIS APPENDIX, THAT THE SERVICES PROVIDED UNDER THIS APPENDIX WILL BE ERROR FREE OR THAT THE FACILITIES WILL OPERATE WITHOUT INTERRUPTION. GTE AND Hyperion DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR FROM USAGES OF TRADE.

ARTICLE 11. RESERVATION OF RIGHTS

- a. Rights Reserved. By entering into this Appendix to the Agreement, neither Party waives, releases or compromises any rights it may have to argue, in any federal or state regulatory proceeding (or in any judicial appeal following such a proceeding), in support of, or in

opposition to any position, including but not limited to: (a) Accounting for deregulated (or detariffed) data base services; (b) removal from regulated accounts of expenses and investment associated with deregulated (or detariffed) data base services; and (c) any other issue pertinent to regulation or deregulation of costs which were, are now, or may in the future be, associated with the provisions of data base services. Each Party expressly reserves all its rights in connection with such matters.

APPENDIX I
POLE ATTACHMENT AGREEMENT

1. Parties.

This agreement (Agreement) is between GTE _____ INCORPORATED, a State of _____ corporation having its principal office at _____ ("GTE"), and _____, a corporation of the State of _____, having its principal office at _____ ("Licensee").

2. Definitions.

- a. "GTE's poles" or "GTE pole(s)" means a pole or poles solely owned by GTE, jointly owned by GTE and another entity, and space on poles obtained by GTE through arrangements with the owner(s) thereof.
- b. "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- c. "Cable Television Services" means the transmission to subscribers of off-the-air pickup of broadcast signals or the transmission, without separate charge, of locally originated closed circuit television to the subscribers of off-the-air service.
- d. "Attachments" means the equipment reasonably required by Licensee to provide its Telecommunications Services or Cable Television Services that is placed on GTE's poles.
- e. "Make-Ready Work" means all work, including, but not limited to, rearrangement, removal, or transfer of existing attachments, placement, repair, or replacement of poles, or any other changes required to accommodate the Licensee's Attachments on a pole.
- f. "Hazardous Materials" means (i) any substance, material or waste now or hereafter defined or characterized as hazardous, extremely hazardous, toxic or dangerous within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law, ordinance, statute, rule or regulation of any governmental body or authority, (ii)

any substance, material or waste now or hereafter classified as a contaminant or pollutant under any law, ordinance, statute, rule or regulation of any governmental body or authority or (iii) any other substance, material or waste, the manufacture, processing, distribution, use, treatment, storage, placement, disposal, removal or transportation of which is now or hereafter subject to regulation under any law, ordinance, statute, rule or regulation of any governmental body or authority.

- g. "Attachment Fee" means the fee assessed per pole and paid by Licensee to place Attachments on GTE's poles.

3. Purpose.

- a. Licensee represents to GTE that Licensee has a need to occupy, place and maintain Attachments on GTE's poles for the purpose of providing Telecommunications Services.
- b. GTE agrees to permit Licensee to occupy, place and maintain its Attachments on such GTE poles as GTE may allow pursuant to the terms of this Agreement.

4. Grant of License.

GTE grants to Licensee and Licensee accepts from GTE a non-exclusive revocable license to occupy, place and maintain in a designated space on specified GTE poles Licensee's Attachments on the terms and conditions set forth herein. Licensee shall have no further right, title, or other interest in connection with GTE's poles. GTE shall have the right to grant, renew or extend privileges to others not parties to this Agreement to occupy, place or maintain Attachments on or otherwise use any or all GTE poles. Nothing herein is intended to, nor should it be construed to require GTE to construct or modify any facilities not needed for its own service requirements. GTE grants this license in reliance on the representation of Licensee that Licensee intends to provide Telecommunications Services with the Attachments covered by this Agreement.

5. Term.

This Agreement shall continue in effect until terminated in accordance with the provisions herein.

6. Pole Attachment Requests (PARs).

- a. Licensee shall submit a written Pole Attachment Request ("PAR") to GTE identifying the GTE poles upon which it desires to place Attachments. Each PAR shall be in a form specified by GTE and may be revised from time to time by GTE. All PARs submitted to GTE shall be processed on a first come, first served basis. GTE, in its sole judgment, will determine the availability of space on the GTE pole(s) specified in the PAR and will provide its response to the PAR within thirty (30) Business Days of its submission. Upon approval of the PAR, GTE shall return one copy thereof to Licensee bearing an endorsement acknowledging GTE's authorization. All Attachments placed on GTE's poles pursuant to an approved PAR shall become subject to all of the terms and conditions of this Agreement. Licensee may submit subsequent PARs for approval by GTE as needed. GTE is under no obligation to provide general information respecting the location and availability of GTE poles, except as may be necessary to process a PAR. No Attachment shall be placed on any GTE pole identified in a PAR until that PAR has been approved by GTE.
- b. Licensee shall pay GTE a fee for processing a PAR to compensate GTE for the general administrative costs as well as the actual engineering costs reasonably incurred. The fee for engineering costs shall be computed by multiplying the fully loaded hourly rate for an engineer times the number of hours reasonably required by each engineer to inspect the GTE poles included in the PAR. GTE will charge its then current rates for administrative and engineering costs, as may be changed from time to time by GTE to remain consistent with prevailing costs.
- c. Upon receiving an approved PAR, Licensee shall have the right, subject to the terms of this License, to place and maintain the facilities described in the PAR in the space designated on the GTE poles identified therein.
- d. In the event Make-Ready Work is necessary to accommodate Licensee's Attachments, GTE shall notify Licensee of such fact and provide Licensee with a good faith estimate of the total cost of such Make-Ready Work needed to accommodate Licensee's Attachments. Within fifteen (15) days after receiving such notice from GTE, Licensee shall notify GTE either (1) that Licensee shall pay all of the costs actually incurred to perform the Make-Ready

Work and shall pay the total estimated amount to GTE at least ten (10) days prior to the date the Make-Ready Work is to begin or (2) that it desires to cancel its PAR.

- e. GTE shall not be responsible to Licensee for any loss sustained by Licensee by reason of the refusal or failure of any other party with attachments on GTE's poles to rearrange or modify its attachments as may be required to accommodate Licensee's Facilities.
- f. Licensee is not authorized and shall have no right to place facilities on any GTE pole unless that GTE pole is identified in an approved PAR.

7. Availability of Information Regarding Space on Poles.

GTE will provide information regarding the availability of pole space within thirty (30) Business Days of a written request by Licensee. Because GTE will endeavor to determine available space as quickly as possible, a shorter interval may be experienced for requests of a limited scope where physical field verification is not necessary. In the event the thirty (30) Business Day time frame cannot be met, GTE shall so advise Licensee and shall seek a mutually satisfactory alternative response date. No representation regarding the availability of space shall be made in the absence of a physical field verification.

8. Authority to Place Attachments.

- a. Before Licensee places any Attachments on GTE's poles pursuant to an approved PAR, Licensee shall submit evidence satisfactory to GTE of its authority to erect and maintain the facilities to be placed on GTE's poles within the public streets, highways and other thoroughfares or on private property. Licensee shall be solely responsible for obtaining all rights-of-way, easements, licenses, authorizations, permits and consents from federal, state and municipal authorities or private property owners that may be required to place Attachments on GTE's poles. In the event Licensee must obtain any additional easements, permits, approvals, licenses and/or authorizations from any governmental authority or private individual or entity in order to utilize GTE's poles under an approved PAR, GTE shall, upon Licensee's request, provide written confirmation of its consent to Licensee's utilization of poles in a particular location in accordance with this Agreement, if needed by Licensee to obtain such additional approvals or authorizations. GTE shall also provide maps or drawings of its

facilities' locations to the extent reasonably required by such governmental authority or private individual or entity for purposes of considering or granting Licensee's request to it for authority or approval.

- b. GTE shall not unreasonably intervene in or attempt to delay the granting of any rights-of-way, easements, licenses, authorizations, permits and consents from federal, state or municipal authorities or private property owners that may be required for Licensee to place its Attachments on GTE's poles.
- c. If any right-of-way, easement, license, authorization, permit or consent obtained by Licensee is subsequently revoked or denied for any reason, Licensee's permission to attach to GTE's poles shall terminate immediately and Licensee shall promptly remove its Attachments. Should Licensee fail to remove its Attachments within one hundred twenty (120) days of receiving notice to do so from GTE, GTE shall have the option to remove all such Attachments and store them in a public warehouse or elsewhere at the expense of and for the account of Licensee without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to Licensee occasioned thereby. All costs incurred by GTE to remove Licensee's Attachments shall be reimbursed to GTE by Licensee upon demand.
- d. Upon notice from GTE to Licensee that the cessation of the use of any one or more of GTE's poles is necessary for reasons of safety or has been directed by any federal, state or municipal authority, or private property owner, permission to attach to such pole or poles shall terminate immediately and Licensee promptly shall remove its Attachments. Should Licensee fail to remove its Attachments within the time frame provided by the requesting or directing party or one hundred twenty (120) days of receiving notice to do so from GTE, whichever is less, GTE shall have the option to remove all such Attachments and store them in a public warehouse or elsewhere at the expense of and for the account of Licensee without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to Licensee occasioned thereby. All costs incurred by GTE to remove Licensee's Attachments shall be reimbursed to GTE by Licensee upon demand by GTE.

9. Placement of Attachments.

- a. Licensee shall, at its own expense, place and maintain its Attachments on GTE's poles in accordance with (i) such requirements and specifications as GTE shall from time to time prescribe in writing, (ii) all rules or orders now in effect or that hereafter may be issued by any regulatory agency or other authority having jurisdiction, and (iii) all currently applicable requirements and specifications of the National Electrical Safety Code, and the applicable rules and regulations of the Occupational Safety and Health Act.
- b. Licensee's Facilities shall be tagged at maximum intervals of 300 feet so as to identify Licensee as the owner of the Facilities. The tags shall be of sufficient size and lettering so as to be easily read from ground level.

10. Failure of Licensee to Place Attachments.

Once Licensee has obtained an approved PAR, Licensee shall have sixty (60) days from the date the PAR is approved to begin the placement of its Attachments on the GTE poles covered by the PAR. If Licensee has not begun placing its Attachments within that sixty (60) day period, Licensee shall so advise GTE with a written explanation for the delay. If Licensee fails to advise GTE of its delay, with a written explanation therefor, or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Attachments within the sixty (60) days prescribed by this Section, the previously approved PAR shall be deemed rescinded by GTE and Licensee shall have no further right to place Attachments pursuant to that PAR.

11. Attachment Fees.

- a. Licensee shall pay to GTE an Attachment Fee, as specified in Exhibit A hereto, for each GTE pole upon which Licensee obtains authorization to place an Attachment. The Attachment Fee may be increased by GTE from time to time as permitted by law upon sixty (60) days written notice to Licensee.
- b. Attachments Fees shall become due and payable on the date a PAR is approved by GTE for all GTE poles identified in that PAR on a pro rata basis until the end of the then current year and thereafter on an annual basis within thirty (30) days of the date of a statement from GTE specifying the fees to be paid. Any payment

after thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is less.

- c. GTE shall maintain an inventory of the total number of GTE poles occupied by Licensee based upon the cumulative number of poles specified in all PARs approved by GTE. GTE may, at its option, conduct a physical inventory of Licensee's Attachments under this Section. It shall be Licensee's sole responsibility to notify GTE of any and all removals of Attachments from GTE's poles. Except as provided in Section 18 of this Agreement in connection with the termination of this Agreement, such notice shall be provided to GTE at least thirty (30) days prior to the removal of the Attachments. Each Notice of Removal shall be in a form specified by GTE and may be revised from time to time at GTE's sole discretion. Licensee shall remain liable for Attachment Fees until Licensee's Attachments have been physically removed from GTE's poles.

12. Modifications, Additions or Replacements to Existing Attachments.

- a. Licensee shall not modify, add to or replace Facilities on any pre-existing Attachment without first notifying GTE in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include: (1) the date the activity is scheduled to begin, (2) a description of the planned modification, addition or replacement, (3) a representation that the modification, addition or replacement will not require any space other than the space previously designated for Licensee's Attachments, and (4) a representation that the modification, addition or replacement will not impair the structural integrity of the poles involved.
- b. Should GTE determine that the modification, addition or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require the reinforcement of, replacement of or an addition of support equipment to the poles involved in order to accommodate Licensee's modification, addition or replacement, GTE will so notify Licensee, whereupon Licensee will be required to submit a PAR in compliance with this Agreement in order to obtain authorization for the modification, addition or replacement of its Attachments.

- c. Access to GTE's poles for repairs, modifications, additions, or replacements required in emergency situations shall be governed by Section 21 of this Agreement.
- d. Should Hyperion request GTE to expand capacity or purchase additional plant, Hyperion agrees to pay all costs.

13. Rearrangements to Accommodate Other Licensees.

Licensee acknowledges that at some point in the future it may become necessary to rearrange Licensee's Facilities in order to create space to accommodate the facilities of another licensee. Licensee agrees that in such event Licensee will cooperate in good faith with such other licensee to come to a mutually agreeable understanding regarding the manner in which the rearrangement of Licensee's Facilities will be achieved.

14. Unauthorized Attachments.

- a. The parties agree that because it would be impracticable and extremely difficult to determine the actual amount of damages resulting from Licensee's unauthorized Attachment(s), a charge equal to five (5) times the amount of the then current Attachment Fee shall be paid by Licensee to GTE for each unauthorized Attachment to a GTE pole. Such payment shall be deemed liquidated damages and not a penalty. Licensee also shall pay GTE an Attachment Fee for each unauthorized Attachment accruing from the date the unauthorized Attachment was first placed on the GTE pole. In the event that the date the unauthorized Attachment was first placed on a GTE pole cannot be determined, such date shall be deemed the date of the last physical inventory made in accordance with this Agreement or, if no physical inventory has been conducted, the date the first PAR from Licensee was approved in accordance with this Agreement. Licensee also shall pay to GTE all costs incurred by GTE to rearrange any unauthorized Attachment(s) of Licensee if such rearrangement is required to safeguard GTE's Attachment(s) or to accommodate the Attachment(s) of another party whose Attachment(s) would not have required a rearrangement but for the presence of Licensee's unauthorized Attachment(s). Licensee shall also pay to GTE all costs incurred by GTE to reinforce, replace or modify any GTE pole, which reinforcement, replacement or modification was required as a result of the unauthorized Attachment of Licensee. The Attachment Fee referenced in this

subsection 14.1 shall be determined in the same manner as such fee would have been determined if the attachment had been authorized by GTE.

- b. For purposes of this section, an unauthorized Attachment shall include, but not be limited to:
 - i. An Attachment to a GTE pole which pole is not identified in any PAR approved in accordance with this Agreement;
 - ii. An Attachment that occupies more space than that allocated to Licensee by GTE;
 - iii. An Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate PAR issued pursuant to this Agreement;
 - iv. An addition or modification by Licensee to its pre-existing Attachment(s) that impairs the structural integrity of the involved GTE pole(s).
 - v. An Attachment that consists of facilities owned or controlled by, and for the use of a party other than Licensee.

15. Surveys and Inspections of Pole Attachments.

- a. Upon written notice to Licensee, the total number and exact location of Licensee's Attachments on GTE's poles may be determined, at GTE's discretion, through a survey to be made not more than once per calendar year by GTE. If so requested, Licensee and/or any other entity owning or jointly owning the poles with GTE may participate in the survey. The costs incurred by GTE to conduct the survey shall be reimbursed to GTE by Licensee upon demand by GTE. If the Attachments of more than one Licensee are surveyed, each such Licensee shall contribute a proportionate share of the costs reimbursed to GTE.
- b. Apart from surveys conducted in accordance with this section, GTE shall have the right to inspect any Attachment of Licensee on GTE's poles as conditions may warrant upon written notice to Licensee. Licensee shall, upon demand by GTE, reimburse GTE all costs incurred to conduct its inspection. No joint survey or inspection, or lack thereof, by GTE shall operate to relieve

Licensee of any responsibility, obligation or liability assumed under this Agreement.

16. Notice of Modification or Alteration of Poles by GTE.

- a. In the event GTE plans to modify or alter any GTE pole(s) upon which Licensee has Attachments, GTE shall provide Licensee notice of the proposed modification or alteration at least thirty (30) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter its Attachments on the GTE poles to be modified or altered by GTE, Licensee shall so notify GTE in writing. In such event, Licensee shall bear a proportionate share of the total costs incurred by GTE to make such poles accessible to Licensee.
- b. In the event GTE is required by a federal, state, or local authority to move, replace or change the location of any GTE pole(s), Licensee shall concurrently relocate Licensee's Attachments. GTE and each Licensee required to relocate its Attachments shall bear its own costs for such relocation.

17. Disclaimer of Warranties.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, GTE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18. Default and Remedies.

- a. The occurrence of any one of the following shall be deemed a Material Default by Licensee under this Agreement:
 - i. Failure by Licensee to pay any fee or other sum required to be paid under the terms of this Agreement and such default continues for a period of ten (10) days after written notice thereof to Licensee;
 - ii. Failure by Licensee to perform or observe any other term, condition, covenant, obligation or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from GTE (provided that if such default is not curable within such thirty (30) day

period, the period will be extended if Licensee commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure);

- iii. The filing of any tax or mechanic's lien against GTE's poles which is not bonded or discharged within thirty (30) days of the date Licensee receives notice that such lien has been filed;
- iv. Licensee's voluntary or involuntary bankruptcy;
- v. Licensee's knowing use or maintenance of its Attachments in violation of any law or regulation, or in aid of any unlawful act or undertaking;
- vi. If any authorization which may be required of the Licensee by any governmental or private authority for the placement, operation or maintenance of Licensee's Attachments is denied or revoked.

b. In the event of a Material Default, GTE, without any further notice to the Licensee (except where expressly provided for below or required by applicable law) may do any one or more of the following:

- i. Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which GTE shall have given Licensee notice, the cost of which performance shall be paid by Licensee to GTE upon demand;
- ii. Terminate this Agreement by giving notice of such termination to Licensee and remove Licensee's Attachments and store them in a public warehouse or elsewhere at the expense of and for the account of Licensee without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to Licensee occasioned thereby; or
- iii. Exercise any other legal or equitable right or remedy which GTE may have.

c. Any costs and expenses incurred by GTE (including, without

limitation, reasonable attorneys' fees) in enforcing this Agreement shall be repaid to GTE by Licensee upon demand.

- d. Upon termination of this Agreement by GTE because of a material default by Licensee, Licensee shall remain liable to GTE for any and all fees, other payments and damages which may be due or sustained prior to such termination, all reasonable costs, fees and expenses, including, without limitation, reasonable attorneys' fees incurred by GTE in pursuit of its remedies hereunder, and additional liquidated damages which shall be an amount equal to one full year of Pole Attachment fees.
- e. All rights and remedies of each party set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

19. Indemnification.

- a. Licensee shall compensate GTE for the full actual loss, damage or destruction of GTE's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments).
- b. Licensee will further indemnify, defend and hold harmless GTE and GTE's agents, officers, employees and assigns, from any and all losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees), statutory fines or penalties, actions or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments), except to the extent caused by the gross negligence or willful misconduct on the part of GTE or GTE's agents, officers, employees and assigns. Licensee expressly assumes all liability for actions brought against GTE and GTE's agents, officers, employees and assigns, by Licensee's agents, officers or employees and Licensee expressly waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by workers' compensation law or by other

state or federal laws.

- c. Without limiting any of the foregoing, Licensee assumes all risk of, and agrees to relieve GTE of any and all liability for, loss or damage (and the consequences of loss or damage) to any Attachments placed on GTE's poles and any other financial loss sustained by Licensee, whether caused by fire, extended coverage perils, or other casualty, except to the extent caused by the gross negligence or willful misconduct on the part of GTE or GTE's agents, officers, employees and assigns.
- d. Without limiting the foregoing, Licensee expressly agrees to indemnify, defend and hold harmless GTE and GTE's agents, officers, employees and assigns from any and all claims asserted by customers of Licensee in any way arising out of or in connection with this Agreement or Licensee's Attachments, except to the extent caused by the gross negligence or willful misconduct on the part of GTE or GTE's agents, officers, employees and assigns.
- e. Notwithstanding anything to the contrary in this Agreement, Licensee further shall indemnify and hold harmless GTE, its agents, officers, employees and assigns from and against any claims, liabilities, losses, damages, fines, penalties and costs (including, without limitation, reasonable attorneys' fees) whether foreseen or unforeseen, which the indemnified parties suffer or incur because of: (i) any discharge of Hazardous Waste resulting from acts or omissions of Licensee or the Licensee's predecessor in interest; (ii) acts or omissions of the Licensee, its agents, employees, contractors or representatives in connection with any cleanup required by law, or (iii) failure of Licensee to comply with Environmental, Safety and Health Laws.
- f. In no event shall either party be liable to the other party for any special, consequential or indirect damages (including, without limitation, lost revenues and lost profits) arising out of this Agreement or any obligation arising hereunder, whether in an action for or arising out of breach of contract, tort or otherwise.
- g. Licensee shall indemnify, protect and hold harmless GTE from and against any and all claims for libel and slander, copyright and/or patent infringement arising directly or indirectly by reason of installation of Licensee's equipment on GTE's poles pursuant to this Agreement.

20.

Insurance.

- a. Licensee shall carry insurance, at its sole cost and expense, sufficient to cover its indemnification obligations as set forth in Section 19 of this Agreement. Such insurance shall include, but not be limited to, coverage against liability due to personal injury or death of persons in the amount of \$500,000 as to any one person and \$1,000,000 as to any one accident; coverage against liability due to property damage in the amount of \$500,000 as to each accident and \$500,000 aggregate; and coverage necessary to fully protect both it and GTE from all claims under any worker's compensation laws that may be applicable.
- b. All insurance required of Licensee under this Agreement shall remain in force for the entire life of this Agreement. The company or companies issuing such insurance shall be approved by GTE and GTE shall be named as an additional insured in each such policy. Licensee shall submit to GTE certificates by each insurer to the effect that the insurer has insured Licensee for all potential liabilities of Licensee under this Agreement, and that it will not cancel or change any policy of insurance issued to Licensee except upon thirty (30) days notice to GTE. In the event Licensee's insurance coverage is to be canceled by reason of non-payment of premiums due, GTE shall have the option of paying any amount due and Licensee shall forthwith reimburse GTE the full amount paid by GTE.
- c. Licensee shall promptly advise GTE in writing of any and all claims for damages, including, but not limited to, damage to property or injury to or death of persons, allegedly arising out of or in any manner related, directly or indirectly, to the presence or use of Licensee's Attachments.
- d. Licensee shall furnish bond or satisfactory evidence of contractual insurance coverage, the terms of which shall be subject to GTE's approval, in the amount of ten thousand dollars (\$10,000) to guarantee the payment of any sums which may become due to GTE for rentals, inspections or for work performed by GTE for the benefit of Licensee under this Agreement, including the removal of Licensee's equipment pursuant to any of the provisions hereof. All bonds must specify that GTE be notified thirty (30) days prior to the expiration or cancellation of the policy.

21. Emergency Restoration Procedures.

In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Attachments. While GTE shall not be responsible for the repair of Licensee's Attachments that are damaged (except by mutual written agreement), GTE shall nonetheless control access to its poles if the restoration is to be achieved in an orderly fashion.

- a. Where GTE and Licensee are involved in emergency restorations, access to GTE's poles will be controlled by GTE's Maintenance District Manager or his/her on-site representative according to the following guidelines:
 - i. Service Disruptions/Outages
 - (a) In the event of service disruptions and/or outages, while exercising its right to first access, GTE shall make all reasonable efforts to grant access to as many other entities with Attachments as is reasonably safe.
 - (b) Where simultaneous access is not possible, access will be granted by GTE on a first come, first served basis.
 - ii. Service Affecting Emergencies
 - (a) In the event of service affecting emergencies not resulting in service disruptions or outages, while exercising its right to first access, GTE shall make all reasonable efforts to grant access to as many other entities with Attachments as is reasonably safe.
 - (b) Where GTE is unable to grant simultaneous access to all other entities with Attachments, access will be granted according to the level of damage to the Attachments of each entity and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.
- b. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by GTE regarding access to Attachments, or any action or failure to

act by GTE, under this Section 21 shall not constitute a basis for any claim by Licensee against GTE for any damage to Licensee's Attachments or disruption of Licensee's services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

22. Damage Suspected to Licensee's Facilities Only.

- a. In the event Licensee receives information that Licensee's Attachments are damaged, Licensee shall notify GTE of said damage at a number to be provided later by GTE. This is a 24-hour, 7 days per week notification number. Licensee shall provide GTE all information known to it regarding the damage to Licensee's Attachments.
- b. In the event GTE receives notice that Licensee's Facilities are damaged, GTE will notify Licensee of said damage by telephone at the Licensee's emergency telephone number. GTE shall provide Licensee all information known to it regarding the damage to Licensee's Attachments.
- c. After the giving of such notice by either Licensee or GTE, Licensee shall be authorized to perform emergency restoration maintenance activities in connection with Licensee's Attachments, subject to the provisions of this Agreement.
- d. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by GTE regarding access to Licensee's Attachments, or any action or failure to act by GTE, appropriately or inappropriately, under this Section shall not be the basis for any claim by Licensee against GTE for any damage to Licensee's Attachments or disruption of Licensee's services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee and Licensee shall indemnify and hold GTE harmless from any such claim.

23. Abandonment.

Nothing in this Agreement shall prevent or be construed to prevent GTE from abandoning, selling, assigning or otherwise disposing of any poles or other GTE property used for Licensee's Attachments; provided, however, that GTE shall condition any such sale, assignment or other disposition subject to the rights granted to Licensee pursuant to this Agreement. GTE shall promptly notify

Licensee of any proposed sale, assignment or other disposition of any poles or other GTE property used for Licensee's Attachments.

24. Notices.

Any written notice to be given to a party to this Agreement shall be in writing and given or made by means of telegram, facsimile transmission, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges prepaid, and addressed or directed to the respective parties as follows:

To Licensee:

To GTE:

Any notice given by personal delivery shall be deemed to have been given on the day of actual delivery and, if given by registered or certified mail, return receipt requested, on the date of receipt thereof and, if given by facsimile transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

25. Non-Waiver of Terms and Conditions.

No course of dealing, course of performance or failure to enforce any of term, right, condition or other provision of this Agreement shall constitute or be construed as a waiver of any term, right or condition or other provision of this Agreement.

26. Dispute Resolution.

- a. Except in the case of (i) a suit, action or proceeding by GTE to compel Licensee to comply with its obligations to indemnify GTE pursuant to this Agreement or (ii) a suit, action or proceeding to compel either party to comply with the dispute resolution procedures set forth in this section, the parties agree to use the following procedure to resolve any dispute, controversy or claim arising out of or relating to this Agreement or its breach.

- b. At the written request of a party, each party shall designate a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute, controversy or claim arising under this Agreement. The parties intend that these negotiations be conducted by *non-lawyer, business representatives*. The substance of the negotiations shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence between the representatives for purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in the arbitration described below or in any subsequent lawsuit without the concurrence of all parties. Documents identified in or provided during such negotiations, which are not prepared for purposes of the negotiations, shall not be so exempt and may, if otherwise admissible, be admitted as evidence in any subsequent proceeding.
- c. If a resolution of the dispute, controversy or claim is not reached within sixty (60) days of the initial written request, the dispute, controversy or claim shall be submitted to binding arbitration by a single arbitrator pursuant to the rules of the American Arbitration Association (AAA), except as hereinafter provided. Discovery in any proceeding before the AAA shall be controlled by the arbitrator and shall be permitted to the extent set forth in this section. Parties may exchange, in any combination, up to thirty-five (35) (none of which may contain subparts) written interrogatories, demands to produce documents and requests for admission. Each party may also take the oral deposition of one (1) witness. Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration and shall be held in the city where GTE's local offices are located. The arbitrator shall rule on the dispute, controversy or claim by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
- d. Each party shall bear its own costs, including attorneys' fees,

incurred in connection with any of the foregoing procedures. A party seeking discovery shall reimburse the responding party the cost of reproducing documents (to include search time and reproduction time costs). The fees associated with any arbitration, including the fees of the arbitrator, shall be divided equally between the parties.

27. Compliance With Laws.

Notwithstanding anything to the contrary in this Agreement, each party shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable laws, including, without limitation, all applicable provisions of (i) workers' compensation laws, (ii) unemployment compensation laws, (iii) the Federal Social Security Law, (iv) the Fair Labor Standards Act, and (v) all laws, regulations, rules, guidelines, policies, orders, permits and approvals of any governmental authority relating to environmental matters and/or occupational safety.

28. Force Majeure.

Neither party shall have any liability for its delays or its failure in performance due to fire, flood, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the Elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other cause beyond its control.

29. Assignment.

- a. The rights and obligations of Licensee under this Agreement shall not be assigned, transferred or sub-licensed, in whole or in part, without the prior written consent of GTE. An assignment, transfer or sub-license of this Agreement by Licensee shall not relieve Licensee of its obligations under this Agreement. Any assignment attempted without the prior written consent of GTE shall be void.
- b. GTE shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part. GTE shall provide notice to Licensee of any assignment which shall state the effective date thereof. Upon the effective date and to the extent of the assignment, GTE shall be released and discharged from all obligations and liabilities under this Agreement.

- c. Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.
- d. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

30. Applicable Law.

This Agreement, and the rights and obligations contained in it, shall be governed and construed under the laws of the State of _____ without regard to its conflicts of laws provisions.

31. Subsequent Law.

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations, guidelines, orders, or tariffs that are currently in force or that may be prescribed by any federal, state or local governmental authority. The parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation, guideline, order, or tariff. Should any term of this Agreement be determined by a court or other entity with competent jurisdiction to be unenforceable, all other terms of this Agreement shall remain in full force and effect.

32. Headings.

All headings contained in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

33. Entire Agreement.

The terms and conditions of this Agreement supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by a writing signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives.

For GTE:

For Licensee:

GTE

(Signature of Authorized Agent)
(Printed Name of Authorized Agent)
(Title)
(Date)

(Signature of Officer)
(Printed Name of Officer)
(Title)
(Date)

ATTEST:

Corporate Seal (If Applicable)

EXHIBIT A

ATTACHMENT FEES

Attachment fees are Five dollars (\$5.00) per pole per year. -

These fees are collected in advance on an annual basis.

APPENDIX J
CONDUIT OCCUPANCY AGREEMENT

1. Parties.

This agreement (Agreement) is between GTE _____ INCORPORATED, a State of _____ corporation having its principal office at _____ ("GTE"), and _____, a corporation of the State of _____, having its principal office at _____ ("Licensee").

2. Definitions.

- a. "GTE's conduit(s)" or "GTE conduit(s)" means any reinforced passage or opening in, on, under/over or through the ground capable of containing communications facilities.
- b. "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- c. "Cable Television Services" means the transmission to subscribers of off-the-air pickup of broadcast signals or the transmission, without separate charge, of locally originated closed circuit television to the subscribers of off-the-air service.
- d. "Conduit" or "Duct" means a single enclosed raceway used to house Innerduct.
- e. "Innerduct," unless otherwise specified or approved by GTE, shall mean a single enclosed raceway 1" or 1-1/4" in diameter, placed within duct and used for housing communications facilities.
- f. "Facilities" means all facilities, including, but not limited to, cables, equipment and associated hardware, owned and utilized by the Licensee which occupy an innerduct.
- g. "Make-Ready Work" means all work, including, but not limited to, rearrangement, removal, or transfer of existing facilities, placement, repair, or replacement of duct or innerduct, or any other changes required to accommodate the Licensee's Facilities in a conduit.

- h. "Manholes" and "handholes" mean subsurface enclosures which personnel may enter and use for the purpose of installing, operating and maintaining communications facilities.
- i. "Hazardous Materials" means (i) any substance, material or waste now or hereafter defined or characterized as hazardous, extremely hazardous, toxic or dangerous within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law, ordinance, statute, rule or regulation of any governmental body or authority, (ii) any substance, material or waste now or hereafter classified as a contaminant or pollutant under any law, ordinance, statute, rule or regulation of any governmental body or authority or (iii) any other substance, material or waste, the manufacture, processing, distribution, use, treatment, storage, placement, disposal, removal or transportation of which is now or hereafter subject to regulation under any law, ordinance, statute, rule or regulation of any governmental body or authority.
- j. "Occupancy Fee" means the fee paid by Licensee to GTE per linear foot for each innerduct occupied by Licensee's Facilities in GTE's Conduit(s).

3. Purpose.

Licensee represents to GTE that Licensee has a need to occupy, place and maintain communications facilities within GTE's conduit(s) for the purpose of providing Telecommunications Service. GTE agrees to permit Licensee to occupy, place and maintain communications facilities within GTE's conduit(s) as GTE may allow pursuant to the terms of this Agreement.

4. Grant of License.

GTE grants to Licensee and Licensee accepts from GTE a non-exclusive revocable license to occupy, place and maintain in a designated space in specified GTE conduits Licensee's Facilities on the terms and conditions set forth herein. Licensee shall have no further right, title, or other interest in connection with GTE's conduit(s). GTE shall have the right to grant, renew or extend privileges to others not parties to this Agreement to occupy, place and maintain facilities in or otherwise use any or all of GTE's conduit(s). Nothing herein is intended to, nor should it be construed to require GTE to construct or modify any facilities not needed for its own service requirements. GTE grants this license in reliance on the representation of Licensee that Licensee intends to

provide Telecommunications Service with Licensee's Facilities covered by this Agreement.

5. Term.

This Agreement shall continue in effect until terminated in accordance with the provisions provided herein.

6. Conduit Occupancy Requests.

- a. Upon execution of this Agreement, Licensee shall have the right to submit a written Conduit Occupancy Request ("COR") to GTE specifying the GTE conduits in which it desires to place its Facilities. Each COR shall be in a form specified by GTE, which form may be revised from time to time by GTE. CORs received by GTE shall be processed on a first come, first served basis. GTE will determine the availability of space for Licensee's Facilities in the GTE conduit(s) specified in the COR within thirty (30) Business Days of its submission. Upon approval of the COR, GTE shall return a copy thereof to Licensee bearing an endorsement acknowledging GTE's authorization. All of Licensee's Facilities placed in GTE's conduit(s) pursuant to an approved COR shall become subject to all of the terms and conditions of this Agreement. Licensee may submit subsequent CORs for approval by GTE as needed. All of Licensee's Facilities shall be placed in innerduct unless otherwise approved by GTE. No facilities of any kind shall be placed in any GTE conduit(s) identified in a COR until that COR has been approved by GTE.
- b. Licensee shall pay GTE a fee for processing a COR to compensate GTE for the general administrative costs as well as the actual engineering costs reasonably incurred. The fee for engineering costs shall be computed by multiplying the fully loaded hourly rate for an engineer times the number of hours reasonably required by each engineer to inspect the GTE conduits included in the COR. GTE will charge its then current rates for administrative and engineering costs, as may be changed from time to time by GTE to remain consistent with prevailing costs.
- c. Upon receiving an approved COR, Licensee shall have the right, subject to the terms of this Agreement, to place and maintain Licensee's Facilities described in the COR in the innerducts of the GTE conduit(s) identified therein.

- d. In the event Make-Ready Work is necessary to accommodate Licensee's Facilities, GTE shall notify Licensee of such fact and provide Licensee with an estimate of the total cost of such Make-Ready Work. Within fifteen (15) days after receiving such notice from GTE, Licensee shall notify GTE either (1) that Licensee shall pay all of the costs actually incurred to perform the Make-Ready Work and shall pay the total estimated amount to GTE at least ten (10) days prior to the date the Make-Ready Work is to begin or (2) that it desires to cancel its COR.
- e. Nothing herein shall confer any right upon Licensee to place power cables or related power equipment in GTE conduit(s) or Manholes. Licensee shall place equipment of this nature in its own pull boxes outside of GTE's Conduit(s) or Manholes. Cable connectors or splicing devices shall not be used by Licensee in GTE's conduit(s) or innerducts.

7. Availability of Conduit Maps.

Existing conduit maps will be made available for viewing by Licensee for the purpose of pre-order planning at the GTE area engineering offices during normal business hours, subject to reasonable advance notification. While a formal written request will not be required in connection with the first request by Licensee to view conduit maps, GTE reserves the right to refuse any subsequent viewing request or require written justification for the request if Licensee has demonstrated that it does not have a good faith intention to submit a COR. If the availability of specific point-to-point conduits can be determined at the time of viewing conduit maps, maps reflecting such point-to-point conduits may be made available for copying. Licensee shall pay to GTE a fee for making such copies available sufficient to cover the general administrative costs incurred. IN MAKING CONDUIT MAPS AVAILABLE, GTE WILL BE MAKING NO EXPRESS OR IMPLIED WARRANTY REGARDING THEIR ACCURACY OTHER THAN THAT THEY ARE THE SAME CONDUIT MAPS USED BY GTE IN ITS DAY-TO-DAY OPERATIONS.

8. Availability of Information Regarding Space In Conduits.

GTE will provide information regarding the availability of conduit space within thirty (30) Business Days of a written request by Licensee. Because GTE will endeavor to determine available space as quickly as possible, a shorter interval may be experienced for requests of a limited scope where physical field verification is not necessary. In the event the thirty (30) Business Day time

frame cannot be met, GTE shall so advise Licensee and shall seek a mutually satisfactory alternative response date. No representation regarding the availability of space shall be made in the absence of a physical field verification.

9. Authority to Place Licensee's Facilities:

- a. Before Licensee places any of Licensee's Facilities in GTE's conduit(s) pursuant to an approved COR, Licensee, upon request, shall submit sufficient evidence to GTE of its authority to maintain the Facilities to be placed in GTE's conduit(s) within the public streets, highways and other thoroughfares or on private property. Licensee shall be solely responsible for obtaining all licenses, authorizations, permits and consents from federal, state and municipal authorities or private property owners that may be required to place and maintain Licensee's Facilities in GTE's conduit(s).
- b. GTE shall not attempt to prevent or delay the granting of any rights-of-way, easements, licenses, authorizations, permits and consents from any federal, state or municipal authorities, or private property owners that may be required by Licensee to place Licensee's Facilities in GTE's conduit(s).
- c. If any right-of-way, easement, license, authorization, permit or consent obtained by Licensee is subsequently revoked or denied for any reason, Licensee's permission to occupy GTE's conduit(s) shall terminate immediately and Licensee shall promptly remove Licensee's Facilities. Should Licensee fail to remove Licensee's Facilities within thirty (30) days of receiving notice to do so from GTE, GTE shall have the option to remove Licensee's Facilities and store them in a public warehouse or elsewhere at the expense of and for the account of Licensee without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to Licensee occasioned thereby. All costs incurred by GTE to remove Licensee's Facilities shall be reimbursed to GTE by Licensee upon demand.
- d. Upon notice from GTE to Licensee that the cessation of the use of any portion of GTE's conduit(s) has been ordered or directed by any federal, state or municipal authority, or private property owner, Licensee's permission to occupy such GTE conduit(s) shall terminate immediately and Licensee promptly shall remove Licensee's Facilities. Should Licensee fail to remove Licensee's

Facilities within thirty (30) days of receiving notice to do so from GTE, GTE shall have the option to remove Licensee's Facilities and store them in a public warehouse or elsewhere at the expense of and for the account of Licensee without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to Licensee occasioned thereby. All costs incurred by GTE to remove Licensee's Facilities shall be reimbursed to GTE by Licensee upon demand by GTE.

10. Placement of Licensee's Facilities.

- a. Licensee shall, at its sole expense, place and maintain Licensee's Facilities in GTE's conduit(s) in accordance with (i) such requirements and specifications as GTE shall from time to time prescribe in writing, (ii) all rules or orders now in effect or that hereafter may be issued by any regulatory agency or other authority having jurisdiction, and (iii) all currently applicable requirements and specifications of the National Electrical Safety Code, and the applicable rules and regulations of the Occupational Safety And Health Act. Licensee agrees to comply, at its sole risk and expense, with all specifications included in Exhibits ___ through ___ hereto, as may be revised from time to time by GTE.
- b. Licensee's Facilities shall be tagged at each manhole so as to identify Licensee as the owner of the Facilities. The tags shall be of sufficient size and lettering so as to be easily read.

11. Failure of Licensee to Occupy Conduit Space.

Upon approval of a COR, Licensee shall have sixty (60) days in which to begin the placement of Licensee's Facilities in the GTE conduit(s) covered by the COR. If Licensee has not begun placing its Facilities within that sixty (60) day period, Licensee shall so advise GTE with a written explanation for the delay. If Licensee fails to advise GTE of its delay, with a written explanation therefor, or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Facilities within the sixty (60) days prescribed by this Section, the previously approved COR shall be deemed rescinded by GTE and Licensee shall have no further right to place Licensee's Facilities pursuant to that COR.

12. Occupancy Fees.

- a. Licensee shall pay to GTE an Occupancy Fee, as specified in Exhibit A hereto, for each linear foot of innerduct occupied by

Licensee's Facilities in GTE's conduit(s). If Licensee's Facilities occupy more than one innerduct, a separate Occupancy Fee shall be paid by Licensee for each innerduct occupied. The Occupancy Fee specified in Exhibit A hereto is the fee applicable to 1" or 1-1/4" diameter innerduct. GTE reserves the right to charge a higher fee for innerduct of greater diameter. The Occupancy Fee may be increased by GTE from time to time as permitted by law upon sixty (60) days written notice to Licensee.

- b. Occupancy Fees shall become due and payable on the date a COR is approved by GTE for all GTE innerducts identified in that COR on a pro rata basis until the end of the calendar year and thereafter on an annual basis within thirty (30) days of the receipt of a statement from GTE specifying the fees to be paid. Any payment after thirty (30) days shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is less.
- c. GTE shall maintain an inventory of the total linear footage of innerduct occupied by Licensee's Facilities in GTE's conduit(s) based upon the cumulative linear footage per innerduct from all CORs approved by GTE. GTE may, at its option, conduct a physical inventory of Licensee's Facilities for purposes of determining the Occupancy Fees to be paid by Licensee under this section. It shall be Licensee's sole responsibility to notify GTE of any and all removals of Licensee's Facilities from GTE's conduit(s). Written notice of such removals (unless they are covered by Section 17 of this Agreement) shall be provided to GTE at least thirty (30) days prior to the removal. Each Notice of Removal shall be in a form specified by GTE. Licensee shall remain liable for all Occupancy Fees until Licensee's Facilities have been physically removed from GTE's conduits.

13. Modifications, Additions or Replacements of Licensee's Facilities.

- a. Licensee shall not modify, add to or replace Licensee's Facilities in any GTE conduit(s) without first notifying GTE in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include: (1) the date the activity is scheduled to begin, (2) a description of the planned modification, addition or replacement, (3) a representation that the modification, addition or replacement will not require any space other than the

space previously designated for Licensee's Facilities, and (4) a representation that the modification, addition or replacement will not impair the structural integrity of the GTE conduit(s) involved.

- b. Should GTE determine that the modification, addition or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require any modification, replacement or reinforcement of the GTE conduit(s) involved in order to accommodate Licensee's modification, addition or replacement, GTE will so notify Licensee, whereupon Licensee shall be required to submit a COR in compliance with this Agreement in order to obtain authorization for the modification, addition or replacement of Licensee's Facilities.
- c. Access to GTE's conduit(s) for repairs, modifications, additions, or replacements required in emergency situations shall be governed by the provisions of Section 20 of this Agreement.

14. Unauthorized Occupancy of GTE Conduit.

- a. It is agreed that a charge equal to five (5) times the amount of the then current Occupancy Fee shall be paid by Licensee to GTE for each unauthorized occupancy of GTE's conduit(s) by Licensee. Such payment shall be deemed liquidated damages and not a penalty. Licensee also shall pay GTE an Occupancy Fee for each unauthorized occupancy accruing from the date the unauthorized occupancy first began. In the event that the date the unauthorized occupancy first began cannot be determined, such date shall be deemed the date of the last physical inventory made in accordance with this Agreement or, if no physical inventory has been conducted, the date the first COR from Licensee was approved in accordance with this Agreement. Licensee also shall pay to GTE all costs incurred by GTE to rearrange Licensee's Facilities that are unauthorized if such rearrangement is required to safeguard GTE's facilities or to accommodate the facilities of another party whose facilities would not have required a rearrangement but for the presence of Licensee's unauthorized facilities. Licensee also shall pay to GTE all costs incurred by GTE to reinforce, replace or modify any GTE conduit(s), which reinforcement, replacement or modification is required as a result of the unauthorized occupancy by Licensee. The Occupancy Fee referenced in this subsection 14.1 shall be determined in the same manner as such a fee would have been determined if the occupancy had been authorized by

GTE.

- b. For purposes of this section, an unauthorized occupancy shall include, but not be limited to:
 - i. The presence of Licensee's Facilities in any GTE conduit which conduit is not identified in any COR approved in accordance with this Agreement;
 - ii. The presence of Licensee's Facilities in any GTE conduit that occupies more space than that allocated to Licensee by GTE;
 - iii. Licensee's Facilities that are not placed in accordance with the provisions of this Agreement or the appropriate COR issued pursuant to this Agreement;
 - iv. An addition or modification by Licensee to its pre-existing Facilities in any GTE conduit that impairs the structural integrity of that GTE conduit.
 - v. The presence of facilities in GTE's conduit(s) placed by Licensee that are owned or controlled by and for the use of a party other than Licensee.

15. Modification or Alteration GTE Conduits.

- a. In the event GTE plans to modify or alter any GTE conduit(s) that house Licensee's Facilities, GTE shall provide Licensee notice of the proposed modification or alteration at least fourteen (14) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter Licensee's Facilities in the GTE conduit(s) to be modified or altered by GTE, Licensee shall so notify GTE in writing. In such event, Licensee shall bear a proportionate share of the total costs incurred by GTE to make the GTE conduit(s) accessible. Licensee's proportionate share of the total cost shall be based on the ratio of the amount of new space occupied by Licensee to the total amount of new space occupied by all of the parties joining in the modification.
- b. In the event GTE moves, replaces or changes the location, alignment or grade of GTE's conduit(s) ("relocation") for reasons

beyond GTE's control, Licensee concurrently shall relocate Licensee's Facilities. Licensee shall be solely responsible for the costs of the relocation of Licensee's Facilities.

16. Disclaimer of Warranties.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, GTE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17. Default and Remedies.

a. The occurrence of any one of the following shall be deemed a Material Default by Licensee under this Agreement:

- i. Failure by Licensee to pay any fee or other sum required to be paid under the terms of this Agreement and such default continues for a period of five (5) days after written notice thereof to Licensee;
- ii. Failure by Licensee to perform or observe any other term, condition, covenant, obligation or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from GTE (provided that if such default is not curable within such thirty (30) day period, the period will be extended if Licensee commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure);
- iii. The filing of any tax or mechanic's lien against any GTE conduit(s) which is not bonded or discharged within thirty (30) days of the date Licensee receives notice that such lien has been filed;
- iv. Licensee's voluntary or involuntary bankruptcy;
- v. Licensee's knowing use or maintenance of Licensee's Facilities in violation of any law or regulation, or in aid of any unlawful act or undertaking;
- vi. If any authorization which may be required of the Licensee by any governmental or private authority for the placement,

operation or maintenance of Licensee's Facilities is denied or revoked.

- b. In the event of a Material Default, GTE, without any further notice to the Licensee (except where expressly provided for below or required by applicable law) may do any one or more of the following:
 - i. Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which GTE shall have given Licensee notice, the cost of which performance shall be paid by Licensee to GTE upon demand;
 - ii. Terminate this Agreement by giving notice of such termination to Licensee and remove Licensee's Facilities and store them in a public warehouse or elsewhere at the expense of and for the account of Licensee without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to Licensee occasioned thereby; or
 - iii. Exercise any other legal or equitable right or remedy which GTE may have.
- c. Any costs and expenses incurred by GTE (including, without limitation, reasonable attorneys' fees) in enforcing this Agreement shall be paid to GTE by Licensee upon demand.
- d. Upon termination of this Agreement by GTE, Licensee shall remain liable to GTE for any and all fees, other payments and damages which may be due or sustained prior to such termination, all reasonable costs, fees and expenses, including, without limitation, reasonable attorneys' fees incurred by GTE in pursuit of its remedies hereunder, and additional liquidated damages which shall be an amount equal to one full year of Occupancy Fees.
- e. All rights and remedies of GTE set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

18.

Indemnification.

- a. Licensee shall compensate GTE for the full actual loss, damage or destruction of GTE's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Facilities).
- b. Licensee will further indemnify, defend and hold harmless GTE and GTE's agents, officers, employees and assigns, from any and all losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees), statutory fines or penalties, actions or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Facilities), except to the extent caused by the negligence or willful misconduct on the part of GTE or GTE's agents, officers, employees and assigns. Licensee expressly assumes all liability for actions brought against GTE and GTE's agents, officers, employees and assigns, by Licensee's agents, officers or employees and Licensee expressly waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by workers' compensation law or by other state or federal laws.
- c. Without limiting any of the foregoing, Licensee assumes all risk of, and agrees to relieve GTE of any and all liability for, loss or damage (and the consequences of loss or damage) to any of Licensee's Facilities placed in any GTE conduit(s) and any other financial loss sustained by Licensee, whether caused by fire, extended coverage perils, or other casualty, except to the extent caused by the negligence or willful misconduct on the part of GTE or GTE's agents, officers, employees and assigns.
- d. Without limiting the foregoing, Licensee expressly agrees to indemnify, defend and hold harmless GTE and GTE's agents, officers, employees and assigns from any and all claims asserted by customers of Licensee in any way arising out of or in connection with this Agreement or Licensee's Attachments, except to the extent caused by the negligence or willful misconduct on the part of GTE or GTE's agents, officers, employees and assigns.

- e. Notwithstanding anything to the contrary in this Agreement, Licensee further shall indemnify and hold harmless GTE, its agents, officers, employees and assigns from and against any claims, liabilities, losses, damages, fines, penalties and costs (including, without limitation, reasonable attorneys' fees) whether foreseen or unforeseen, which the indemnified parties suffer or incur because of: (i) any discharge of Hazardous Waste resulting from acts or omissions of Licensee or the Licensee's predecessor in interest; (ii) acts or omissions of the Licensee, its agents, employees, contractors or representatives in connection with any cleanup required by law, or (iii) failure of Licensee to comply with Environmental, Safety and Health Laws.
- f. In no event shall GTE be liable to Licensee for any special, consequential or indirect damages (including, without limitation, lost revenues and lost profits) arising out of this Agreement or any obligation arising hereunder, whether in an action for or arising out of breach of contract, tort or otherwise.
- g. Licensee shall indemnify, protect and hold harmless GTE from and against any and all claims for libel and slander, copyright and/or patent infringement arising directly or indirectly by reason of installation of Licensee's equipment in GTE's Ducts pursuant to this Agreement.

19. Insurance.

- a. Licensee shall carry insurance, at its sole cost and expense, sufficient to cover its indemnification obligations as set forth in Section 18 of this Agreement. Such insurance shall include, but not be limited to, coverage against liability due to personal injury or death of persons in the amount of \$500,000 as to any one person and \$1,000,000 as to any one accident; coverage against liability due to property damage in the amount of \$500,000 as to each accident and \$500,000 aggregate; and coverage necessary to fully protect both it and GTE from all claims under any worker's compensation laws that may be applicable.
- b. All insurance required of Licensee under this Agreement shall remain in force for the entire life of this Agreement. The company or companies issuing such insurance shall be approved by GTE and GTE shall be named as an additional insured in each such

policy. Licensee shall submit to GTE certificates by each insurer to the effect that the insurer has insured Licensee for all potential liabilities of Licensee under this Agreement, and that it will not cancel or change any policy of insurance issued to Licensee except upon thirty (30) days notice to GTE. In the event Licensee's insurance coverage is to be cancelled by reason of non-payment of premiums due, GTE shall have the option of paying any amount due and Licensee shall forthwith reimburse GTE the full amount paid by GTE.

- c. Licensee shall promptly advise GTE in writing of any and all claims for damages, including, but not limited to, damage to property or injury to or death of persons, allegedly arising out of or in any manner related, directly or indirectly, to the presence or use of Licensee's Facilities.
- d. Licensee shall furnish bond or satisfactory evidence of contractual insurance coverage, the terms of which shall be subject to GTE's approval, in the amount of ten thousand dollars (\$10,000) to guarantee the payment of any sums which may become due to GTE for rentals, inspections or for work performed by GTE for the benefit of Licensee under this Agreement, including the removal of Licensee's equipment pursuant to any of the provisions hereof. All bonds must specify that the GTE be notified thirty (30) days prior to the expiration or cancellation of the policy.

20. Emergency Restoration Procedures.

In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Facilities in GTE's conduit(s). While GTE shall not be responsible for the repair of Licensee's Facilities that are damaged (except by mutual written agreement), GTE shall nonetheless control access to its Conduits if the restoration is to be achieved in an orderly fashion.

- a. Where GTE and Licensee are involved in emergency restorations, access to GTE's conduit(s) will be controlled by GTE's Maintenance District Manager or his/her on-site representative according to the following guidelines:
 - i. Service Disruptions/Outages
 - (a) In the event of service disruptions and/or outages, while exercising its right to first access, GTE shall make all

reasonable efforts to grant access to as many other entities with facilities in GTE's conduit(s) as is reasonably safe.

- (b) Where simultaneous access is not possible, access will be granted by GTE on a first come, first served basis.

ii. Service Affecting Emergencies

- (a) In the event of service affecting emergencies not resulting in service disruptions or outages, while exercising its right to first access, GTE shall make all reasonable efforts to grant access to as many other entities with facilities in GTE's conduit(s) as is reasonably safe.

- (b) Where GTE is unable to grant simultaneous access to all other entities with facilities in GTE's conduit(s), access will be granted according to the level of damage to the facilities of each entity and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.

- b. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by GTE regarding access to Licensee's Facilities, or any action or failure to act by GTE under this Section 20 shall not constitute a basis for any claim by Licensee against GTE for any damage to Licensee's Facilities or disruption of Licensee's services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

21. Damage Suspected to Licensee's Facilities Only.

- a. In the event Licensee receives information that Licensee's Facilities are damaged, Licensee shall notify GTE of said damage at [---TELEPHONE NUMBER---]. This is a 24-hour, 7 days per week notification number. Licensee shall provide GTE all information known to it regarding the damage to Licensee's Facilities.
- b. In the event GTE receives notice that Licensee's Facilities are damaged, GTE will notify Licensee of said damage by telephone at the Licensee's emergency telephone number. GTE shall provide Licensee all information known to it regarding the damage to

Licensee's Facilities.

- c. After the giving of such notice by either Licensee or GTE, Licensee shall be authorized to perform emergency restoration maintenance activities in connection with Licensee's Facilities, subject to the provisions of this Agreement.
 - d. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by GTE regarding access to Licensee's facilities, or any action or failure to act by GTE, appropriately or inappropriately, under this Section shall not be the basis for any claim by Licensee against GTE for any damage to Licensee's Facilities or disruption of Licensee's services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee and Licensee shall indemnify and hold GTE harmless from any such claim.
22. Access to GTE's Manholes/Handholes.
- a. GTE will allow Licensee to audit manholes/handholes that are included in any COR submitted to GTE to confirm usability. Licensee shall give GTE at least fourteen (14) days advance written notice of its desire to audit and shall obtain all authorizations from appropriate authorities required to open the manholes/handholes. GTE shall have the right to have a GTE employee or agent present when its manholes/handholes are being opened. Such GTE employee or agent shall have the authority to suspend Licensee's activities in and around GTE's manholes/handholes if, in the sole discretion of said employee or agent, any hazardous conditions arise or any unsafe practices are being followed by Licensee's employees, agents, or contractors. Licensee agrees to reimburse GTE the cost of having GTE's employee or agent present. Such charge shall be GTE's fully loaded labor rates then in effect.
 - b. For purposes other than to audit usability, GTE's manholes/handholes shall be opened only as permitted by GTE and only after Licensee has obtained all necessary authorizations from appropriate authorities to open manholes/handholes and conduct work operations therein. GTE shall have the right to have a GTE employee or agent present at any site at which its manholes/handholes are being opened. Such GTE employee or agent shall have the authority to suspend Licensee's work

operations in and around GTE's manholes/handholes if, in the sole discretion of said employee or agent, any hazardous conditions arise or any unsafe practices are being followed by Licensee's employees, agents, or contractors. Licensee agrees to reimburse GTE the cost of having GTE's employee or agent present. Such charge shall be GTE's fully loaded labor rates then in effect. The presence of GTE's authorized employee or agent shall not relieve Licensee of its responsibility to conduct all of its work operations in and around GTE's conduit(s) in a safe and workmanlike manner, in accordance with the terms of this Agreement.

23. Abandonment.

Nothing in this Agreement shall prevent or be construed to prevent GTE from abandoning, selling, assigning or otherwise disposing of any GTE conduit(s) or other GTE property used in connection with Licensee's Facilities; provided, however, that GTE shall condition any such sale, assignment or other disposition subject to the rights granted to Licensee pursuant to this Agreement. GTE shall promptly notify Licensee of any proposed sale, assignment or other disposition of any GTE conduit(s) or other GTE property used in connection with Licensee's Facilities.

24. Notices.

Any written notice to be given to a party to this Agreement shall be in writing and given or made by means of telegram, facsimile transmission, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges prepaid, and addressed or directed to the respective parties as follows:

To Licensee:

To GTE:

Any notice given by personal delivery shall be deemed to have been given on the day of actual delivery and, if given by registered or certified mail, return receipt requested, on the date of receipt thereof and, if given by facsimile transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during

normal business hours.

25. Non-Waiver of Terms and Conditions.

No course of dealing, course of performance or failure to enforce any of term, right, condition or other provision of this Agreement shall constitute or be construed as a waiver of any term, right or condition or other provision of this Agreement.

26. Dispute Resolution.

- a. Except in the case of (i) a suit, action or proceeding by GTE to compel Licensee to comply with its obligations to indemnify GTE pursuant to this Agreement or (ii) a suit, action or proceeding to compel either party to comply with the dispute resolution procedures set forth in this section, the parties agree to use the following procedure to resolve any dispute, controversy or claim arising out of or relating to this Agreement or its breach.
- b. At the written request of a party, each party shall designate a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute, controversy or claim arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The substance of the negotiations shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence between the representatives for purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in the arbitration described below or in any subsequent lawsuit without the concurrence of all parties. Documents identified in or provided during such negotiations, which are not prepared for purposes of the negotiations, shall not be so exempt and may, if otherwise admissible, be admitted as evidence in any subsequent proceeding.
- c. If a resolution of the dispute, controversy or claim is not reached within sixty (60) days of the initial written request, the dispute, controversy or claim shall be submitted to binding arbitration by a single arbitrator pursuant to the rules of the American Arbitration

Association (AAA), except as hereinafter provided. Discovery in any proceeding before the AAA shall be controlled by the arbitrator and shall be permitted to the extent set forth in this section. Parties may exchange, in any combination, up to thirty-five (35) (none of which may contain subparts) written interrogatories, demands to produce documents and requests for admission. Each party may also take the oral deposition of one (1) witness. Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration and shall be held in the city where GTE's local offices are located. The arbitrator shall rule on the dispute, controversy or claim by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

- d. Each party shall bear its own costs, including attorneys' fees, incurred in connection with any of the foregoing procedures. A party seeking discovery shall reimburse the responding party the cost of reproducing documents (to include search time and reproduction time costs). The fees associated with any arbitration, including the fees of the arbitrator, shall be divided equally between the parties.

27. Compliance With Laws.

Notwithstanding anything to the contrary in this Agreement, Licensee shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable laws, including, without limitation, all applicable provisions of (i) workers' compensation laws, (ii) unemployment compensation laws, (iii) the Federal Social Security Law, (iv) the Fair Labor Standards Act, and (v) all laws, regulations, rules, guidelines, policies, orders, permits and approvals of any governmental authority relating to environmental matters and/or occupational safety.

28. Force Majeure.

Except for payment of the Occupancy Fees and other amounts payable under this Agreement, neither party shall have any liability for its delays or its failure in performance due to fire, flood, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the Elements, war, civil disturbances, acts of civil or

military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other cause beyond its control.

29. Assignment.

- a. The rights and obligations of Licensee under this Agreement shall not be assigned, transferred or sub-licensed, in whole or in part, without the prior written consent of GTE. An assignment, transfer or sub-license of this Agreement by Licensee shall not relieve Licensee of its obligations under this Agreement. Any assignment attempted without the prior written consent of GTE shall be void.
- b. GTE shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part. GTE shall provide notice to Licensee of any assignment which shall state the effective date thereof. Upon the effective date and to the extent of the assignment, GTE shall be released and discharged from all obligations and liabilities under this Agreement.
- c. Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.
- d. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

30. Applicable Law.

This Agreement, and the rights and obligations contained in it, shall be governed and construed under the laws of the State of _____ without regard to its conflicts of laws provisions.

31. Subsequent Law.

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline. Should any term of this Agreement be determined by a court or other

entity with competent jurisdiction to be unenforceable, all other terms of this Agreement shall remain in full force and effect.

32. Headings.

All headings contained in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

33. Entire Agreement.

The terms and conditions of this Agreement supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by a writing signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives.

For GTE:

For Licensee:

GTE

(Signature of Authorized Agent)
(Printed Name of Authorized Agent)
(Title)
(Date)

(Signature of Officer)
(Printed Name of Officer)
(Title)
(Date)

ATTEST:

Corporate Seal (If Applicable)

EXHIBIT A

OCCUPANCY FEES

The occupancy fees for duct space are eighty four cents (\$0.84) per foot per year.

The occupancy fees are collected on an annual basis.

APPENDIX K
RECIPROCAL COMPENSATION FOR CALL TERMINATION

1. This document describes the reciprocal compensation arrangements between Hyperion and GTE for Local Tariff, Toll and Switched Access Services. The Parties shall compensate each other for transport and termination of such traffic at the rates provided in Appendix C and/or the appropriate Parties' Switched Access Tariff.
2. Compensation for Call Termination
 - A. Reciprocal compensation does not apply in a resale environment.
 - B. The following compensation terms shall apply in all cases where Hyperion purchases GTE's unbundled Local Switching:
 1. For local intra-switch calls between lines connected to GTE's switch where Hyperion has purchased GTE's unbundled Local Switching, the Parties agree to impose no call termination charges on each other. GTE's Local Switching charge will apply as described below where the call is:
 - (a) Originated by Hyperion's customer and completed to a GTE customer:
 - (1) (For use of the local switch): Local Switching charge at the originating office will apply to Hyperion.
 - (b) Originated by Hyperion's customer and completed to the customer of a third party LEC (not affiliated with Hyperion) using GTE's unbundled Local Switching:
 - (1) (For use of the local switch): Local Switching charge at the originating office will apply to Hyperion.
 - (c) Originated by Hyperion's customer and completed to another Hyperion's customer using GTE's unbundled Local Switching.
 - (1) (For use of the local switch): Local Switching charge at the originating office will apply to Hyperion.

(d) Originated by a GTE customer and terminated to Hyperion's customer using GTE's unbundled Local Switching.

(1) No Local Switching charge will apply.

(e) Originated by the customer of a third party LEC (not affiliated with Hyperion) using GTE's unbundled Local Switching and terminated to Hyperion's customers using GTE's unbundled Local Switching.

(1) No Local Switching charge will apply to Hyperion.

2. For Local inner-switch calls where Hyperion has purchased GTE's unbundled Local Switching.

GTE's charges will apply to Hyperion described below where the call is:

(a) Originated from Hyperion's end-user customer using GTE's unbundled Local Switching and completed to a GTE customer.

(1) (For use of the local switch): Local Switching charge at the originating office.

(2) A mileage-based transport charge will apply when Hyperion uses GTE's transport.

(3) (For call termination): Charges for local interconnection/call termination, when applicable.

(b) Originated from Hyperion's customer using GTE's unbundled Local Switching and completed to a third party LEC (not affiliated with Hyperion) customer using GTE's unbundled Local Switching.

(1) (For use of the local switch): Local Switching charge at the originating office.

(2) A mileage-based transport charge will apply when Hyperion uses GTE's transport.

(c) Originated from Hyperion's customer using GTE's unbundled Local Switching and completed to the interconnected network of a third party LEC (not affiliated with Hyperion).

- (1) (For use of the local switch): Local Switching charge at the originating office.
 - (2) A mileage-based transport charge will apply when Hyperion uses GTE's transport, and mileage shall be measured between the originating office and the POI of the third party's network.
- (d) Originated from Hyperion's customer using GTE's unbundled Local Switching and completed to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use of the local switch): Local Switching charge at the originating office.
 - (2) A mileage-based transport charge will apply when Hyperion uses GTE's transport.
 - (3) (For use of the local switch): Local Switching charge at the terminating office.
- (d) Originated by a GTE customer and terminated to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use at local switch): Local Switching Charge at the terminating office.
 - (2) (For call termination): Hyperion shall charge GTE for local interconnection/call termination, when applicable.
- (f) Originated by a customer of a third-party LEC (not affiliated with Hyperion) using GTE's unbundled Local Switching and terminated to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use of the local switch): Local Switching charge at the terminating office.
- (g) Originated by a customer of the interconnected network of a third-party LEC (not affiliated with Hyperion) and terminated to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use of the local switch): Local Switching charge at the

terminating office.

3. For intraLATA toll calls where Hyperion has purchased GTE's unbundled Local Switching, charges per Unbundled Network Element pricing shall apply as follows:
- (a) *Originated by Hyperion's customer and completed to a GTE customer.*
 - (1) (For use of the local switch): Local Switching charge plus RIC and CCLC (Residual Interconnection Charge) at the originating office.
 - (2) Shared transport charge between the two offices will apply when Hyperion uses GTE's transport.
 - (3) (For call termination): End Office Switching charge at the terminating office (Switched Access Rate).
 - (4) RIC and CCLC at the terminating office.
 - (b) *Originated by Hyperion's customer and completed to the customer of a third-party LEC (not affiliated with Hyperion) using GTE's unbundled Local Switching in a distant end office.*
 - (1) (For use of the local switch): Local Switching charge plus RIC and CCLC at the originating office.
 - (2) Shared transport charge between the two offices will apply when *Hyperion uses GTE's transport.*
 - (c) *Originated by Hyperion customer and completed to the network of a third-party LEC (not affiliated with Hyperion) interconnected with GTE's network.*
 - (1) (For use of the local switch): Local Switching charge, plus RIC and CCLC, at the originating office.
 - (2) Common transport charge will apply when Hyperion uses GTE's transport, and mileage shall be measured between the originating office and the POI of the third party's network.
 - (3) Tandem Switching, where applicable.
 - (d) *Originated by Hyperion's customer and completed by another of*

Hyperion's customers being served through GTE's unbundled Local Switching in a distant office.

- (1) (For use of the local switch): Local Switching charge plus RIC and CCLC at the originating office.
 - (2) Shared transport charge between the two offices will apply when Hyperion uses GTE's transport.
 - (3) (For use of the local switch): Local Switching charge plus RIC and CCLC at the terminating office.
- (e) Originated by a GTE customer and terminated to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use of the local switch): Local Switching charge plus RIC and CCLC at the terminating office.
 - (2) (For call termination): Hyperion will charge GTE Local Switching at the terminating office (Switched Access Rate).
 - (3) (For call termination): Hyperion will charge GTE NIC and CCLC at the terminating office.
- (f) Originated by the customer of a third-party LEC (not affiliated with Hyperion) using GTE's unbundled Local Switching in a distant end office and terminated to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use of the local switch): Local Switching charge plus RIC and CCLC at the terminating office.
- (g) Originated by a customer of the network of a third-party LEC (not affiliated with Hyperion) interconnected with GTE's network and terminated to Hyperion's customer using GTE's unbundled Local Switching.
- (1) (For use of the local switch): Local Switching charge plus RIC and CCLC at the terminating office.
4. For intrastate Switched Access calls where Hyperion's is using GTE's unbundled Local Switching for calls originated from or terminated to an IXC for completion:
- (a) For calls originated from Hyperion's customer to Hyperion's own IXC

switch (or that of an affiliate) for completion.

- (1) (For use of the local switch): Local Switching charge at the terminating office.
 - (2) Originating RIC and CCLC.
 - (3) GTE will charge Hyperion's IXC affiliate the following Switched Access elements on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge Hyperion's IXC affiliate the following Switched Access elements on a meet-point basis:
 - a. Originating RIC and CCLC;
 - b. Local Switching.
- (b) For calls originating from Hyperion's customer to an IXC's switch not affiliated with Hyperion.
- (1) (For use of the local switch): Hyperion's customer to an IXC's switch not affiliated with Hyperion.
 - (2) Originating RIC and CCLC.
 - (3) GTE shall charge the non-affiliated IXC for the following originating Switched Access on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge the non-affiliated IXC for the following Switched Access elements on a meet-point basis:
 - a. Originating RIC and CCLC;
 - b. Local Switching.

- (c) For calls terminating to Hyperion's end-user customer from Hyperion's own IXC switch (or that of an affiliate) for completion.
 - (1) (For use of the local switch): Local Switching charge at the terminating office.
 - (2) Terminating RIC and CCLC.
 - (3) GTE will charge Hyperion's IXC (affiliate) the following Switched Access elements on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge Hyperion's IXC (affiliate) for the following Switched Access elements on a meet-point basis:
 - a. Terminating RIC and CCLC.
 - b. Local Switching.
- (d) For calls terminating to Hyperion's customer from an IXC switch not affiliated with Hyperion.
 - (1) (For use of the local switch): Local Switching charge at the terminating office.
 - (2) Terminating RIC and CCLC.
 - (3) GTE shall charge the IXC for the following terminating Switched Access on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge IXC for the following Switched Access elements on a meet-point basis:
 - a. Terminating RIC and CCLC;
 - b. Local Switching.

5. For interstate Switched Access calls where Hyperion is using GTE's unbundled Local Switching for calls originated from or terminated to an IXC for completion:
- (a) For calls originated from Hyperion's customer to Hyperion's own IXC switch (or that of an affiliate) for completion.
 - (1) (For use of the local switch): Local Switching charge at the originating office.
 - (2) Originating Residual Interconnection Charge (RIC) and CCL.
 - (3) GTE shall charge Hyperion's IXC affiliate for the following originating Switched Access on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge Hyperion's IXC affiliate the following Switched Access elements on a meet-point basis:
 - a. Originating RIC;
 - b. Originating CCLC;
 - c. Local Switching.
 - (b) For calls originated from Hyperion's customer to an IXC's switch not affiliated to Hyperion.
 - (1) (For use of the local switch): Local Switching charge at the terminating office.
 - (2) Originating RIC and CCLC.
 - (3) GTE shall charge the IXC for the following originating Switched Access on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge IXC the following Switched Access elements

- on a meet-point basis:
- a. Originating RIC;
 - b. Originating CCLC;
 - c. Local Switching.
- (c) For calls terminating to Hyperion's customer for Hyperion's own IXC switch (or that of an affiliate) for completion.
- (1) (For use of the local switch): Local Switching charge at the terminating office.
 - (2) Terminating RIC and CCL.
 - (3) GTE will charge Hyperion's IXC (affiliate) the following Switched Access elements on a meet-point basis:
 - a. Local Transport;
 - b. Tandem Switching.
 - (4) Hyperion will charge Hyperion's IXC affiliate the following Switched Access elements on a meet-point basis:
 - a. Terminating RIC;
 - b. Terminating CCLC;
 - c. Local Switching.
- (d) For calls terminating to Hyperion's customer from an IXC switch not affiliated with Hyperion.
- (1) (For use of the local switch): Local Switching charge at the terminating office.
 - (2) Terminating RIC and CCL.
 - (3) GTE will charge the non-affiliated IXC for the following terminating Switched Access on a meet-point basis:

- a. Local Transport;
 - b. Tandem Switching.
- (4) Hyperion will charge IXC the following Switched Access elements on a meet-point basis:
- a. Terminating RIC;
 - b. Terminating CCLC;
 - c. Local Switching.

APPENDIX 42A
GTE TERMS

Pursuant to Section 42 of Article III of the GTE/Hyperion Interconnection Agreement, and subject to all of the terms and conditions of that Section 42, each of the following rates or terms may be replaced or supplemented by the correlative rate or term set forth in the CLEC-Prime Terms listed in Appendix 42B, as and when provided in Section 42 and only until, as long as, and under the conditions prescribed by Section 42.

1. Substitute each rate and charge in Appendix C with the rate or charge that may be indicated for the same items in Appendix 42B, item 1.
2. Substitute the *Avoided Cost Discount* in Appendix E with the *resale discount rate(s)* that may be indicated in Appendix 42B.
3. Substitute the list of services excluded from resale under Section 2.2 of Article V to remove those services to be made available for resale that may be indicated in Appendix 42B.
4. Substitute the list of services available for resale but not at a discount under Sections 3 and 5.6 of Article V to remove those services to be made available for resale at a discount that may be indicated in Appendix 42B.
5. Substitute each price in Appendix F with the price that may be indicated for the same items in Appendix 42B.
6. Add to Appendix F the price for dark fiber that may be indicated in Appendix 42B, item 2.
7. Add the provisions regarding the terms and conditions of providing dark fiber as an unbundled network element that may be indicated in Appendix 42B.

APPENDIX 42B

CLEC - PRIME TERMS

Pursuant to Section 42 of Article III of the GTE/Hyperion Interconnection Agreement, and subject to all of the terms and conditions thereof, and after notice as called for in Section 42, the following terms as written in the "CLEC - Prime Agreement" referred to in Section 42 will be substituted for the GTE Terms which are set out in Appendix 42A as and when Section 42 calls for them to be substituted.

When the identity of the CLEC-Prime Agreement is established pursuant to the provisions of Section 42, the parties shall modify this Appendix by replacing the descriptions of subjects below with the specific rates and terms of the CLEC-Prime Agreement that describes those precise points.

1. The rates or charges set forth in the CLEC-Prime Agreement that were established by order of the arbitrator for the specific rates and charges that are listed in Appendix C.
2. The resale discount percentage(s) ordered by the arbitrator to apply to the services that will be provided under Article V of this Agreement for resale at a discount.
3. The services that were ordered by the arbitrator to be made available for resale which would otherwise be excluded from available resale services under Article V, Section 2.2 of this Agreement.
4. The services that were ordered by the arbitrator to be made available for resale at a discount which would otherwise be made available but not at a discount under Article V, Sections 3 and 5.6 of this Agreement.
5. The prices set forth in the CLEC-Prime Agreement that were established by order of the arbitrator for the unbundled network elements that are listed in Appendix F.
6. The price set forth in the CLEC-Prime Agreement for dark fiber, if dark fiber was ordered by the arbitrator to be provided as an unbundled network element.
7. The terms and conditions that apply to the provision of dark fiber as an unbundled network element, if dark fiber was ordered by the arbitrator to be provided as an unbundled network element.