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ORIGINAL

August 13, 1999

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

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SECRETARY'S BUREAU

A-310828F0002

RE: In the Matter of the Adoption by Fibernet Telecommunications of Pennsylvania, LLC of an Interconnection Agreement Between GTE North Incorporated and Hyperion Susquehanna Telecommunications Pursuant to Section 252(i) of the Telecommunications Act of 1996; Docket No. _____

DOCUMENT
FOLDER

Dear Mr. McNulty:

Enclosed, please find the original and three (3) copies of the Adoption of Interconnection Agreement between GTE North Incorporated and Fibernet Telecommunications of Pennsylvania, LLC.

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

Respectfully,

Craig R. Burgraff
Craig R. Burgraff

CRB/bes
Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of the Adoption by Fibernet)
Telecommunications of Pennsylvania, LLC)
Of an Interconnection Agreement Between)
GTE North Incorporated And Hyperion)
Susquehanna Telecommunications Pursuant)
To Section 252(i) of the)
Telecommunications Act of 1996)

Docket No.

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ADOPTION OF INTERCONNECTION AGREEMENT

COMES NOW, GTE North Incorporated ("GTE") and respectfully files this Adoption of Interconnection Agreement. In connection with this filing, GTE states as follows:

1. Pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Federal Act"), Fibernet Telecommunications of Pennsylvania, LLC ("Fibernet") notified GTE that it desired to adopt the terms (the "Terms") of the Interconnection Agreement between GTE and Hyperion Susquehanna Telecommunications approved by the Pennsylvania Public Utility Commission (the "Commission") in Docket No. A310547 (the "Agreement"). Subsequent to this, GTE and Fibernet signed a letter relating to Fibernet's adoption of the Terms. A copy of said letter is attached to this filing as Exhibit 1.

2. Section 252(i) of the Federal Act provides as follows:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.-

A local exchange carrier shall make available any interconnection services, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and condition as those provided in the agreement.

The Commission approved the Agreement pursuant to Section 252(e) of the Federal Act. Accordingly, per

Section 252(i), Fibernet has the right to adopt the Terms

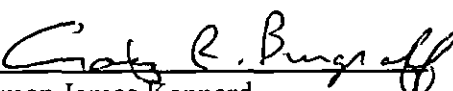
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3. Subject to the terms of the letter attached as Exhibit 1, there are no outstanding issues between GTE and Fibernet relating to such adoption. Therefore, the adoption is effective upon the filing of this document with the Commission.

WHEREFORE, GTE respectfully submits this Adoption of Interconnection Agreement.

Respectfully submitted,

GTE NORTH INCORPORATED

By: 

Norman James Kennard

Craig R. Burgraff

Malatesta Hawke & McKeon LLP

Harrisburg Energy Center

100 North Tenth Street

P.O. Box 1778

Harrisburg, PA 17105

ATTORNEY FOR GTE NORTH
INCORPORATED

Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



GTE Network
Services

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972/718-4586
FAX 972/719-1523

July 14, 1999

A-310828F0002

Scott A. Sawyer
Vice President, Regulatory Affairs
Fibernet Telecommunications of Pennsylvania, LLC
222 Richmond Street, Suite 206
Providence, RI 02903

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P.A.P.U.C.
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Dear Mr. Sawyer:

GTE has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, Fibernet Telecommunications of Pennsylvania, LLC (Fibernet) wishes to adopt the terms of the Interconnection Agreement between Hyperion Telecommunications (Hyperion) and GTE that was approved by the Commission as an effective agreement in the State of Pennsylvania in Docket No. A-31057 (Terms)¹. The terms provide for the election by Hyperion of certain additional provisions from a future GTE arbitrated agreement and may also include provisions that could be interpreted contrary to the law ("Arbitrated Provisions"). I understand you have a copy of the Terms.

Please be advised that our position regarding the adoption of the Terms is as follows.

On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

¹ *These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, any provisions in the Terms requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Terms which Fibernet seeks to adopt does *not* reflect the Court's decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, Fibernet will not seek UNE "platforms," or "already bundled" combinations of UNEs.
3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Terms, GTE will agree to extend any new interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Court's decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.
5. The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet are not available for adoption and are not a part of the 252(i) agreement pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

GTE believes that the first four conditions above are adequately explained by the first part of this letter. The reason for the last condition is the FCC gave the ILECs the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the contract pertaining to reciprocal compensation is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, -900 - 976, etc)".

In sum, GTE believes its proposal as described above would maintain the status quo until the legal landscape is settled.

Fibernet's adoption of the Hyperion Terms shall become effective upon filing of this letter with the Pennsylvania Utility Commission and remain in effect no longer than the date the Hyperion Terms are terminated. The Hyperion agreement is currently scheduled to expire on October 30, 1999.

As these Terms are being adopted by Fibernet pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of its position as to the illegality or unreasonableness of certain Arbitrated Provisions or a portion thereof, nor does it constitute a waiver by GTE of all rights and remedies it may have to seek review of the Arbitrated Provisions, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant with respect to the Arbitrated Provisions, or to seek review in any way of any provisions included in these Terms as a result of Fibernet's 252(i) election.

Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or Fibernet that any Arbitrated Provisions comply with the rights and duties imposed by the Telecommunications Act of 1996, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and Fibernet expressly reserve their full right to assert and pursue claims arising from or related to the Arbitrated Provisions. GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals.

Should Fibernet attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

Fibernet does not concur with GTE's position as stated above. Please indicate by your countersignature on this letter that you are agreeing to an understanding of and commitment to the following three points only:

- (A) Fibernet adopts the Terms of the Hyperion agreement for interconnection with GTE and in applying the Terms, agrees that Fibernet be substituted in place of Hyperion in the Terms wherever appropriate
- (B) Fibernet requests that notice to Fibernet as may be required under the Terms shall be provided as follows:

To : Fibernet Telecommunications of Pennsylvania, LLC
Attention: Scott A. Sawyer
Vice President, Regulatory Affairs
222 Richmond Street, Suite 206
Providence, RI 02903
Telephone number: 401/274-6383
FAX number: 401/272-9751

- (C) Fibernet represents and warrants that it is a certified provider of local dialtone service in the State of Pennsylvania and that its adoption of the Terms will cover services in the State of Pennsylvania only.

Sincerely,

GTE North Incorporated



Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C only:

Fibernet Telecommunications of Pennsylvania, LLC



For Fibernet Telecommunications of Pennsylvania, LLC

- c: R. Bates – NC999142 – Durham, NC
A. Lowery – NC999142 – Durham, NC
D. Robinson - HQE03B73 - Irving, TX

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