

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: Complaint of AVR of Tennessee, LP d/b/a Hyperion of Tennessee, LP Against  
BellSouth Telecommunications, Inc. to Enforce Reciprocal Compensation and  
"Most Favored Nation" Provisions of the Parties' Interconnection Agreement

Docket No. 98-00530

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SUPPLEMENT TO MOTION TO STRIKE

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Yesterday, September 15, 1999, Hyperion filed a Motion to Strike pre-filed testimony in the above-captioned proceeding. Later that day, counsel for Hyperion learned that a notice had been issued on September 9, 1999 setting forth time limits for the filing of pre-hearing motions. According to that notice, Hyperion's Motion to Strike should have been filed by 4:30 p.m. on September 13, 1999. BellSouth's response would have been due by noon on Wednesday, September 15. Both Hyperion's local attorney and the company's Washington, D.C. counsel apparently overlooked the September 9 notice and were unaware of the September 13 deadline.

Hyperion asks that, notwithstanding the untimeliness of its motion, the Hearing Officer consider the motion on its merits either at the outset of the hearing on September 17, or after the hearing but prior to making a final decision on this matter.

The issues raised in the Motion to Strike are familiar to BellSouth and are identical to issues litigated by BellSouth in the *Brooks Fiber* proceeding. If there is any reason to distinguish this case from the Authority's application of the parole evidence rule in the *Brooks Fiber* case, BellSouth should be readily able to offer it. Therefore, BellSouth may be able to respond to the motion, orally or in writing, at the outset of the hearing on Friday. In the alternative, Hyperion


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asks that the Hearing Officer grant BellSouth the opportunity to respond to the motion in a post-hearing brief. Under that alternative, Hyperion would not object to allowing BellSouth's testimony to be introduced into evidence as filed, pending a ruling on the Motion to Strike. By proceeding in that manner, the Hearing Officer may consider Hyperion's Motion to Strike without any prejudice to BellSouth caused by the late filing.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Arbitration Petition in the above captioned proceeding has been hand-delivered to the office of Guy Hicks, BellSouth Telecommunications, 333 Commerce St., Suite 2101, Nashville, Tennessee 37201-3300 on this the 16 day of September, 1999.

