

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR TRANSFER OF)
PARTNERSHIP INTERESTS OF HYPERION) CASE NO. 97-478
TELECOMMUNICATIONS OF KENTUCKY, INC.)
AND TCI TKR OF KENTUCKY, INC.)

O R D E R

On December 5, 1997, Hyperion Telecommunications of Kentucky, Inc. ("Hyperion-Kentucky") and TCI TKR of Kentucky, Inc. ("TKR") (hereinafter collectively referred to as "Joint Applicants") filed an application ("Joint Application") pursuant to KRS 278.020 for Commission approval of the transfer of TKR's 50 percent partnership interest in Louisville Lightwave to Hyperion-Kentucky, owner of the remaining 50 percent partnership interest. Louisville Lightwave is a foreign general partnership formed under New Jersey law between Hyperion-Kentucky and TKR. Louisville Lightwave is authorized to provide intrastate telecommunications in Kentucky.¹

Hyperion-Kentucky, a Delaware corporation, is a wholly-owned subsidiary of Hyperion Telecommunications, Inc. ("Hyperion"). Hyperion operates 22 competitive local

¹ Case No. 95-047, Application of Louisville Lightwave for a Certificate of Convenience and Necessity to Construct Facilities and Provide Intrastate Telecommunications Services, Order dated September 13, 1995. Specifically the Order authorized Louisville Lightwave to provide "interLATA and intraLATA dedicated services, known as special access and private line services." More recently, in 1997, Louisville Lightwave satisfied all necessary requirements to provide competitive local exchange telecommunications services in Kentucky, including the following: (i) approval of an interconnection agreement; (ii) an approved tariff, and (iii) the establishment of an escrow account to satisfy its Universal Service Fund Obligations.

exchange networks in 12 states throughout the United States, currently serving 35 cities with approximately 4,000 route miles of fiber optic cable. Hyperion-Kentucky has created two wholly-owned subsidiaries to operate Louisville Lightwave's two networks, Hyperion Telecommunications of Louisville, Inc. ("Hyperion-Louisville") and Hyperion Telecommunications of Lexington, Inc. ("Hyperion-Lexington"). Joint Applicants assert that these two subsidiaries will rely heavily on the technical, managerial, and financial resources of Hyperion-Kentucky and its parent, Hyperion, as Louisville Lightwave did in providing telecommunications services. These qualifications having already been reviewed by the Commission in Louisville Lightwave's application to provide competitive access services and the Commission having found them to be satisfactory, a finding that these two subsidiaries demonstrate the financial ability to provide reasonable service is warranted.

The proposed transaction consists of a merger pursuant to which TKR's 50 percent partnership interest in Louisville Lightwave will be entirely absorbed into Hyperion-Kentucky and will cease to exist. Subsequently, Hyperion-Kentucky will own all assets of Louisville Lightwave. In addition, Louisville Lightwave requests authorization pursuant to KRS 278.020 to abandon service in Kentucky following the cessation of the partnership between Hyperion-Kentucky and TKR. Joint Applicants have attached to their Joint Application a copy of the Purchase Agreement, a Mutual Release, and An Assignment of Partnership Interest.

Until the proposed transaction has been consummated, Louisville Lightwave will provide uninterrupted service pursuant to its tariff. After completion of the proposed

transaction, Joint Applicants state that Louisville Lightwave will cease to exist and the customers of Louisville Lightwave will be transferred to Hyperion-Louisville and Hyperion-Lexington. Hyperion-Louisville and Hyperion-Lexington will continue to provide all telecommunication services currently provided by Louisville Lightwave. This merger, Joint Applicants state, will have no impact on the quality of service currently provided to the public by Louisville Lightwave or on the rates charged therefor. In lieu of adopting the tariff of Louisville Lightwave, Joint Applicants have submitted new tariffs under the names, Hyperion Telecommunications of Louisville, Inc. and Hyperion Telecommunications of Lexington, Inc.

Pursuant to KRS 278.020(4), persons under the jurisdiction of the Commission are required to obtain Commission approval prior to the acquisition or transfer of ownership or control of a utility. KRS 278.020(5) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval. The Commission finds that KRS 278.020(4) and KRS 278.020(5) apply to the proposed transaction as described by Joint Applicants and Commission approval is necessary.

The Commission finds that the proposed transaction is consistent with the public interest and that it will take place in accordance with law and for a proper purpose. The Commission finds that the Joint Application demonstrates that Hyperion-Louisville and Hyperion-Lexington, through their reliance on Hyperion-Kentucky and Hyperion, possess the financial, technical and managerial abilities to provide reasonable service in Kentucky.

IT IS THEREFORE ORDERED that:

1. The proposed transaction as described by the Joint Applicants is hereby approved.

2. Joint Applicants shall notify the Commission within 10 days of the date of consummation of the proposed transaction or, in the alternative, shall notify the Commission if the proposed transaction does not occur.

3. The tariff filed by Hyperion Telecommunications of Louisville, Inc., effective January 3, 1998, is approved with the following modifications:

a. KY PSC Tariff No. 1, Section 1, Original Page 24 at Section 1.1, which currently reads, "Hyperion Telecommunications of LOUISVILLE, Inc. will provide service within the Commonwealth of Massachusetts," shall be corrected to read, "Hyperion Telecommunications of LOUISVILLE, Inc. will provide service within the Commonwealth of Kentucky."

b. KY PSC Tariff No. 1, Section 1, Original Page 26 at Section 2.1.1 lines 3-6 which currently reads, "The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the Commonwealth of Massachusetts," shall be corrected to read, "The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the Commonwealth of Kentucky."

4. The tariff filed by Hyperion Telecommunications of Lexington, Inc., effective January 3, 1998, is approved with the following modifications:

a. KY PSC Tariff No. 1, Section 1, Original Page 24 at Section 1.1, which currently reads, "Hyperion Telecommunications of LEXINGTON, Inc. will provide service within the Commonwealth of Massachusetts," shall be corrected to read, "Hyperion Telecommunications of LEXINGTON, Inc. will provide service within the Commonwealth of Kentucky."

b. KY PSC Tariff No. 1, Section 1, Original Page 26 at Section 2.1.1 lines 3-6 which currently reads, "The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the Commonwealth of Massachusetts," shall be corrected to read, "The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the Commonwealth of Kentucky."

5. Within 10 days of the date of this Order, Hyperion Telecommunications of Louisville, Inc. and Hyperion Telecommunications of Lexington, Inc. shall file the tariff modifications described herein.

6. Within 10 days of the consummation of the proposed transaction, the acquirer, Hyperion-Kentucky, shall file with the Commission Articles of Incorporation of both Hyperion Telecommunications of Louisville, Inc. and Hyperion Telecommunications of Lexington, Inc.

Done at Frankfort, Kentucky, this 23rd day of December, 1997.

PUBLIC SERVICE COMMISSION

B. J. Helton
Chairman

[Signature]
Vice Chairman

[Signature]
Commissioner

ATTEST:

Helen C. Helton
Executive Director