

Exhibit B

“[c]ustomer terminals could access on the host computer content aggregated from the Internet, but the terminals were not directly connected to the Internet”). One of the named inventors also admitted that such a system is not contemplated by the claims. See MyMail 30(b)(6) Depo. of Thomas Selgas (11/03/04), at 412:14-19, 415:10-14, Exh. 11.

Furthermore, MyMail has repeatedly admitted that a significant aspect of an NSP is its ability to grant the user access to the Internet directly from a modem bank at a local POP.⁷ See, e.g., MyMail 30(b)(6) Depo. of Thomas Selgas (9/16/04) at 100-103 (stating that the user gets on the network “[a]t the location of the NSP”), Exh. 9; *id.* at 125 (stating that EarthLink qualify as an NSP “if [it] owns its own modem banks”); MyMail 30(b)(6) Depo. of Thomas Selgas (10/27/04) at 305, 333-35, Exh. 10. Accordingly, an NSP is a provider of network services that grants its customers Internet access directly from a modem bank at a local POP.

MyMail further claims that this construction is too narrow because the patent discloses that “the invention supports many types of physical connections such as telephone connections, ISDN connections, Ethernet, and other local area connections.” MM Br. at 14 (quoting col. 5:35-38). In highlighting this isolated sentence, MyMail ignores the rest of the patent’s disclosure, including the requirements imposed by the claims themselves, which require the NSP to include modems.

A critical function of an NSP is to provide a user a connection via a telephone number. For example, claim 6 recites providing a user a “telephone number to access the access service provider via an available NSP,” providing the user “information indicating a second telephone number for a given NSP,” and providing the user a “connection to the network via the second

⁷ These admissions contradict MyMail’s argument that an NSP does not have to provide Internet access. MM Br. at 9 n.5. Each of the claims recite that user communicates with an ASP, which is an Internet entity. See *supra*. For users to communicate with the ASP via the NSP, the NSP must grant the users access to the Internet.

CONCLUSION

For the foregoing reasons, AOL urges the Court to adopt the Defendants' claim constructions, set forth in the Joint Claim Construction Statement.

Dated: March 16, 2005

Respectfully submitted,

/s/ Lauren Degnan

Ruffin B. Cordell—Attorney-in-charge
(Texas State Bar No. 04820550)

E-mail: rbc@fr.com

Lauren A. Degnan

E-mail: lad@fr.com

Rama G. Elluru

E-mail: rge@fr.com

FISH & RICHARDSON P.C.

1425 K Street, N.W., 11th Floor

Washington, D.C. 20005

Telephone: (202) 783-5070

Facsimile: (202) 783-2331

Michael E. Jones

(Texas State Bar No. 10929400)

POTTER MINTON, P.C.

110 N. College

500 Plaza Tower

Tyler, Texas 75702

Telephone: (903) 597-8311

Facsimile: (903) 593-0846

E-mail: mikejones@potterminton.com

Otis W. Carroll

(Texas State Bar No. 03895700)

Wesley Hill

(Texas State Bar No. 24032294)

IRELAND, CARROLL & KELLEY, P.C.

6101 S. Broadway, Suite 500

P.O. Box 7879

Tyler, TX. 75711

Telephone: (903) 561-1600

Facsimile: (903) 581-1071

E-mail: Fedserve@icklkw.com

Attorneys for Defendant

AMERICA ONLINE, INC.

