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January 6, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: ***Ex Parte***
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

In this letter, Cbeyond Communications provides further information for the Commission's consideration in the above captioned proceedings concerning access to enhanced extended loop combinations or "EELs."[1] The present debate for access to EELs appears to center on two key issues. The first issue is under what criteria should EELs be made available to competitive local exchange carriers (CLECs) and the second is how to ensure that the criteria established cannot be "gamed" by competitive providers resulting in EELs being used for service offerings that do not include a local exchange component. Further, we believe our submission creates the proper framework to prevent "gaming" by all parties, including the incumbent local exchange carriers (ILECs).

Summary of Additional Indicia

In addition to the proposal made by Cbeyond in its December 16, 2002 letter to the Commission, we offer the following additional indicia that could be added to strengthen our proposed "bright line" test.[2] As noted in our previous submission, an attestation of compliance by CLECs would meet the burden of proof to qualify for an EEL and the evidence to support the attestation would be produced in the supporting documentation provided should that attestation be called into question after the fact and

[1] An enhanced extended loop ("EEL") is a combination of network elements comprised of a loop, transport and, when required multiplexing.
[2] Letter to Marlene H. Dortch, Secretary, from Julia O. Strow, Vice President – Regulatory & Legislative Affairs, Cbeyond Communications, CC Docket No. 01-338, filed December 16, 2002.

in the case of an audit.[3] The Commission should be clear that ILECs must provision the EEL first and to the extent there are questions as to compliance they can be addressed after the fact and at such time as the ILEC has supported its contention that the circuit does not qualify for an EEL.

In looking at what would differentiate a carrier who was legitimately using an EEL for the provision of local exchange service, there do exist several distinguishing characteristics of carriers who are operating as providers of **primary** local exchange services.[4] Carriers providing local exchange service will have following capabilities associated with a facility used in the provision of primary local exchange service: 1) the presence of local exchange lines and associated local numbers on the facility demonstrating that the carrier has undertaken the obligation of having local number assignment and local number portability capability; 2) a provider of primary local exchange service will always provide originating ***and*** terminating local voice service over the Public Switched Telephone Network (PSTN); and 3) a provider of primary local exchange service will always have the additional obligation to provide emergency service (e.g. 911) capability over the facility used in the provision of local exchange service.

Amended "Bright Line" Test

The proposal made by Cbeyond is amended below (new information underlined) to demonstrate how the additional criteria would be incorporated into Cbeyond's December 16, 2002 proposal.

> **Service Requirement:** CLEC provides primary local exchange service to its customer. Primary local exchange service would include the provision of local exchange lines and local number assignment and porting capability, that the service offering includes emergency services (e.g. 911 access) capability and that service permits both originating and terminating local voice service capability.
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> **Evidence to Support**:
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> - Local exchange tariffs filed; Certificate of Authority to Provide Local Service; and/or Customer contracts demonstrating that local service is provided.

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[3] A wholesale provider would also be eligible to qualify for EELs as long as the indicia as proposed by Cbeyond are met by the underlying provider of retail local exchange services.

[4] In today's competitive environment, it is inappropriate to define "primary" as to mean "most" or "majority." To do so could have an inadvertent negative impact on the competitive choices available to end users and could potentially discriminate against providers of local exchange services. For example, Cbeyond serves small business customers with as few as 3 business lines up to 25 business lines. At the small end of our market, Cbeyond is usually the exclusive provider of local exchange services to those customers. The exception typically being that the customer will have one business line from another provider as back up service. At the larger end of the small businesses Cbeyond serves, however, there are sometimes multiple providers of local services. Because of this and because we believe the intent of the Act and the FCC implementation of it is to promote the availability of choice in local service providers to end users (vs. limiting them), use indicia such as majority of lines would then limit an end users choice of local exchange providers and would be discriminatory to legitimate providers of local exchange service all who could be operating as providers of primary local exchange service as defined by Cbeyond.

- Local numbers assignments, new or ported, associated with the EEL circuit and the local numbers are registered to the CLEC as the local service provider in the Service Order Activation ("SOA") database.
- Compliance with emergency service provider obligations can be documented by PSAP certificates for serving area and by an ANI/ALI database lookup that would show the local numbers associated with that customer circuit as resident in the emergency services database
- Evidence that two way local exchange voice traffic is provided, *e.g.* call detail records.

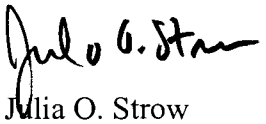
Network Infrastructure Requirement: The EEL circuit terminates into a physical collocation pursuant to Section 251 Interconnection Agreement.

Evidence to Support:
- Circuit facility assignment (CFA) on the order.

Interconnection Requirement: Interconnection service in place for the exchange of local traffic pursuant to Section 251 Interconnection Agreement.

Evidence to Support:
- Local interconnection trunks in place.

Sincerely,



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