SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7645
WWW.SWIDLAW.COM

PATRICK J. DONOVAN
DIRECT DIAL: (202) 424-7857
FAX: (202) 424-7643
PJDONOVAN@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL.(212) 973-0111
FAX (212) 891-9598

September 8, 2002

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

Ex Parte
CC Docket No. 01-338
WC Docket No. 04-313

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on September 7, 2004, Jim Geiger, CEO, and Julia Strow, Vice President - Regulatory Affairs, Cbeyond Communications, LLC and the undersigned met with Commissioner Jonathan S. Adelstein and Scott Bergmann; Commissioner Michael J. Copps and Jessica Rosenworcel; and Jeffrey Carlisle, Chief, Wireline Competition Bureau. Andrew D. Lipman of this firm also attended the meeting with Mr. Carlisle. In addition, Julia Strow and Andrew D. Lipman met with Bryan Tramont and Aaron Goldberger, Office of the Chairman. Finally, Mr. Geiger, Ms. Strow, Mr. Lipman, and Kevin Joseph met with Commissioner Kevin J. Martin and Dan Gonzalez. At these meetings, Cbeyond presented the views set forth in the attached presentation.

Sincerely,

Patrick J. Donovan
Counsel for
Cbeyond Communications

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CBEYOND COMMUNICATIONS™

Access to Unbundled Network Elements

Jim Geiger – CEO
Julia Strow – VP Regulatory

September 7, 2004

Company Background

- Facilities-based CLEC offering local, long distance and high speed Internet connectivity to over 13,000 small business customers
- Cbeyond is EBITDA positive, fully funded and financially healthy
- Operations currently in Atlanta, Dallas, Denver and Houston, expansion planned for Chicago market in early 2005
- Cbeyond provides its services using a state-of-the-art IP network jointly developed in partnership with Cisco
- Cbeyond fully complies with all regulatory requirements (911, CALEA, etc) and operates as a full peer with ILEC networks
- Cbeyond obtains its revenue via retail service offerings (>95%)

Cbeyond Provides Big Business Tools to Small Businesses

- Cbeyond's target market is small businesses with 4 to 100 employees using between 5 and 25 telephone lines
- Cbeyond's average customer has nine (9) employees and seven (7) business lines
- Over 90% of Cbeyond's customers did not previously have DS1 level facilities which Cbeyond uses exclusively to provision its service offering
- 88% of Cbeyond's customer purchase Cbeyond's five line base package of services which is priced at about $500
- Cbeyond is not the low cost service provider and competes against Bell Company product offerings that are typically priced below our service offering

Cbeyond Has Minimal, but Essential Regulatory Needs

- Cbeyond is facilities based – we invest in our own network facilities and physical collocation space to provision our services
- Cbeyond exclusively uses unbundled DS1 loops and DS1 level EELs to provide service to end user customers
- Cbeyond is impaired in serving the small business market without access to DS1 loops and DS1 EELs as UNEs
  - Not economically feasible to self-provision DS1 loops and DS1 level EELs
  - Alternatives to the ILEC network do not exist – cable companies don't service this market segment and wireless is not a viable alternative
  - Data submitted on the record by ILECs in an attempt to show non-impairment for DS1 level UNEs is contaminated with LD and wireless data and overstated

Special Access not a Viable Substitute for UNEs used to serve Small Business Market

- The statutory framework of the '96 Act recognized that special access was not viable for competitors serving the small business market
- The economics simply don't work – under special access pricing Cbeyond's product is NPV negative
- Raising prices is not an option since ILEC retail pricing is typically below Cbeyond's most aggressive pricing
- The availability of UNEs provides a needed price constraint on what today is largely deregulated special access pricing
- The Bell companies have begun to exploit their market dominance and power via special access pricing since USTA II (e.g. Qwest recently filed tariffs increasing special access pricing for DS1 by 20%)
- Given their market dominance over essential facilities and without the presence of UNEs in the market, the Bell companies will become the *defacto* regulator of local competition

FCC UNE Rules – Interim and Permanent

- Interim rules while helpful during the initial six month freeze will result in devastating consequences in the small business market if CLECs are no longer permitted to provision new customers using DS1 level UNEs

- CLECs will be forced from the market - business model is not sustainable if subject to special access pricing given the per customer revenue potential and price squeeze presented by Bell retail pricing

- Even on a temporary basis such a change presents dramatic and wasteful disruptions to CLEC operations, e.g., CLEC OSS/BSS systems and processes are not set up for an ASR environment

- Given this, permanent FCC UNE rules must be in place prior to expiration of or any lifting of the six month freeze or standstill

Summary and Conclusion

- Continued access to DS1 UNEs and DS1 level EELs is essential for preserving competition in the small business market
- Continued availability of DS1 UNEs and DS1 EELs is imperative in order to constrain Bell monopoly power over special access pricing
- If the FCC finds that permanent rules will not be in place prior to the expiration of the six month standstill *or* that the six month standstill is in jeopardy, it should act on an expedited basis to preserve competition in the small business market by issuing an immediate order finding impairment for DS1 UNEs and DS1 level EELs