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JUN 16 2005

Federal Communications Commission
Office of Secretary

June 16, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th St. S.W.
Washington D.C. 20554

REDACTED--FOR PUBLIC INSPECTION

Re: Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Local Exchange Carriers, WC Dkt. No. 04-313, CC Dkt. No. 01-338.

Dear Ms. Dortch:

On behalf of Cbeyond Communications, LLC ("Cbeyond") we have enclosed for filing, pursuant to the protective order in the above referenced proceedings, two copies of the redacted versions of a Reply to Oppositions to Petitions for Reconsideration and accompanying Declaration of Thomas Hyde. The redacted versions of the Reply and declaration were also filed electronically today in those dockets.

Confidential versions of the enclosed Reply and declaration has also been sent to Gary Remondino of the Wireline Competition Bureau and were filed separately with the Secretary.

Please let us know if you have any questions.

Respectfully submitted,

Thomas Jones
Willkie Farr & Gallagher LLP
1875 K Street, N.W.,
Washington, D.C. 20006
(202) 303-1000

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REDACTED--FOR PUBLIC INSPECTION

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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JUN 16 2005

Federal Communications Commission
Office of Secretary

In the Matter of	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION OF CBEYOND COMMUNICATIONS

WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
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June 16, 2005

REDACTED--FOR PUBLIC INSPECTION

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Cbeyond Communications, LLC ("Cbeyond") hereby files these reply comments in support of its petition for reconsideration of the *TRRO*.[1]

I. ILEC ARGUMENTS REGARDING THE REASONABLENESS AND MEANING OF THE DS1 TRANSPORT CAP ARE WITHOUT MERIT

A. ILEC Attempts To Defend The Reasonableness Of The Cap On Unbundled DS1 Transport As Applied To Routes On Which DS3 Transport Is Not Available Are Easily Rejected.

The incumbents offer several unpersuasive arguments in an attempt to impeach the Cbeyond analysis of the number of DS1 EELs that a competitor must accumulate before it becomes efficient to purchase DS3 transport at commercial rates. Importantly, the incumbents do not attempt to argue that a cross-over analysis for EELs should include, as Cbeyond's did, the costs of collocation, conversions and DS3 transport acquired from the lowest priced non-UNE source for DS3 transport. Instead, they quibble (incorrectly) about the *amounts* attributable to

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[1] *See Unbundled Access to Network Elements et al.*, Order on Remand, 20 FCC Rcd 2533 (2005) ("*TRRO*").

these cost categories. There should be no dispute, therefore, that the cross-over "analysis" in the *TRRO*, which was nothing more than a simple comparison of the price of unbundled DS1 transport to unbundled DS3 transport, was deficient.

Moreover, the incumbents' fallback position that Cbeyond's cross-over analysis cannot be correct because it is inconsistent with other aspects of the *TRRO* (*e.g.*, that competitors must be able to deploy DS3s before they reach the cross-over points proved by Cbeyond) proves too much. *See, e.g.*, BellSouth at 20-21; Verizon at 20-21. If Cbeyond's cross-over analysis is sound and yet in tension with other findings in the *TRRO*, it is the other findings that must be questioned (at the very least as they apply to EELs) rather than the conclusions yielded by Cbeyond's analysis.

In all events, there should be no question that the Cbeyond cross-over analysis was, if anything, overly conservative.[2] For example, BellSouth claims that it is unreasonable to assume, as Cbeyond did,[3] that a CLEC must utilize two DS3 interoffice transport facilities since a reasonably efficient competitor would purportedly make use of SONET ring technology that

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[2] Apparently aware that their attacks on the Cbeyond cross-over analysis are unpersuasive, the incumbents accuse Cbeyond of failing to meet the reasonably efficient competitor standard that the Commission has adopted as part of its impairment test. Nothing could be further from the truth. Cbeyond's purely IP-based network is far more efficient than the conventional TDM-based technology on which virtually every other competitor relies to one degree or another. The efficiencies yielded by Cbeyond's use of IP technology are substantial. For example, IP based concentration allows Cbeyond to compress 196 DS1s onto each DS3. Conventional TDM technology allows only 28 DS1s on a single DS3. In this regard, Cbeyond's network is exactly *seven times* more efficient than the incumbents' and other TDM-based networks.

Similarly, BellSouth makes the bizarre argument that Cbeyond cannot meet the reasonably efficient competitor standard because Cbeyond focuses on serving small business customers. BellSouth Milner Dec. at ¶¶ 3-4. BellSouth offers no basis for this assertion, and there is of course none. There are many competitors that target specific market segments and do so efficiently (more efficiently than either BellSouth or any other incumbent). Perhaps the most obvious example is cable companies that have focused successfully on offering broadband to mass market customers and do not, as the Commission concluded in the *TRRO*, serve business customers to any significant degree. *See TRRO* ¶ 193.

[3] As Mr. Batelaan explained in his declaration, Cbeyond orders two DS3 circuits "to provide redundancy and the ability to expand to meet demand." Batelaan Dec. n.1.

obviates the need for redundancy. BellSouth at 19-20. But in setting the DS3 transport cap, the FCC itself relied on crossover studies that assumed the need for two redundant fiber pairs as part of a SONET ring architecture.[4] There is no basis for concluding that a different assumption is warranted here.

In addition, Cbeyond's experience with BellSouth transport demonstrates the need for redundancy. As Tom Hyde, Cbeyond's Director, ILEC-Relations, explains in the attached declaration, between January 1st and June 10th of this year, **[proprietary]** of the interoffice DS3 transport circuits Cbeyond leases from BellSouth in Atlanta failed. Hyde Dec. ¶ 4. In the absence of redundant DS3 transport circuits, such failures would have caused Cbeyond's customers to lose service. A failure to account for this likelihood would be inconsistent with efficient entry.

BellSouth's attempt to dispute Cbeyond's average collocation costs in Georgia (**[proprietary]** on average) are no more meritorious. *See* BellSouth Milner Dec. ¶ 9. As Mr. Hyde explains, the costs incurred for Cbeyond's collocations are real and justified. *See* Hyde Dec. ¶ 6. That several important cost components include work and equipment supplied by third party vendors (*e.g.*, engineering, furnishing and installation) does not make them less real or efficient. Furthermore, the average collocation costs used in the Cbeyond study are far lower than those relied upon by the Commission in the *TRRO*.[5] In addition, Cbeyond did not include any of the costs of multiplexing equipment in its study.

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[4] *See Unbundled Access to Network Elements et al.*, Report and Order, 18 FCC Rcd 16978, n.1205 (2003) *citing* Letter from Thomas Jones, Counsel for Allegiance, to Marlene H. Dortch, CC Docket Nos. 01-338, 96-98, 98-147 (Feb. 3, 2003) at attachment; Letter from Cathleen A. Massey, Vice President, External Affairs, XO Communications, to Marlene H. Dortch, CC Docket Nos. 01-338, 96-98, 98-147 (Feb. 5, 2003) at attachment.

[5] *See TRRO* ¶ 75 ("The record indicates that where it is necessary, collocation costs associated with the self-deployment of transport can be as much as $350,000 to $450,000 where a competitive LEC already has a switch

BellSouth asserts further that Cbeyond should not focus on charges for converting ILEC transport to non-ILEC transport. BellSouth Milner Dec. ¶ 10. BellSouth implies that Cbeyond could have negotiated lower rates for conversions, which is of course nonsense. Cbeyond has no leverage in negotiating conversion rates with the incumbents since there is no competitive market for such services. In any event, BellSouth does not even attempt to assert that these conversion costs should not be accounted for in a cross-over analysis.

Finally, BellSouth claims that Cbeyond has overstated the delays associated with the construction of collocations and in converting ILEC transport to non-ILEC transport. BellSouth Milner Dec. ¶¶ 13-14. The delays associated with constructing collocations are a non-issue since, as explained by Mr. Hyde, those delays (while unquestionably a cost, especially outside the BellSouth region) were excluded from the Cbeyond cross-over analysis. *See* Hyde Dec. ¶ 7. Delays associated with conversions were included in the analysis, but they were, as explained by Mr. Hyde, extremely conservative.

B. The DS1 Transport Cap Should Not Apply To Transport Routes On Which Unbundled DS3 Transport Is Available

The incumbent LECs argue that, notwithstanding the text of the order, the Commission meant in the *TRRO* to apply the DS1 transport cap even on routes where competitors are impaired without DS3 transport. This argument is easily rejected.

The text of the Order is clear on its face: "[o]n routes for which we determine there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limited the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits." *TRRO* ¶ 128. The incumbents try to twist this language around to say that the FCC

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deployed in a market, and potentially even higher when a competitive LEC is establishing a presence in an entirely new market.").

merely meant that the DS1 transport cap applies on all routes, *including* those on which unbundled DS3 transport is not available. *See, e.g.*, SBC at 10. This is absurd. If the Commission had meant that the DS1 cap applies to all routes, it could and would have said so. By limiting the explanation to "routes for which we determine there is no unbundling obligation for DS3 transport," the Commission clarified that the DS1 cap does not apply where unbundled DS3 transport is available.

The incumbents themselves demonstrate the absurdity of applying the DS1 transport cap on routes where DS3 transport is available when they assert that application of the rule in this manner would ensure more efficient use of the transport network. *See* SBC at 9; BellSouth at 17-18. Apparently the incumbents believe that the FCC should decide the most efficient network architecture for CLECs. This is of course ridiculous. The CLECs need to be free to make their own business decisions as to the most efficient cross-over point from DS1s to DS3s, and they have every incentive to do so carefully and effectively.

Finally, the incumbents argue that applying the DS1 transport cap only on routes where unbundled DS3 transport is unavailable would allow CLEC to circumvent the cap of 12 DS3 facilities per route. *See* Verizon at 19-20; SBC at 10-11. But restricting CLECs to 10 DS1s on routes where unbundled DS3 transport is available is not the way to address this concern. At most, it would be appropriate for the Commission to limit a CLEC to either 12 DS3s or the equivalent number of DS1s (adjusted upwards in the case of EELs in light of Cbeyond's cross-over study) on any route on which CLECs are deemed impaired without unbundled DS3 transport.

II. THE COMMISSION SHOULD GRANT CLEC PETITIONS FOR RECONSIDERATION REGARDING THE BUSINESS LINE COUNT METHODOLOGY.

In response to CTC's argument that the rules for counting business access lines must be rationalized, the ILECs assert that the FCC should apply the same methodology for determining whether a wire center meets the business access line thresholds as was used to set the level of the thresholds. *See* SBC at 19; Verizon at 35. This approach makes sense to the extent that a consistent methodology was used by the RBOCs to count business access lines for purposes of setting the impairment thresholds. The incumbents apparently do not realize, however, that this principle supports the relief sought by the CLECs.

For example, the Commission relied on incumbent LEC December 2004 reports of business line totals in ARMIS 43-08 Table III, columns (fc), (fd), and (fe) to set the impairment thresholds. These ARMIS columns apparently include only those lines actually used to provide switched service to end users (discussions with FCC staff have confirmed this interpretation). These columns do *not* include each voice grade equivalent ("VGE") of capacity on the underlying facility used to provide service to an end users.[6] BellSouth and Qwest have both openly admitted that the ARMIS data they submitted in 2004 did not utilize a VGE methodology.[7] Unfortunately, Section 51.5(3) can be read to require that incumbents change the data ARMIS 43-08 Table III, columns (fc), (fd) and (fe) so that it is reported on a VGE-

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[6] For example, if an ILEC provides a service to an end user that delivers six VGEs via a DS1 circuit with the capacity to provide 24 VGEs, the incumbent apparently report only six VGEs in the relevant ARMIS columns.

[7] *See* BellSouth Jun. 3, 2005 *Ex Parte* Letter ("[W]ith the exception of Basic Rate and Primary Rate ISDN retail lines, the December 2004 wire center filing did not count retail [*i.e.*, lines reported in ARMIS] or wholesale digital access lines on a per 64 kbps-equivalent basis, as the Commission rules require."); Qwest Mar. 7, 2005 *Ex Parte* Letter, Appendix ¶ 4 ("The business line counts that Qwest submitted to the Commission in December . . . only counted the active channels of access lines [*i.e.*, lines reported in ARMIS], rather than all the channels on those lines.").

equivalent basis, thus skewing upward the business access lines counted in the relevant ARMIS columns.[8] Based on the incumbents' own logic, this rule must be changed to ensure that the relevant ARMIS data is reported in the form relied upon in December by the FCC when it set the business access line thresholds. That is, the VGE equivalent approach must be eliminated.

Business access lines served via UNEs present a more difficult situation. It appears that the incumbents did not follow a consistent methodology when reporting these lines in December. The best approach now would be for the Commission to ensure that these lines are counted for the purposes of impairment in the same way that incumbent LEC retail lines are reported in the relevant ARMIS columns. This way, the total business access line counts would not be skewed when customers switch between the incumbent and a competitor. Moreover, the Commission must ensure that the same categories that are excluded from the relevant ARMIS columns (*i.e.*, dedicated, non-switched access lines) are excluded from the UNE-based lines counted for purposes of impairment. CLEC reporting requirements may be the only practical way of compiling this information.

III. THE IMPAIRMENT TIERS SHOULD ACCOUNT FOR BOTH INCREASES AND DECREASES IN COLLOCATORS AS WELL AS BUSINESS ACCESS LINES IN A WIRE CENTER.

The RBOCs' argument that the impairment triggers should not account for reductions in collocations or business access lines should be dismissed out of hand. Most fundamentally, the incumbents misread the impairment standard. Contrary to the last 5 years of hard experience in the telecommunications market, the ILECs assume that all facilities investments have been rational and therefore the trigger determinations should be frozen in place. *See, e.g.*, BellSouth at 15. This assumption ignores the billions of dollars spent on *inefficient* entry. Indeed, through

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[8] *See id.*

August 2004, there were at least 53 CLEC bankruptcies,[9] and, from 1999 to 2004, CLEC market capitalization declined by 95 percent. *Id.* at 17. It is clear therefore that all entry is not efficient, and the impairment test must account for this fact.[10]

The RBOCs' argument that a "downward ratchet" would produce gaming is similarly without merit. They argue that carriers might intentionally eliminate a collocation arrangement in order to obtain access to UNEs in a particular wire center. *See* SBC at 26; BellSouth at 16. This is unlikely. For a carrier to pursue such a strategy successfully, it would first need to eliminate its own collocation and wait for some undetermined amount of months or years until the Commission reevaluated its impairment triggers in that wire center. In the meantime, the carrier would have lost substantial sunk collocation costs and be forced to lease collocation facilities from another carrier. More importantly, the carrier would need to successfully cooperate with all other potential entrants and convince them not to establish a collocation in the wire center as well. Such a level of coordination is likely to be difficult if not impossible to accomplish in practice.

In general, the ILECs argue that any drop in the number of business access lines or collocations must mean that competitive entry is increasing because competitors would be bypassing the ILECs' networks. *See* BellSouth at 15; Verizon at 39. This assumption is

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[9] *See* John. W. Mayo *et. al.*, Mayo/MiCRA/Bates White Economic Impairment Analysis at 15-16 (Oct. 2004) attached to Letter of John W. Mayo, Georgetown University, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 04-313 *et al.*, (filed Oct. 4, 2004).

[10] The flaw in the ILECs' position can be seen if one imagines that the FCC had issued its impairment triggers in 1999 at the "high-water mark" of competitive investment and deployment. Then, there were surely many more collocations and "competitive entry" than exist today. Had the wire center impairment determinations been established at that time without a "downward ratchet," the Commission would have vastly *underestimated* the degree to which competitors are impaired without access to UNEs. Likewise, had the Commission put in place its triggers in 1996 just after the Act was passed and not permitted any "upward ratchet" to remove unbundling obligations from those wire centers with competitive deployment, the FCC would have *overestimated* the degree of impairment. Therefore, the Commission must permit the ratcheting of the triggers to more closely track when it is efficient for a competitor to enter the market.

incorrect on several counts. *First*, if the AT&T and MCI transactions are permitted, all of the in-region collocations will be eliminated as the RBOC/IXC networks are integrated. The lines that had been provided over the IXC's own facilities will be transitioned to the RBOCs, thus resulting in a reduction in lines *and* in competition.

Second, considering the limited number of providers that deploy their own lit fiber loops, any reduction in business access lines and collocations as a result of moving from the ILEC to the CLEC's own facilities is likely to be miniscule. This is so because, as the Commission recognized, the ability of competitors to deploy new loops and "bypass" the RBOCs networks in the future is extremely limited.[11]

More importantly, only a tiny fraction of the already miniscule amount of competitive entry will have an effect on the number of business access lines counted for the purposes of the impairment triggers. This is so because the Commission counts (or should count) only switched access lines (not lines dedicated between an end user and a long haul provider's POP) to determine whether a wire center qualifies for an impairment tier. *See* 47 C.F.R. § 51.5. The majority of buildings served by competitive carriers' fiber are served with dedicated access facilities.[12]

Third, there are many reasons, independent of competitive entry, for why the number of business access lines or collocations in a wire center would decrease. For example, over the past

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[11] *See TRRO* ¶ 151 ("In addition to the substantial fixed and sunk costs involved in deploying competitive fiber, competitive LECs also face substantial operational barriers to constructing their own facilities. As we found in the Triennial Review Order, the construction of local loops generally takes between six to nine months absent unforeseen delay...Often these delays are attributable to problems in securing rights-of-ways from local authorities in order to dig up streets prior to laying fiber, including lengthy negotiations with local authorities over the ability to use public rights-of-way and obtaining building and zoning permits. Moreover, commenters note that many local jurisdictions impose construction moratoriums which prevent the grant of a franchise agreement to construct new facilities in the public rights-of-way.").

[12] For example, only 24 percent of Time Warner Telecom's revenue in the most recent quarter came from switched services, while 50 percent came from dedicated services. *See* TWTC 10-Q at 27.

several decades, many cities such as St. Louis and Detroit have seen a flight of businesses from their urban cores as the result of economic and social factors. The reduction in business access lines exactly tracked the reduced ability of potential entrants to effectively compete in those markets.

Fourth, the ILECs wrongly assume that a reduction in business access lines and collocations is a result of increased *intermodal* competition. *See* Verizon at 39; Bellsouth at 15. As the Commission found in the *TRRO*, cable providers are generally not providing service to customers outside of the mass market (*see TRRO* ¶ 193) and VoIP is not considered a substitute for wireline voice service for any customer class. *See TRRO* n.118. As several commenters noted, competitive wireline carriers have lost only miniscule numbers of their small business voice customers to cable companies.[13] Therefore none of these "intermodal" alternatives will result in a reduction in business access lines any time soon.

IV. CONCLUSION

The Commission should change the *TRRO* rules in the manner explained herein.

Respectfully submitted,

Thomas Jones
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ATTORNEYS FOR CBEYOND
COMMUNICATIONS, LLC

June 16, 2005

[13] *See TRRO* n.514 ("Nuvox for example, states that only a tiny fraction of its customer losses between January and October 2004 were to cable companies, and even those may have been to wireline competitive LEC affiliates. Nuvox Nov. 22, 2004 *Ex Parte* Letter at 3-5. Cbeyond similarly asserts that very few telephone numbers have been ported from Cbeyond to a cable company or vice versa. Cbeyond Nov. 19, 2004 *Ex Parte* Letter at 4.").

APPENDIX A

Reply Declaration of Thomas Hyde on behalf of Cbeyond Communications (Hyde Dec.)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338

REPLY DECLARATION OF THOMAS HYDE

1. My name is Thomas A. (Tom) Hyde. I am Director – ILEC Relations for Cbeyond Communications, LLC ("Cbeyond"). My business address is 320 Interstate North Parkway, Suite 300, Atlanta, Georgia 30339

2. I have over thirty-eight years experience in telecommunications including installation, maintenance and design of switched and special toll services with AT&T; rate and tariff development with South Central Bell and BellSouth for various services including intrastate and interstate switched and special access; access and technology planning with the National Exchange Carrier Association (NECA); telecommunications consulting on Unbundled Network Elements, Universal Service and access issues for MCI; and Industry Relations with ITC^DeltaCom. Currently I am Director, ILEC Relations with Cbeyond Communications, LLC. My job responsibilities required that I master diverse telecommunications disciplines including network design, equipment installation and maintenance, rate and tariff development, project

management, technical aspects of the public switched network and contract negotiations with various ILECs including BellSouth.

3. The purpose of my Declaration is to respond to certain of the assertions made by W. Keith Milner of BellSouth regarding the Declaration of Richard Batelaan filed in support of the Cbeyond petition for reconsideration of the Triennial Review Remand Order in the above-captioned proceeding. In particular, I will respond to three assertions made by Mr. Milner.

4. First, Mr. Milner asserts that Mr. Batelaan incorrectly assumed in his declaration that it is efficient for Cbeyond to purchase two DS3 transport circuits on a route to ensure redundancy and to provide capacity for increased future demand. BellSouth Milner Dec. ¶ 7. BellSouth's experience with BellSouth in particular has demonstrated the need for redundant DS3 transport facilities. In particular, between January 1st and June 10th of this year, **[proprietary]** of the interoffice DS3 transport circuits Cbeyond leases from BellSouth in Atlanta failed. Some of these outages have posed a severe danger to customer service.

5. For example, on **[proprietary]** Cbeyond had **[proprietary]** DS3s fail at the same time due to BellSouth turning the power off on their equipment. Although the outage lasted less than **[proprietary]**, if Cbeyond had not had redundant DS3 transport circuits in place, Cbeyond's tandem office might have been isolated causing severe interruptions to our customers. Cbeyond currently provides world-class telecommunications to our customers and we intend to continue to do so. That cannot occur without redundant facilities serving each central office.

6. Second, Mr. Milner questions the reliability of the average costs Cbeyond has incurred for collocations in the BellSouth territory as set forth in Mr. Batelaan's declaration. BellSouth Milner Dec. at ¶ 9. But each of the cost categories included in the average collocation costs are real and significant. Mr. Batelaan included costs for the following elements in his average

collocation cost figure: (1) all actual collocation recurring charges imposed by BellSouth, (2) all actual non-recurring collocation build-out charges imposed by BellSouth; and (3) all non-recurring collocation build-out charges, including charges for engineering, furnishing and installation, imposed by BellSouth-approved vendors. Cbeyond did not include in its analysis costs associated with collocated multiplexing equipment or recurring charges imposed by non-BellSouth vendors. Mr. Batelaan did of course include costs other than those associated with establishing collocations in his analysis (such as conversion costs). It is also important to point out that the cost savings resulting from the migration of the transport circuits from DS1 EELs to DS1 UNE Loops connected to a collocation were calculated monthly and offset against the costs of the collocation build out, conversion costs and rent to derive a payback period of **[proprietary]** months where cumulative savings exceed the cumulative costs.

7. Third, Mr. Milner has challenged Mr. Batelaan's discussion of delays associated with establishing collocations and performing conversions of DS1 loops from incumbent LEC transport to competitive carrier transport facilities. BellSouth Milner Dec. at ¶¶ 12-14. Delays associated with establishing collocations were not included in Mr. Batelaan's declaration. Even though there are time sensitive costs associated with the collocation interval (i.e., there are often delays in the completion of collocations that impose real costs on Cbeyond), in order to limit the variables in the cost analysis and to keep the conversion cost inputs as conservative as possible, Cbeyond chose to use a collocation interval of zero (0) days as an input.

8. Mr. Batelaan did account for delays caused by converting DS1 circuits from EELs to collocation terminated DS1s in his cross-over analysis. There are two five week components of the time needed to complete these conversions. The first component is the time it takes to order and provision a DS3 transport circuit. Mr. Batelaan used the standard BellSouth interval of five

weeks for provisioning a DS3 transport circuit. It is my experience that most non-incumbent LEC providers of transport utilize a five week standard interval in BellSouth territory for provisiong DS3 transport. Once the DS3 transport facility has been provisioned, Cbeyond can convert EEL loops to loops connected to the competitive transport provider's DS3 transport. Mr. Batelaan assumed that the three hundred and twenty (320) DS1 circuits could be converted in five weeks. This yields a total interval of ten weeks.

9. This concludes my Declaration.

10. *Pursuant to 47 C.F.R. § 1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on: October 4, 2004.*

Thomas A. Hyde

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JUN 16 2005

Federal Communications Commission
Office of Secretary

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June 16, 2005

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

RECEIVED

JUN 16 2005

Federal Communications Commission
Office of Secretary

Re: Annual Log Summary of Consumer Complaints
CC Docket No. 03-123

Dear Ms. Dortch:

In accordance with Commission rules, AT&T submits an original and four copies of its Annual Summary of Consumer Complaints for the time period of June 1, 2004 – May 31, 2005.

Sincerely,

Attachments
cc: Dana Jackson

No. of Copies rec'd 0+4
List ABCDE

AT&T Relay Services

Annual Summary of Consumer Complaints

June 2004 – May 2005

AT&T RELAY SERVICES
ANNUAL SUMMARY OF CONSUMER COMPLAINTS
June 1, 2004 through May 31, 2005

Complaint Summary by Category

As of 6/8/2005

	2004							2005					
Complaint Category	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	Total
Transparency	1					1		3		2	4		11
Confidentiality				1	1	1						1	4
Verbatim	2	1	4	1			3	1	2			2	16
Typing Issues	1	2	3	3	2	1	1	3	2		1	2	21
In Call Replacement						1							1
Answer Performance	2	1	2	1	1	1						1	9
Gender Accommodation										1			1
Total	6	4	9	6	4	5	4	7	4	3	5	6	63

AT&T RELAY SERVICES
2005 ANNUAL SUMMARY OF CONSUMER COMPLAINTS
June 1, 2004 through May 31, 2005

As of 6/8/2005

	2004							2005					
Delaware	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE													0
TTY					1								1
TOTAL	0	0	0	0	1	0	0	0	0	0	0	0	1
Georgia	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE			1		1			1					3
TTY								1					1
TOTAL	0	0	1	0	1	0	0	2	0	0	0	0	4
Maryland	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE							1					1	2
TTY		1	2	1					1			1	6
TOTAL	0	1	2	1	0	0	1	0	1	0	0	2	8
New Jersey	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE													0
TTY	1		2	1		1	1	1					7
TOTAL	1	0	2	1	0	1	1	1	0	0	0	0	7
North Mariana Is.	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE													0
TTY													0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0
Pennsylvania	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE	1					1							2
TTY	3	1	3	1		1	1	1	2	1	1	1	16
TOTAL	4	1	3	1	0	2	1	1	2	1	1	1	18
Virgin Islands	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE													0
TTY													0
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE											1		1
TTY													1
TOTAL	0	1	0	0	0	0	0	0	0	0	1	0	2

AT&T RELAY SERVICES
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	2004								2005				
West Virginia	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE													0
TTY										1		1	2
TOTAL	0	0	0	0	0	0	0	0	0	1	0	1	2
AT&T Other	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE				1		1	1				1		4
TTY	1	1	1	2	2	1		3	1	1	2	2	17
TOTAL	1	1	1	3	2	2	1	3	1	1	3	2	21
ALL CONTRACTS	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE	1	0	1	1	1	2	2	1	0	0	2	1	12
TTY	5	4	8	5	3	3	2	6	4	3	3	5	51
TOTAL	**6**	**4**	**9**	**6**	**4**	**5**	**4**	**7**	**4**	**3**	**5**	**6**	**63**

Note:
1) AT&T Other category complaints are AT&T LDRC, OSD and/or customers from non-AT&T contracted states combined. Includes AT&T Internet Relay contacts.
2) ALL Contracts totals all complaints from all reported state services and AT&T Other category.
3) Service transitioned to new provider: North Mariana Is. - Oct. 2004

Delaware

AT&T RELAY SERVICES
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Complaint Summary by Category

DELAWARE

As of 6/8/2005

	2004							2005					
Complaint Category	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	Total
Transparency													0
Confidentiality													0
Verbatim													0
Typing Issues													0
In Call Replacement													0
Answer Performance					1								1
Gender Accommodation													0
Total	0	0	0	0	1	0	0	0	0	0	0	0	1

AT&T RELAY SERVICES
2005 ANNUAL SUMMARY OF CONSUMER COMPLAINTS
June 1, 2004 through May 31, 2005

DELAWARE

As of 6/8/2005

	2004							2005					
Delaware	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	TOTAL
VOICE													0
TTY					1								1
TOTAL	0	0	0	0	1	0	0	0	0	0	0	0	1