BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Cbeyond, Inc. Petition for Expedited Rulemaking	)	
to Require Unbundling of Hybrid, FTTH, and	)	WC Dkt. No. 09-223
FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of	)	
the Act	)	
	)	
	)	

COMMENTS OF
INTEGRA TELECOM, INC. AND ONE COMMUNICATIONS CORP.

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

ATTORNEYS FOR INTEGRA TELECOM, INC. AND ONE COMMUNICATIONS CORP.

January 22, 2010

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Cbeyond, Inc. Petition for Expedited	)	
Rulemaking to Require Unbundling of Hybrid,	)	WC Docket No. 09-223
FTTH, and FTTC Loops Pursuant to 47 U.S.C.	)	
§ 251(c)(3) of the Act	)	
	)	
	)	
	)	

COMMENTS OF
INTEGRA TELECOM, INC. AND ONE COMMUNICATIONS CORP.

Integra Telecom, Inc. ("Integra") and One Communications Corp. ("One"), by their attorneys, hereby file these comments in response to the public notice[1] released in the above referenced docket on December 14, 2009 regarding Cbeyond's Petition for Expedited Rulemaking.[2]

I. DISCUSSION

Integra and One support Cbeyond's Petition and urge the FCC to immediately initiate a rulemaking to ensure that competitors can obtain access to Fiber to-the-Home ("FTTH") loops, Fiber-to-the-Curb ("FTTC") loops and the packetized features of hybrid loops. Granting Cbeyond's Petition is crucial to enabling the delivery of new and innovative services to business customers, particularly the small and medium businesses

[1] *See Pleading Cycle Established For Comments on Petition for Expedited Rulemaking Filed by Cbeyond, Inc*., Public Notice, WC Dkt. No. 09-223, DA 09-2591 (rel. Dec. 14, 2009).

[2] *See* Cbeyond Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act, WC Dkt. No. 09-223 (filed Nov. 16, 2009) ("*Petition*").

("SMBs") (i.e., businesses with between 5 and 250 employees). SMBs are the engine of the American economy. If competitors can obtain access to the packetized capabilities of fiber and hybrid loops, SMBs will benefit from entirely new classes of services which today are only used by the largest enterprises with the deepest pockets.

Cbeyond requests that incumbent LECs make the packetized capabilities of fiber and hybrid loops available in a manner that requires minimal engineering. This approach eliminates any concern that "unbundling" would burden incumbent LEC's with network changes or otherwise discourage incumbent LEC investment in next-generation loops. Under Cbeyond's proposal, incumbent LECs could provide the loops in question with little or no inconvenience while enabling competitors to provide innovative and compelling services to SMBs. In addition, as Cbeyond explains, its proposal would, if adopted, spur investment and help lift the economy, all at no cost to the government.

Integra's and One Communications' experience in the market is that SMBs are typically ignored by the incumbent LECs because of the relatively limited revenue opportunity they provide. Indeed, incumbents do not focus on developing products for SMBs and they do not focus their sales and support efforts on SMBs.

Nor do cable companies focus on the SMB market. This is in part because cable networks are not well suited to providing the symmetrical, dedicated bandwidth demanded by most SMBs. Cable companies' "business class" cable modem services appear to be variations of cable companies' "best efforts" consumer-class services. Nor do the cable companies' sales force and support teams have the experience and direction

to target the small business segment.[3] In sum, both Integra and One agree with Cbeyond's declarant Brooks Robinson, that "neither incumbent LECs nor cable operators offer…sophisticated high-bandwidth applications at prices suitable for small businesses…today."[4]

Like Cbeyond, Integra and One have stepped into the vacuum left by the incumbent LECs and cable companies. Integra and One have found success in the SMB segment by providing intensive, personalized sales and customer care, along with products specifically tailored to the needs of SMB customers. For example, both Integra and One offer sophisticated DS1-based products that permit customers to allocate bandwidth as they see fit between voice lines and data services. These products are backed by service-level guarantees not available from cable companies' "business class" offerings.[5] Both Integra and One have relied heavily on incumbent LEC-provided DS-1 facilities to provide these services.

But DS-1 facilities are quickly becoming insufficient to meet the needs of SMBs. SMBs increasingly demand services that require both greater bandwidth and more

---

[3] *See* Opposition of Integra Telecom, Inc., tw telecom inc., Cbeyond, Inc., and One Communications Corp., WC Dkt. No. 09-135 , Attach. D: Declaration of Steve Fisher on Behalf if Integra Telecom, Inc. ¶ 12 (Sept. 21, 2009) ("Integra faces relatively limited competition from Cox in the retail business market in the Phoenix MSA.").

[4] *See Petition,* Attachment A: Declaration of Brooks Robinson on Behalf of Cbeyond, Inc. ¶ 4 (Nov. 16, 2009).

[5] *See* One Communications, *OneSolutions Enhanced,* http://www.onecommunications.com/enhanced.aspx ("Dedicated satellite offices, high-speed T1 Internet access—with dynamic bandwidth allocation that helps you maximize your connection at no additional cost. Includes extras like email, Web hosting, voice mail, your favorite calling features, and a bandwidth guarantee that comes with our industry-leading Service Level Agreement") (last visited Jan. 22, 2010).

sophisticated features than Integra and One can offer via DS-1 loops. The next generation of SMB services can only be efficiently provided via higher capacity packetized loops. These next-generation services include the following.

Advanced Packetized Telephony Services. These services, which include advanced trunking, IP PBX services and hosted Centrex services, allow SMB customers to engage in multiple simultaneous voice calls at multiple locations on a scale that is neither technically nor economically feasible with current DS-1-based services. For example, a DS-1-based service provides up to 28 circuit-switched voice channels which must be shared with any data transmitted over the DS-1 facility. Packet-based IP telephony is much more bandwidth-efficient than circuit switched telephony. When IP telephony is provided over a high-capacity packetized loop, an SMB could engage in 30, 40 or even 50 simultaneous voice conversations while still retaining substantial spare capacity on the facility. This spare capacity can be utilized for data transmission or internet access.

High Capacity Internet Access Applications. These are bandwidth-intensive third-party services provided via Internet access. These services include third-party backup and storage, as well as cloud computing applications. Such services require the extra bandwidth that packetized fiber and hybrid loops deliver. DS-1 loops generally do not deliver sufficient capacity to support these high-capacity applications.

VPN and High Bandwidth Private Line Services. These services include multi-site and site-to-site services provided, for example, via packetized Ethernet or MPLS networks. At bandwidths made possible by high capacity packetized loops, these networks can enable numerous innovative applications, including off-site storage,

business continuity and disaster recovery and server consolidation. Again, it is not feasible to provide these services via DS-1 loops.

High Capacity Imaging and Video Services. If competitors were able to obtain unbundled access to packetized fiber and hybrid loops, they could afford their SMB customers the ability to transmit high-resolution medical image files and telemedicine applications. This capability is critically important for small and mid-sized health care facilities that seek to exchange information with larger hospitals. In addition, competitors could provide services to support distance learning applications and teleconferencing to locations that currently cannot use these services or that do not understand their utility. Competitors could also provide IPTV services tailored to the needs of SMBs.

Integra and One are ready and willing to provide these services to the SMB market. But they cannot do so unless they are able to obtain access to incumbent LECs' high-capacity packetized loops. This is because the TDM-based UNE and special access facilities are simply not suitable for providing many of these services.

For example, many of the services described here require "mid-band" levels of capacity in-between the capacities provided by TDM DS-1 and DS-3 facilities. But if a customer demands a service requiring 20 megabits of bandwidth, it is not efficient, or in many cases economically feasible, for the retail carrier to bond multiple DS-1s together or "overbuy" a single DS-3 from the incumbent. Therefore, the competitive carrier seeking to innovate is simply unable to deliver the service and the business will have few, if any, alternative options.

Moreover, many of the advanced services described here are delivered to the retail customer in a packetized format. These services cannot be provided efficiently

using TDM wholesale inputs because of the additional translation electronics that must be utilized to convert a DS-1 or DS-3 TDM signal into packetized format.[6] These problems would disappear if the competitor could obtain access to a transmission facility that transmits data natively in a packetized format.

Nor does the availability of incumbent copper loops provide a comprehensive solution to meet the growing demands of SMB customers. As many parties, including Integra, have explained, it is important that copper facilities remain available to competitors.[7] Such facilities can, in many instances, serve as an effective input to meet the needs of carriers serving the SMB market. But the capabilities of copper loops are inherently limitated. Most importantly, copper loops cannot provide anything close to peak theoretical bandwidth unless the loop is short and in good condition. As Cbeyond explains, this is not the case in many locations.[8]

---

[6] For example, many competitors have explained that it is inefficient to use TDM inputs to provide retail Ethernet service. *See, e.g.*, Letter from Joshua M. Bobeck, Counsel, Alpheus Communications, L.P., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-125, at 3-5 (Oct. 9, 2007); *Ex Parte* Letter from Thomas Jones, Counsel, TWTC, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-125, at 3-4 (Aug. 24, 2007); *Ex Parte* Letter from Aryeh Friedman, BT Americas, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 06-125 *et al.*, at 1-2 (Oct. 5, 2007); *Ex Parte* Letter from Brad E. Mutschelknaus *et al.*, Counsel, NuVox Comm. & XO Comm.., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 04-440 *et al.*, at 7 (Sept. 19, 2007); *Ex Parte* Letter from Laura H. Carter, Vice President, Government Affairs, Fed. Regulatory, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 06-125 *et al*., at 7-8 (Aug. 30, 2007); Opposition of Time Warner Telecom, Inc. *et al.*, WC Dkt. Nos. 06-125 & 06-147, at 16-20 (Aug. 17, 2006).

[7] *See* Petition of Eschelon Telecom, Inc. [now Integra Telecom, Inc.] *et al*. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, RM-11358 (filed Jan. 18, 2007).

[8] *See Petition* at 19.

Finally, self deployment of facilities to deliver "mid-band" services is simply not economically feasible. As the FCC has found and competitors have repeatedly argued, a single DS-3 of capacity does not generate sufficient revenue to justify facility construction.[9] Therefore, incumbent LEC TDM facilities are the only choice for last-mile access and, as explained, these facilities are becoming an increasingly untenable option to meet the needs of the SMB market.

The inability of current incumbent LEC access technologies to meet the burgeoning demands of the SMB market makes it absolutely critical that the FCC make available to competitors the packetized capabilities of incumbent LEC fiber and hybrid loops. The innovative services enabled by these facilities would lower businesses' costs and allow them to increase productivity, thereby facilitating job growth.

Finally, it is important to emphasize that, while granting Cbeyond's petition would provide important public interest benefits, the facilities that Cbeyond seeks to unbundle are one part of the larger solution for SMB connectivity. Different services require different types of inputs. In some cases, copper might be the best solution for an SMB. Therefore, the FCC must ensure that incumbent LECs continue to make available and offer at reasonable rates *all* last mile facilities, including copper, Ethernet and TDM facilities.

---

[9] *See, e.g., Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 150 (2005) ("The record reflects that for these reasons, LECs do not typically construct fiber loop facilities at lower capacity levels, such as DS1 or DS3, but rather install high-capacity fiber-optic cables and then use electronics to light the fiber at specific capacity levels, often 'channelizing' these higher-capacity offerings into multiple lower-capacity streams."). As Cbeyond, explains, it is difficult to understand how the FCC could have concluded that limiting unbundling would spur CLEC investment in loop facilities if CLECs cannot obtain sufficient revenue to construct such facilities, whatever their incentives might be. *See Petition* at 14.

II. CONCLUSION

For the foregoing reasons, the FCC should initiate a rulemaking to consider the issues raised in Cbeyond's Petition.

Respectfully submitted,

/s/

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

ATTORNEYS FOR INTEGRA TELECOM, INC. AND ONE COMMUNICATIONS CORP.

January 22, 2010