

May 27, 2011

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Business Broadband Marketplace, WC Docket No. 10-188; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; IP Enabled Services, WC Docket No. 04-36; Empowering Consumers to Avoid Bill Shock, CG Docket No. 10-207; Consumer Information and Disclosure, CG Docket No. 09-158*

Dear Ms. Dortch:

Yesterday, Jim Geiger, Founder, Chairman, President and CEO of Cbeyond, Inc. (“Cbeyond”), Bill Weber, General Counsel of Cbeyond, Chip Pickering and the undersigned met with Commissioner Robert McDowell and Christine Kurth, legal advisor to Commissioner McDowell. Also yesterday, Messrs Geiger and Weber as well as the undersigned met with Commissioner Mignon Clyburn and Louis Peraertz, legal advisor to Commissioner Clyburn.

During both of the meetings, Mr. Geiger explained that Cbeyond has developed significant new offerings for its business customers, such as cloud computing solutions, that require bandwidth of greater than a DS1 while at the same time not requiring a DS3 of capacity. In order to provide these offerings, Cbeyond has invested heavily in electronics to provide Ethernet over copper to its customers. Ethernet over copper delivers significant value for small business customers. In order to ensure the availability of this service, however, the FCC must prohibit incumbent LECs from unilaterally retiring copper where they deploy fiber in their loop plant.

Mr. Geiger explained further that a large percentage of Cbeyond’s customer base, approximately 50 percent, cannot be served by Ethernet over copper (e.g., because the copper has been removed, the loop is too long, or for other reasons the copper loop is unsuitable for Ethernet transmission). In those locations, Cbeyond has no choice but to rely on insufficient DS1s. Moreover,

as the incumbent LECs press to retire their TDM-based networks, there is a risk that even DS1 and DS3 facilities will be unavailable in the foreseeable future. The FCC must therefore update its unbundling regime to require that incumbent LECs make available packetized loops at prices equal to the lowest available retail prices for such facilities. The Commission must also complete its pending special access reform proceeding, a proceeding that is now more than six years old.

The Cbeyond representatives also emphasized the need for the Commission to undertake other reforms in light of the transition of networks to IP. The FCC should clarify that VoIP is a telecommunications service. Such clarification will eliminate the many costly disputes between carriers regarding the appropriate intercarrier compensation for VoIP. That clarification would also remove any doubt that providers of VoIP have a right to interconnection with incumbent LECs under Section 251(c)(2) of the Communications Act at any technically feasible point.

Lastly, the Cbeyond representatives explained that the Commission should exempt corporate-liable¹ and business accounts from any “bill shock” regulations it decides to adopt. This is because (1) mandatory notification requirements of the kind proposed in the *Bill Shock NPRM*² would not benefit the vast majority of business subscribers to mobile wireless service; (2) there is no evidence in the record of this proceeding that overage charges or roaming charges have been a source of significant dissatisfaction for business customers; and (3) requiring firms like Cbeyond that serve business customers to provide automatic notifications regarding usage limits and roaming would impose significant costs on such providers.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Counsel for Cbeyond, Inc.

cc (via email): Commissioner Mignon Clyburn
Commissioner Robert McDowell
Christine Kurth
Louis Peraertz

¹ Corporate-liable accounts are those accounts for which a corporation assumes responsibility for the payment of fees associated with the provision of wireless service to its employee or employees.

² *In the Matter of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (rel. Oct. 14, 2010).