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Federal Communications Commission  
Office of the Secretary

EX PARTE OR LATE FILED

VIA COURIER AND ECFS

*EX PARTE*

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

**Re: *Developing a Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future, CC Dkt. No. 01-92, WC Dkt. Nos. 07-135, 10-90, & 05-337, GN Dkt. No. 09-51***

Dear Ms. Dortch:

Cbeyond, Inc. ("Cbeyond"), Integra Telecom, Inc. ("Integra"), and tw telecom inc. ("tw telecom") (collectively, the "Joint Commenters"), through their undersigned counsel, hereby submit this letter in the above-referenced dockets.

The Joint Commenters have explained in this proceeding that, due to a number of factors, incumbent LECs have a monopoly over the provision of tandem transit service for a significant portion of the local traffic exchanged among LECs.<sup>1</sup> Neutral Tandem, an alternative transit provider, disputes this argument, claiming that "the amount of traffic for which [the Joint Commenters] supposedly lack delivery options for their traffic is minimal."<sup>2</sup> Neutral Tandem is wrong.

Based on an internal analysis, Integra has found that it sends [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]. The incumbent LEC monopoly over that [BEGIN CONFIDENTIAL] [REDACTED]

<sup>1</sup> See Letter from Thomas Jones, Counsel for Cbeyond, Inc. et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2-5 (filed July 29, 2011) ("Joint Commenters' July 29, 2011 Ex Parte Letter").

<sup>2</sup> Reply Comments of Neutral Tandem in Response to August 3, 2011 Notice of Further Inquiry, WC Dkt. Nos. 10-90 et al., at 6 (filed Sept. 6, 2011).

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[REDACTED] [END CONFIDENTIAL] gives the incumbent LEC the power to price transit service far above the levels that a competitive market would yield.<sup>3</sup>

Moreover, in [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Cbeyond has found that, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] it is not yet economically feasible to rely on an alternative transit provider to deliver any of Cbeyond's transit traffic. In these markets, Cbeyond is forced to rely on the incumbent LEC for all of its transit needs because (1) Cbeyond has insufficient traffic to justify deployment of trunks between its switch and the alternative transit provider's switch;<sup>4</sup> and/or (2) the costs of maintaining a redundant transit arrangement with an alternative transit provider (even if that provider charges a lower rate than the incumbent LEC) are too high.<sup>5</sup>

For these and other reasons provided by the Joint Commenters in this proceeding, the Commission should clarify that incumbent LECs have a duty to provide tandem transit service and require that such service be provided at TELRIC-based rates. If the Commission plans to reduce above-cost rates for terminating access service in order to benefit consumers,<sup>6</sup> the Commission should do the same for tandem transit service, which includes nearly all of the same functionalities as access service.

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

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

*Counsel for Cbeyond, Inc., Integra Telecom, Inc., and  
tw telecom inc.*

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<sup>3</sup> See Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. Nos. 10-90 et al., at 20 (filed Apr. 18, 2011) (explaining that legacy Qwest offers CLECs tandem transit service at a rate which is more than three times Qwest's average TELRIC rate for tandem transit service).

<sup>4</sup> See also Joint Commenters' July 29, 2011 Ex Parte Letter at 4.

<sup>5</sup> See also *id.* n.18. For markets where Cbeyond relies on an alternative transit provider to deliver some of its transit traffic, Cbeyond does not have the capability to determine the percentage of transit traffic that it sends to the incumbent LEC as opposed to the alternative transit provider.

<sup>6</sup> See FCC News Release, *FCC Chairman Genachowski Unveils 'Connect America Fund' Proposal to Reform and Modernize the Universal Service Fund & Inter-carrier Compensation System*, at 2 (rel. Oct. 6, 2011).