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October 24, 2011

## VIA ECFS

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

**Re: CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90  
and GN Docket No. 09-51**

Dear Ms. Dortch:

Neutral Tandem, Inc. (“Neutral Tandem”), by its undersigned counsel, hereby submits this reply to the written *ex parte* presentation made by Cbeyond, Inc. (“Cbeyond”), Integra Telecom, Inc. (“Integra”), and tw telecom inc. (“tw telecom”) (collectively, “Joint Commenters”) on October 20, 2011 in the above-referenced dockets.<sup>1</sup>

In this letter, Cbeyond alleged that in certain markets, “it is not yet economically feasible to rely on an alternative transit provider to deliver any of Cbeyond’s transit traffic.”<sup>2</sup> In those markets, Cbeyond states that it relies on the incumbent LEC for its transit needs because “Cbeyond has insufficient traffic to justify deployment of trunks between its switch and the alternative transit provider’s switch” and/or because “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>3</sup>

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<sup>1</sup> See Letter from Thomas Jones *et al.*, Counsel for Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90 and GN Docket No. 09-51 (dated Oct. 20, 2011). This reply is submitted pursuant to Section 1.1206(b)(2)(iv) of the Commission’s *ex parte* rules.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* (footnotes omitted).

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This statement does nothing to disprove the existence of robust competition in the market for tandem transit services. It only shows that Cbeyond has made a business decision to use the incumbent LEC for its transit needs because Cbeyond has determined that it does not have sufficient traffic to use another provider – not because there are no alternative transit providers. Indeed, Neutral Tandem has offered to provide tandem transit services to Cbeyond in every market where Cbeyond operates. Moreover, since Neutral Tandem covers the cost of deploying trunks, any cost to Cbeyond to use Neutral Tandem as its transit provider would be minimal.

Similarly, Integra states that it uses incumbent LECs for certain of its transit traffic.<sup>4</sup> However, the Joint Commenters' letter does not identify any specific reason for Integra's decision to use ILEC transit services for this traffic. As the record established by Neutral Tandem in this docket shows, Neutral Tandem has offered to provide transit service to Integra, at rates lower than the ILEC rate, in all markets where Integra provides service. In some of these markets, Integra has declined to use Neutral Tandem's services due to insufficient traffic or other business priorities.

Of course, neither Cbeyond nor Integra is under any obligation to make use of Neutral Tandem's service, or of any competitive transit service, if doing so does not suit its business needs. However, the fact that certain operators make business decisions not to send transit traffic to an alternative provider does not justify regulation by the Commission. The Commission should therefore determine that the market for tandem transit services is competitive and should reject the requests to impose TELRIC-based pricing on incumbent carriers' tandem transit service.

Respectfully submitted,

/s/

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cc: Zachary Katz  
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<sup>4</sup> *Id.* at 1-2.