

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Cbeyond Communications, LLP)	
)	
Complainant,)	
)	
vs.)	Docket No. 05-0521
)	
Illinois Bell Telephone Company, d/b/a SBC Illinois)	
)	
Respondent.)	

SBC ILLINOIS' ANSWER

Illinois Bell Telephone Company (“SBC Illinois” or the “Company”) respectfully submits its Answer to the Complaint filed by Cbeyond Communications, LLP (“Cbeyond”). For its Answer to the Complaint, SBC Illinois states as follows:

PARTIES

1. Cbeyond is a Delaware-based Limited Liability Corporation with its headquarters in Georgia. Cbeyond received its certificate of service authority to provide telecommunications services in Illinois in ICC Docket No. 00-0469. Cbeyond currently has a binding and valid interconnection agreement with SBC Illinois, approved in ICC Docket No. 04-0420.

SBC ANSWER: On information and belief, SBC Illinois admits the allegations in Paragraph 1 of the Complaint.

2. Respondent SBC Illinois is an Illinois corporation with headquarters in Chicago, Illinois. SBC Illinois is a wholly-owned subsidiary of SBC Communications, Inc., headquartered in San Antonio, Texas. SBC Illinois is a Regional Bell Operating Company, as that term is defined in the Federal Communications Act of 1934, as amended by the Federal

Telecommunications Act of 1996 (the “Act”). SBC Illinois is also an incumbent Local Exchange Carrier, as that term is defined in the Act.

SBC ANSWER: SBC Illinois admits the allegations of Paragraph 2, with the clarification that SBC Illinois is a wholly-owned subsidiary of SBC Teleholdings, Inc. (formerly Ameritech Corporation), which, in turn, is a wholly-owned subsidiary of SBC Communications Inc.

3. On June 30, 2005, Pursuant to Section 13-515(c) and (d)(2), Cbeyond served notice upon SBC of the violations alleged herein, and offered SBC Illinois the opportunity to remedy the dispute. (A copy of this correspondence is attached hereto as *Exhibit A*.) At the time of filing this Complaint, SBC Illinois has not satisfactorily cured the unlawful conduct alleged herein.

SBC ANSWER: With respect to the first sentence of Paragraph 3, SBC Illinois admits that Cbeyond notified SBC Illinois pursuant to Section 13-515(c) and (d)2 of the violations alleged in its Complaint, but denies that those allegations have any basis in fact or law. With respect to the last sentence of Paragraph 3, SBC Illinois denies it has engaged in unlawful conduct. SBC Illinois’ response to Cbeyond’s notice letter is attached hereto as Exhibit A.

4. Pursuant to Part 766.15(a) of the Commission's rules, Cbeyond agrees to waive the statutory timeline requirements in Section 13-515(d) of the PUA.

SBC ANSWER: On information and belief, SBC Illinois admits that Cbeyond has waived the statutory timeline requirements in Section 13-515(d) of the PUA.

5. Pursuant to Part 766.1050 of the Commission's Rules, Cbeyond agrees to electronic service to the email addresses listed in the signature section contained herein for any

service necessary after the Commission has addressed the requested emergency relief under Section 13-515(e).

SBC ANSWER: On information and belief, SBC Illinois admits that Cbeyond has agreed to electronic service, and also agrees to electronic service.

JURISDICTION

6. Cbeyond and SBC Illinois are subject to the jurisdiction of the Commission with respect to the matters raised in this Complaint. The Commission further has jurisdiction over this proceeding under Sections 13-514 and 13-515 of the Illinois Public Utilities Act.

SBC ANSWER: SBC Illinois states that the allegations of Paragraph 6 state a legal conclusion with which SBC Illinois does not agree.

7. The Commission also has jurisdiction under the federal Telecommunications Act of 1996 under 47 U.S.C. § 251(d)(3) (conferring authority to State commissions to enforce any regulation, order or policy that is consistent with the requirements of Section 251) with respect to the matters raised in this Complaint.

SBC ANSWER: SBC Illinois states that the allegations of Paragraph 7 state a legal conclusion with which SBC Illinois does not agree.

LEGAL FRAMEWORK

8. Section 13-514 of the Illinois Public Utilities Act (PUA) provides, in relevant part, as follows:

Sec. 13-514. Prohibited Actions of Telecommunications Carriers. A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:

(1) unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier;

(2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier;

(8) violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers;

(11) violating the obligations of Section 13-801;

220 ILCS 5/13-514.

SBC ANSWER: SBC Illinois states that Cbeyond appears to have accurately quoted a portion of the PUA in Paragraph 8 of the Complaint. SBC Illinois denies that the above-quoted provisions are applicable to the Complaint, denies that any of those provisions have been violated, and denies that Cbeyond has fully stated that the law applicable to its Complaint.

9. Section 13-801(b) of the Illinois Public Utilities Act provides as follows:

13-801 (b) Interconnection.

(1) An incumbent local exchange carrier shall provide for the facilities and equipment of any requesting telecommunications carrier's interconnection with the incumbent local exchange carrier's network on just, reasonable, and nondiscriminatory rates, terms, and conditions:

(A) for the transmission and routing of local exchange, and exchange access telecommunications services;

(B) at any technically feasible point within the incumbent local exchange carrier's network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA; and

(C) that is at least equal in quality and functionality to that provided by the incumbent local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the incumbent local exchange carrier provides interconnection.

220 ILCS § 5/13-801(b).

SBC ANSWER: SBC Illinois states that Cbeyond appears to have accurately quoted a portion of the PUA in Paragraph 9 of the Complaint. SBC Illinois denies that the above-quoted provisions are applicable to the Complaint, denies that any of those provisions have been violated, and denies that Cbeyond has fully stated that the law applicable to its Complaint.

10. Section 13-515 of the Illinois Public Utilities Act reads as follows, in relevant part:

(a) The following expedited procedures shall be used to enforce the provisions of Section 13-514 of this Act. However, the Commission, the complainant, and the respondent may mutually agree to adjust the procedures established in this Section.

(b) (Blank).

(c) No complaint may be filed under this Section until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation. Provision of notice and the opportunity to correct the situation creates a rebuttable presumption of knowledge under Section 13-514. After the filing of a complaint under this Section, the parties may agree to follow the mediation process under Section 10-101.1 of this Act. The time periods specified in subdivision (d)(7) of this Section shall be tolled during the time spent in mediation under Section 10-101.1.

SBC ANSWER: SBC Illinois states that Cbeyond appears to have accurately quoted a portion of the PUA in Paragraph 10 of the Complaint. SBC Illinois denies that the above-quoted provisions are applicable to the Complaint, denies that any of those provisions have been violated, and denies that Cbeyond has fully stated that the law applicable to its Complaint.

11. Section 252(c)(2) of the federal Communications Act, and the FCC's rules adopted thereunder, 47 C.F.R. 51.305(a)(2), provide that Cbeyond may interconnect with SBC at any technically feasible point, thereby giving Cbeyond the right to select as few as one Point of Interconnection. Further, the right to select the POI (assuming it is at a technically feasible point) is reserved for the CLEC; there is no concurrent right for SBC to select an interconnection point or POI. In the *Local Competition Order*, the FCC stated:

The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.¹

SBC ANSWER: SBC Illinois states that the Federal Communications Act and local competition order speak for themselves, and SBC Illinois admits the allegations in Paragraph 11 to the extent they are consistent with those legal authorities and denies them to the extent they are not.

12. The FCC has consistently applied the Act to prevent Incumbent Local Exchange Carriers (ILECs) such as SBC from increasing CLECs' costs by requiring multiple points of interconnection, or assessing costs against CLECs for facilities on the ILEC's side of the POI. For example, in its order approving Southwestern Bell Telephone's ("SWBT") application for Section 271 authority in Texas, the FCC stated that CLECs have the option to interconnect at as few as one technically feasible point within each LATA:

New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination.²

Further, the FCC stated in that Order:

Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. *This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.*³

SBC ANSWER: SBC Illinois denies the first sentence of Paragraph 12. With respect to the remaining portions of Paragraph 12, SBC Illinois states that the FCC's orders quoted therein

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 13042, ¶ 172 (1996) ("*Local Competition Order*").

² Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, 15 FCC Rcd 18354, ¶ 78 (2000).

³ *Id.* (citing *Local Competition Order*, ¶¶ 172, 209) (emphasis added).

speak for themselves, and SBC Illinois admits the allegations in Paragraph 12 to the extent they are consistent with those orders and denies them to the extent they are not.

13. In the *Virginia Arbitration Decision*⁴, the FCC also addressed the principles relating to a CLEC's right to select a POI and the obligation of the originating carrier to pay for the cost to transport its own traffic to the POI. In this case, Verizon proposed language that would have required AT&T (when terminating traffic to Verizon) to deliver its traffic all the way to the ILEC end office. Verizon further proposed that if AT&T did not establish a POI at every ILEC end office, it would require AT&T to pay for the transport costs that the ILEC incurred to deliver its originating traffic from its originating switch to AT&T's switch or POI. The FCC found that Verizon's proposed interconnection arrangement was not consistent with 47 C.F.R. 51.703(b) (which prohibits charging a CLEC for traffic originating on the ILECs network), and 47 C.F.R. 51.305(a)(2) (which allows a CLEC to connect at any technically feasible point).⁵

SBC ANSWER: SBC Illinois states that the Verizon Arbitration Decision speaks for itself, and SBC Illinois admits the allegations in Paragraph 13 to the extent they are consistent with that decision and denies them to the extent they are not.

14. Several courts have agreed with the FCC's decision on the right of a CLECs to choose its point of interconnection. For example, the Third Circuit reversed and remanded a Pennsylvania Public Service Commission decision requiring WorldCom to interconnect in each access tandem serving area in Bell Atlantic-Pennsylvania's network.⁶ The Court explained that a CLEC's decision on where or where not to interconnect is subject only to concerns of technical

⁴ *In re Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection*, 17 FCC Rcd 27039 (2002) ("Virginia Arbitration Decision").

⁵ *Virginia Arbitration Decision*, ¶¶ 52, 53.

⁶ *MCI Telecommunication Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 517 (3rd Cir. 2001).

feasibility⁷ and held that requiring multiple interconnection points could be costly and would be inconsistent with the goals of the Act.⁸ Specifically the Court stated:

To the degree that a state commission may have discretion in determining whether there will be one or more interconnection points within a LATA, the commission, in exercising that discretion, must keep in mind whether the cost of interconnection at multiple points will be prohibitive, creating a bar to competition in the local service area. If only one interconnection is necessary, the requirement by the commission that there be additional connections at an unnecessary cost to the CLEC, would be inconsistent with the policy behind the Act.⁹

SBC ANSWER: SBC Illinois states that the judicial decisions cited in Paragraph 14 speak for themselves, and SBC Illinois admits the allegations in Paragraph 14 to the extent they are consistent with those judicial decisions and denies to the extent they are not.

15. The Illinois Commerce Commission has reached the exact same result in the docket that approved the SBC-AT&T Interconnection Agreement, the agreement Cbeyond opted into. The Illinois Commission noted that SBC's proposed (rejected) language:

would violate AT&T's rights under current law and FCC rules to select POIs between the respective networks, and also would violate the corresponding principle that each carrier properly bears the financial responsibility of delivering its originating traffic to the point of interconnection. We find that SBC's proposed language effectively and improperly negates AT&T's rights under TA96 to designate a single POI in each LATA by requiring AT&T to pay SBC for transporting traffic as if AT&T were required to establish multiple POIs in each of SBC's local calling areas.¹⁰

SBC ANSWER: SBC Illinois states that the Commission's decision in the AT&T arbitration proceeding (Docket 03-0239) speaks for itself, and SBC Illinois admits the allegations in Paragraph 15 to the extent they are consistent with that arbitration decision and denies them to the extent they are not.

⁷ *Id.*, 271 F.3d. at 518.

⁸ *Id.*, 271 F.3d. at 517; *see also*, *West Communications, Inc. v. Jennings*, 304 F.3d 950, 960-961 (9th Cir. 2002).

⁹ *Id.*, 271 F.3d. at 517. (internal citations omitted).

¹⁰ *Arbitration Order, Re AT&T Communications of Illinois, Inc.*, 2003 WL 22518548 (Ill.C.C. Docket No. 03-0239 (2003)) Issues 5, 6, 7 (“*AT&T Illinois Arbitration Order*”).

16. SBC has done to Cbeyond what SBC attempted to do to with its proposed terms in the AT&T Arbitration proceeding, and what Verizon attempted to do in the *Verizon Arbitration Decision* – compel Cbeyond to establish points of interconnection in such a manner that Cbeyond bears the costs to carry traffic closer to SBC’s local exchange offices.

SBC ANSWER: SBC Illinois denies the allegations in Paragraph 16. Rather, the multi-POI network shown in Exhibit F to Cbeyond’s Complaint is the result of a mutually agreed upon network architecture between Cbeyond and SBC Illinois. Attached to this Answer as Exhibit A is a clean copy of the Exhibit F to the Complaint showing the agreed upon network architecture in more detail, together with a fully-executed copy of Exhibit F.

FACTS

17. On May 20, 2004, Cbeyond and SBC Illinois executed an Interconnection Agreement that was adopted by Cbeyond pursuant to the terms of Section 252(i) of the federal Communications Act, 47 U.S.C. § 252(i). Under Section 252(i), CLECs may opt into the terms of an existing Interconnection Agreement between SBC and another telecommunications carrier. In this circumstance, Cbeyond elected to adopt the terms of the Interconnection Agreement between SBC Illinois and AT&T Communications of Illinois, Inc. dated as of January 1, 2004. The Illinois Commerce Commission approved of the terms of the SBC Illinois and AT&T Communications of Illinois Interconnection Agreement in ICC Docket No. 03-0239.

SBC ANSWER: SBC Illinois admits the allegations of the first sentence of Paragraph 17. With respect to the second sentence of Paragraph 17, SBC Illinois states that Section 252(i) speaks for itself, and SBC Illinois admits the allegations in Paragraph 17 to the extent they are consistent with that statute and denies to the extent they are not. With respect to the third sentence of Paragraph 17, SBC Illinois admits that Cbeyond elected to adopt the terms of the

interconnection agreement between SBC Illinois and AT&T dated January 1, 2004. With respect to the allegations in the last sentence of Paragraph 17, SBC Illinois denies that the ICC approved the terms of the SBC Illinois/AT&T ICA in ICC Docket 03-0239. Rather, the Commission approved that ICA in ICC Docket 03-0717.

18. The Interconnection Agreement between SBC and Cbeyond defines a Point of Interconnection as “a demarcation point between the facilities that each Party is responsible to provide.” ICA, Section 3.2.5 (A copy of Article 3 of the Interconnection Agreement is attached hereto as *Exhibit B*.)

SBC ANSWER: SBC Illinois admits that the allegations in Paragraph 18 include a partial quotation from Section 3.2.5 of the ICA.

19. One of the issues resolved by the Commission in the AT&T / SBC arbitration, is whether SBC would be permitted to impose on AT&T the obligation to establish more than a single point of interconnection within the Chicago LATA, and whether SBC could impose upon AT&T the costs incurred by SBC to transport traffic on SBC’s side of the Point of Interconnection (POI). (See *AT&T v. SBC Arbitration Order*, ICC Docket No. 03-0239, Aug. 26, 2003, addressing Interconnection Issues 5 through 9, p. 26-34.)

SBC ANSWER: SBC Illinois states that the AT&T Arbitration Decision speaks for itself, and SBC Illinois admits the allegations in Paragraph 19 to the extent they are consistent with that decision and denies them to the extent they are not.

20. The Commission in that proceeding adopted AT&T’s proposed terms and conditions with regard to the establishment of a Point of Interconnection. Specifically, the Commission adopted language for Section 4.3 of the AT&T / SBC Interconnection Agreement

that permitted AT&T to establish a single POI within the LATA. (See *AT&T v. SBC Arbitration Order*, p. 28.)

SBC ANSWER: SBC Illinois states that the AT&T Arbitration Decision speaks for itself, and SBC Illinois admits the allegations in Paragraph 20 to the extent they are consistent with that decision and denies them to the extent they are not.

21. The Commission also rejected SBC's proposed terms and conditions that would have required AT&T to pay SBC for SBC's costs of transporting SBC's calls from the originating SBC switch, to the POI; the Commission stated that "SBC cannot charge AT&T for transport on SBC's side of the POI." (See *AT&T v. SBC Arbitration Order*, p. 32.)

SBC ANSWER: SBC Illinois states that the AT&T Arbitration Decision speaks for itself, and SBC Illinois admits the allegations in Paragraph 21 to the extent they are consistent with that decision and denies them to the extent they are not.

22. Cbeyond has opted into the terms and conditions of the AT&T – SBC Interconnection Agreement.

SBC ANSWER: SBC Illinois admits the allegations of Paragraph 22 of the Complaint.

23. Section 3 of the Agreement between Cbeyond and SBC governs the physical interconnection points between Cbeyond and SBC, and provides that interconnection shall be made pursuant to Section 251(c)(2) of the federal Communications Act:

3.0 Interconnection Pursuant to Section 251(c)(2).

3.1 Scope. Article 3 describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic between the respective business and residential Customers of the Parties pursuant to Section 251(c)(2) of the Act. Interconnection may not be used solely for the purpose of originating a Party's own interexchange traffic. Articles 4 and 5 prescribe the specific logical trunk groups (and traffic routing parameters) which will be configured over the physical Interconnections described in this Article 3 related to the transmission and routing of Telephone Exchange Service traffic

and Exchange Access traffic, respectively. Other trunk groups, as described in this Agreement, may be configured using this architecture.

SBC ANSWER: SBC Illinois admits that Paragraph 23 accurately quotes Section 3.1 of the ICA. SBC Illinois also admits that Section 3 of the ICA governs physical interconnection points between Cbeyond and SBC Illinois, but denies that Section 3 is the only section of the ICA that contains terms relevant to physical interconnection.

24. Section 3.2.2 provides that Cbeyond, not SBC, has the option to select the Point of Interconnection, so long as the POI is technically feasible:

3.2.2. As provided in Section 251(c)(2) of the Act, CLEC, at its option, may request and SBC will provide Interconnection of its facilities and equipment to SBC ILLINOIS' network at any technically feasible point in SBC ILLINOIS' network, including a mid-span meet arrangement.

SBC ANSWER: SBC Illinois admits that Paragraph 24 accurately recites the terms of Section 3.2.2 as they appear in the ICA. Answering further, SBC Illinois states that Cbeyond, at its option, mutually agreed to a 12-POI interconnection arrangement in LATA 358, as evidenced by Exhibit F, which is a network interconnection implementation diagram signed by Cbeyond on August 16, 2004.

25. Section 3.2.2. further provides that Cbeyond's right to select the POI is granted to Cbeyond pursuant to Section 251(c)(2). As discussed in Paragraph 11 above, Section 252(c)(2) and 47 C.F.R. 51.305(a)(2), provide that Cbeyond may interconnect with SBC at any technically feasible point, thereby giving Cbeyond the right to select even a single Point of Interconnection.

SBC ANSWER: SBC Illinois states that Section 3.2.2 of the ICA, Section 252(c)(2) of the Federal Telecommunications Act, and Section 51.305(a)(2) of the FCC's rules speak for themselves, and SBC Illinois admits the allegations in Paragraph 25 to the extent they are consistent with those sources and denies them to the extent they are not.

Cbeyond Completed SBC's Network Information Sheet

26. Under the Agreement, when a CLEC identifies its Points of Interconnection, the Agreement calls for the CLEC to submit a "Network Information Sheet" to identify the Points of Interconnection between the parties' networks. The Network Information Sheet that is required to be completed by Cbeyond is attached as Exhibit 1 to the parties' Interconnection Agreement (and attached to this complaint as *Exhibit C*.)

SBC ANSWER: SBC Illinois denies that the Interconnection Agreement, by its express terms, calls for Cbeyond to submit a "Network Information Sheet" to identify the initial points of interconnection between the parties' network. SBC Illinois admits that a Network Information Sheet is attached as Exhibit 1 to the parties' Interconnection Agreement.

27. The Network Information Sheet is "needed upon all new interconnections and in accordance with the Network Interconnection Interoperability Forum (NIIF) Attachment B effective February 2001 documents 'Recommended Notification Procedures to Industry for Changes in Access Network Architecture.'" (*Exhibit D*.¹¹)

SBC ANSWER: SBC Illinois admits that the allegations in Paragraph 27 accurately reflect information taken from Exhibit D to the Complaint.

28. The Instructions for the Network Information Sheet require that the CLEC, in Section II of the form, identify the Point of Interconnection with SBC's network, and that the CLEC specify the CLLI where interconnection would take place. (Exhibit D, p. 2.)

SBC ANSWER: SBC Illinois admits that the Network Information Sheet provides a space for a CLEC to identify each "point of interface (POI)" with SBC Illinois' network and that such POIs are identified by CLLI codes.

29. While the Agreement is silent on the form required for the initial POI, Cbeyond is required to submit the Network Information Sheet for each subsequent POI in any additional LATA:

3.10 Interconnection in Additional LATAs.

3.10.1 If CLEC determines to offer Telephone Exchange Service within SBC ILLINOIS' service areas in any additional LATA, CLEC shall provide written notice to SBC ILLINOIS of its need to establish Interconnection POI(s) within such LATA pursuant to this Agreement.

3.10.2 The notice provided in Section 3.10.1 shall include for each LATA a Network Information Sheet-NIS (See CLEC to SBC NETWORK INFORMATION SHEET Attachment # 1) and a Forecast. For a joint planning meeting to be convened, the NIS will be filled out with the following minimum information: (i) Roman Numeral I, Items 1, 2, and 5 completely filled out, and (ii) a non-binding forecast of CLEC's trunking requirements.

SBC ANSWER: SBC Illinois admits that the Agreement is silent on the form required for the initial POI. Responding further, SBC Illinois states that Sections 3.10.1 and 3.10.2 of the Agreement require Cbeyond to submit a Network Information Sheet for POIs in any additional LATA.

30. On about July 7, 2004, Cbeyond completed its Network Information Sheet, indicating that it would establish two Points of Interconnection, one at the SBC wire center CHCGILWBHOC, 520 S. Federal St., Chicago, Illinois, and one at the SBC wire center NBRKILNTH58, 2305 Sanders Road, Northbrook, Illinois. This selection of Points of Interconnection were provided to SBC. (A copy of Cbeyond's NIS Form is attached hereto as *Exhibit E.*)

¹¹ Exhibit D was obtained from the following website:
https://clec.sbc.com/clec_documents/unrestr/hb/13%20State/191/Network/NIS/Network%20Interconnection%20Sheet-NIS%20Job%20Aid.doc.

SBC ANSWER: SBC Illinois admits that Cbeyond completed a Network Information Sheet on or about July 7, 2004, and that Cbeyond provided that document to SBC Illinois.

Beyond that, SBC Illinois states that the document speaks for itself.

SBC's Creation of 12 POIs Shifts SBC's Costs to Cbeyond.

31. Under the terms of the parties' Interconnection Agreement, each party is responsible for the costs to transport all calls to the Point of Interconnection. So, as an example, a call from a Cbeyond local exchange customer to an SBC customer would require that Cbeyond terminate its traffic to the SBC / Cbeyond POI at the CHCGILWBHOC POI. Similarly, under the network design selected by Cbeyond, for a call from an SBC end user to a Cbeyond customer, SBC would transport the call to the POI at the CHCGILWBHOC POI.

SBC ANSWER: SBC Illinois states that the Interconnection Agreement speaks for itself, and SBC Illinois admits the allegations in Paragraph 31 to the extent they are consistent with the Interconnection Agreement and denies them to the extent they are not.

32. The costs associated with the transport of calls to the POI is a material factor in Cbeyond's decisions on the number of POIs established within the LATA, as well as the location of the POIs within the LATA.

SBC ANSWER: SBC Illinois does not know the basis for Cbeyond's decisions, and therefore SBC Illinois neither admits nor denies the allegations of Paragraph 32.

33. Despite Cbeyond's clear and unequivocal selection of two Points of Interconnection, SBC created 12 separate and distinct Points of Interconnection at various tandem switches located throughout SBC's service territory in LATA 358.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 33 because Cbeyond did not select two points of interconnection, rather it mutually agreed to an interconnection

architecture with 12 points of interconnection. In answering further, SBC Illinois did not unilaterally “create” 12 separate points of interconnection; rather, the multiple POIs were mutually agreed upon.

34. SBC’s creation of 12 separate and distinct POIs located throughout LATA 358 substantially and materially increases Cbeyond’s recurring and nonrecurring costs. To meet the SBC’s unilaterally imposed network configuration, Cbeyond would need to order, build and provision multiple trunk groups from the Cbeyond switch serving the LATA to each of the 12 POIs that SBC created. This network of DS1 and DS3 facilities substantially increases Cbeyond’s costs of delivering its traffic to SBC. Instead of transporting calls to only two POIs, Cbeyond is compelled to provision facilities to transport calls to twelve distant POIs.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 34.

35. By creating additional POIs, SBC is shifting responsibility and costs to Cbeyond for traffic originated by SBC customers, and for traffic that SBC is required to terminate from Cbeyond. SBC creation of 12 POIs rather than 2 effectively requires Cbeyond to provide some of the transport for SBC originated calls, within the SBC network. By establishing more than the 2 POIs requested by Cbeyond, Cbeyond is forced to incur monthly recurring costs of transport that it would not be required to incur with 2 POIs.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 35. The 12 POIs were implemented by mutual agreement, as reflected in the August 16, 2004 network implementation diagram attached to the Complaint as Exhibit F.

Cbeyond Request SBC to Comply with its Request for 2 POIs.

36. Beginning in approximately November 2004 SBC began to bill Cbeyond for the costs of the additional transport facilities leased from SBC for interconnection at the 12 separate POIs.

SBC ANSWER: SBC Illinois admits that in approximately November of 2004, it began to bill Cbeyond for transport facilities ordered by Cbeyond to effect the mutually-agreed upon network interconnection architecture as shown in Exhibit F to the Complaint.

37. When Cbeyond disputed the bills, SBC advised Cbeyond that it (SBC) had established 12 POIs within the LATA. SBC indicated that SBC established the 12 POIs in reliance upon an extraneous document entitled “Cbeyond, LATA 358.” (*Exhibit F.*) According to SBC, this document is a architecture diagram designating those facilities for which Cbeyond and SBC are each responsible. According to SBC, Exhibit F supercedes the Network Information Sheet that is required under the parties Interconnection Agreement.

SBC ANSWER: SBC Illinois denies that Exhibit F to the Complaint is an “extraneous document.” In further responding, SBC Illinois admits that Exhibit F to the Complaint is an architecture diagram designating those facilities for which Cbeyond and SBC Illinois are each responsible. SBC Illinois further admits that its position is that Exhibit F controls and supersedes any prior, inconsistent agreement on POI implementation.

38. In April 2005, Cbeyond engaged in informal dispute resolution with SBC to request that SBC either A) establish the correct Points of Interconnection requested by Cbeyond in the Network Information Sheet; or B) recognize that Cbeyond will maintain only two Points of Interconnection on a going forward basis. XX. SBC refused. Despite repeated requests

during the period from April through July, 2005, SBC continues to refuse to establish only the two Points of Interconnection requested by Cbeyond.

SBC ANSWER: SBC Illinois admits that in approximately April, 2005 SBC Illinois and Cbeyond engaged in informal dispute resolution discussions with respect to the matters raised in the Complaint and that the parties were unable to reach a mutually acceptable resolution. Responding further, SBC Illinois admits that it has declined to decommission 10 of the 12 mutually-agreed upon points of interconnection without adequate compensation, as demanded by Cbeyond.

**COUNT ONE – SBC’S ACTIONS ARE A VIOLATION OF THE TERMS
OF THE INTERCONNECTION AGREEMENT.**

39. Cbeyond realleges the allegations contained in Paragraphs 1 through 38 above, as though fully stated herein.

SBC ANSWER: SBC Illinois states and incorporates its answers to Paragraphs 1 through 38 of the Complaint, as though fully stated herein.

40. SBC’s conduct in establishing 12 POIs, instead of the 2 POIs elected by Cbeyond, is a material and substantial breach of its Agreement with Cbeyond.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 40. In answering further, SBC Illinois states that it has implemented the parties’ agreed upon POIs as set forth in Exhibit F to the Complaint. SBC Illinois expended time and money to implement the multi-POI network to which Cbeyond agreed, and Cbeyond is not now entitled to unilaterally modify that network.

41. As a direct result of SBC’s knowing, intentional and unlawful breaches of its contractual obligations in its Interconnection Agreement, Cbeyond has suffered and will continue to suffer direct and consequential damages.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 41.

**COUNT TWO – SBC’S ACTIONS VIOLATE SECTION
13-801 OF THE ILLINOIS PUBLIC UTILITIES ACT.**

42. Cbeyond realleges the allegations contained in Paragraphs 1 through 41 above, as though fully stated herein.

SBC ANSWER: SBC Illinois restates and incorporates its answers to Paragraphs 1 through 41 of the Complaint, as though fully stated herein.

43. In addition to any obligations imposed by the parties’ Interconnection Agreement, SBC has a binding independent obligation pursuant to Section 13-801 of the Illinois Public Utilities Act to provide interconnection. Section 13-801(b) provides that:

(b) Interconnection.

(1) An incumbent local exchange carrier shall provide for the facilities and equipment of any requesting telecommunications carrier’s interconnection with incumbent local exchange carrier’s network on just, reasonable, and nondiscriminatory rates, terms and conditions:

* * *

(B) at any technically feasible point within the incumbent local exchange carrier’s network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA; and

(C) that is at least equal in quality and functionality to that provided by the incumbent local exchange carrier to . . . any other party to which the incumbent local exchange carrier provides interconnection.

220 ILCS 5/13-801(b).

SBC ANSWER: SBC Illinois denies that it had interconnection obligations under Section 13-801 that are in addition to the interconnection obligations set forth in its Interconnection Agreement with Cbeyond. Stated another way, SBC Illinois’ interconnection obligations are set forth in the Interconnection Agreement – nowhere else. With respect to the

second sentence of Paragraph 43, SBC Illinois admits that it recites a portion of Section 13-801(b).

44. SBC's conduct in establishing 12 POIs, instead of the 2 POIs elected by Cbeyond, is a material and substantial violation of Section 13-801(b) of the Illinois Public Utilities Act.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 44.

45. By unilaterally refusing to allow Cbeyond to establish the two requested Points of Interconnection, SBC and has knowingly and willfully violated Section 13-801(b) of the Illinois Public Utilities Act.

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 45. Responding further, SBC Illinois states that Cbeyond has no rights under Section 13-801(b) to supersede the terms of the Interconnection Agreement and the mutually-agreed upon network architecture implementation diagram set forth in Exhibit F to the Complaint.

46. As a direct result of SBC's knowing, intentional and unlawful violation of Section 13-801(b), Cbeyond will suffer direct, proximate and consequential damages.

SBC ANSWER: SBC Illinois denies the allegations in Paragraph 46 of the Complaint.

**COUNT THREE – SBC ILLINOIS' ACTIONS ALLEGED
IN COUNTS 1 AND 2 VIOLATE SECTION 13-514 OF
THE ILLINOIS PUBLIC UTILITIES ACT.**

47. Cbeyond realleges the allegations contained in Paragraphs 1 through 46 above, as though fully stated herein.

SBC ANSWER: SBC Illinois restates and incorporates its answers to Paragraphs 1 through 46, as though fully stated herein.

48. By committing the above-detailed violations of the Interconnection Agreement and Section 13-801, SBC has knowingly impeded the development of competition in Illinois in

the local exchange market, in violation of Section 13-514 of the Illinois Public Utilities Act, 220 ILCS 5/13-514.

SBC ANSWER: SBC Illinois denies the allegations in Paragraph 48 of the Complaint. In particular, SBC Illinois has not knowingly impeded the development of competition in Illinois, as required by Section 13-514. Rather, it has at all times acted in accordance with the mutual agreement of the parties, as set forth in Exhibit F to the Complaint.

49. By committing the alleged violations of the Interconnection Agreement and Section 13-801, SBC Illinois has unreasonably refused or delayed interconnection, or is providing inferior connections to Cbeyond in violation of 13-514(1) of the Illinois Public Utilities Act, 220 ILCS 5/13-514(1).

SBC ANSWER: SBC Illinois denies the allegations in Paragraph 49 of the Complaint. In particular, SBC Illinois denies that it has reasonably refused or delayed interconnection, or is providing inferior connections to Cbeyond in violation of Section 13-514(1). To the contrary, the action complained of by Cbeyond has been taken by SBC Illinois pursuant to an express, written agreement on network architecture implementation and POI location as set forth in Exhibit F to the Complaint.

50. By committing the alleged violations of the Interconnection Agreement and Section 13-801, SBC has unreasonably impaired the speed, quality or efficiency of services used by Cbeyond in violation of Section 13-514(2), 220 ILCS 5/13-514(2).

SBC ANSWER: SBC Illinois denies the allegations of Paragraph 50. In particular, SBC Illinois has not unreasonably impaired the speed, quality or efficiency of services used by Cbeyond in violation of Section 13-514(2). To the contrary, the action complained of by

Cbeyond has been taken by SBC Illinois pursuant to an express, written agreement on network architecture implementation and POI location as set forth in Exhibit F to the Complaint.

51. By committing the alleged violations of the Interconnection Agreement and Section 13-801, SBC unreasonably acted or failed to act in a manner that has violated the terms of and unreasonably delaying the implementation of an interconnection agreement in a manner that delays, increases the cost, and impedes the availability of telecommunications services to consumers, in violation of Section 13-514(8) of the Illinois Public Utilities Act, 220 ILCS 5/13-514(8).

SBC ANSWER: SBC Illinois denies the allegations in Paragraph 51. In particular, SBC Illinois denies that it unreasonably acted or failed to act in a manner that has violated the terms of, or unreasonably delayed the implementation of an interconnection agreement, in a manner that delays, increases the cost, or impedes the availability of telecommunication services to consumers in violation of Section 13-514(8). To the contrary, the action complained of by Cbeyond has been taken by SBC Illinois pursuant to an express, written agreement on network architecture implementation and POI location as set forth in Exhibit F to the Complaint.

52. By committing the alleged violations of the Interconnection Agreement and Section 13-801, SBC has unreasonably violated its obligations imposed by Section 13-801. This conduct by SBC Illinois is a violation of Section 13-514(11) of the Illinois Public Utilities Act, 220 ILCS 5/13-514(11).

SBC ANSWER: SBC Illinois denies the allegations in Paragraph 52. In particular, SBC Illinois has not unreasonably violated any obligations imposed by Section 13-801, and has therefore not violated Section 13-514(11).

PRAYER FOR RELIEF

WHEREFORE, Cbeyond Communications, LLP, respectfully request that the Commission grant its Complaint, and enter judgment in favor of Cbeyond and against SBC Illinois, and further that the Commission:

- A. Declare that SBC Illinois' unilateral creation of 12 Points of Interconnection, and refusal to establish the two Points of Interconnection requested by Cbeyond is:
 - 1. a material breach of the terms of the existing Interconnection Agreement between SBC Illinois and Cbeyond Communications, LLC.;
 - 2. a violation of Section 13-801(b) of the Illinois Public Utilities Act;
 - 3. a violation of Section 13-514 of the Illinois Public Utilities Act; and,
 - 4. a knowing, intentional and unlawful breach of the contractual terms of Cbeyond's Interconnection Agreement.
- B. Order SBC to cease and desist from its breaching the terms of its Interconnection Agreement;
- C. Order SBC to cease and desist from violating Section 13-801(b);
- D. Order SBC to cease and desist from violating Section 13-514;
- E. Order SBC to establish the two Points of Interconnection requested by Cbeyond;
- F. Order SBC to credit Cbeyond for all Interconnection charges imposed since November 2004;
- G. Order SBC Illinois to pay to Cbeyond the cost incurred in transporting traffic to the POIs established by SBC, and an amount equal to their direct, proximate and consequential damages, attorney fees and all other costs associated with bringing this action pursuant to Section 13-516(a)(3);
- H. Order SBC Illinois to reimburse the Commission for the costs associated with proceeding pursuant to Section 13-515(g);
- I. Order SBC Illinois to pay penalties of up to \$30,000 or 0.00825% of the telecommunications carrier's gross intrastate annual telecommunications revenue, whichever is greater, per violation pursuant to Section 13-516(a)(2);

- J. Grant Cbeyond such other relief, including the imposition of penalties against SBC, as mandated by statute or the Commission shall deem appropriate and just.

SBC ANSWER: SBC Illinois denies that Cbeyond is entitled to any relief whatsoever.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

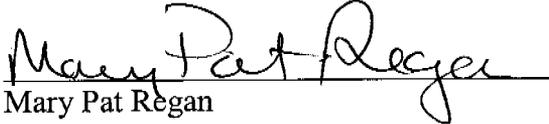


One of Its Attorneys

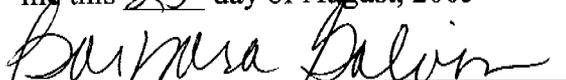
Mark R. Ortlieb
Illinois Bell Telephone Company
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VERIFICATION

I, Mary Pat Regan, on oath, state that I am the Vice President-Regulatory for SBC Illinois, that I have reviewed the foregoing **SBC ILLINOIS' ANSWER**, and that, to the best of my knowledge, information and belief, the statements contained therein are true and correct.


Mary Pat Regan

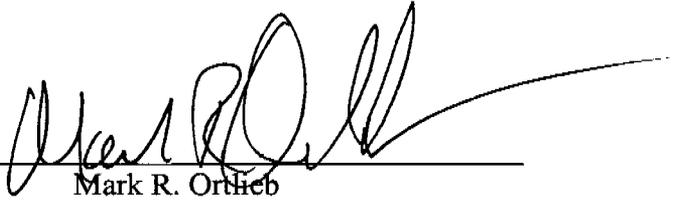
Subscribed and sworn to before
me this 23rd day of August, 2005


Notary Public, State of Illinois



CERTIFICATE OF SERVICE

I, Mark R. Ortlieb, an attorney, certify that a copy of the foregoing **SBC ILLINOIS' ANSWER** was served on the following parties by U.S. Mail and/or electronic transmission on August 23, 2005.



Mark R. Ortlieb

SERVICE LIST FOR ICC DOCKET 05-0521

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