

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLC)
-vs-)
Illinois Bell Telephone Company)
)
)
Formal Complaint and Request for)
Declaratory Ruling pursuant to Sections)
13-515 and 10-108 of the Illinois Public)
Utilities Act)

Docket No. 10-0188

PUBLIC REPLY AFFIDAVIT OF FREDERICK C. CHRISTENSEN
ON BEHALF OF AT&T ILLINOIS

I, Frederick C. Christensen, being duly sworn, do hereby state as follows:

1. I am employed as a Senior Manager – Methods and Procedures Process in the AT&T Wholesale organization. My office address is 845 N. 35th Street, Milwaukee, Wisconsin 53208.

2. I am the same Frederick C. Christensen who filed an earlier Affidavit in this matter.

3. The information in this affidavit is based on my personal knowledge, a review of the Formal Complaint that Cbeyond Communications, LLC (“Cbeyond”) filed in this docket, a review of the Joint Stipulation filed by Illinois Bell Telephone Company (“AT&T Illinois”) and Cbeyond in this case, a review of the opening briefs submitted by AT&T Illinois and Cbeyond, including the affidavit submitted by Mr. Greg Darnell of Cbeyond (“Darnell Affidavit”), and a review of the reply brief submitted by the Commission Staff.

4. In his Affidavit, Mr. Darnell states, “Cbeyond would have much rather resolved this case without litigation and initially had some success doing this. In 2006 and early 2007, AT&T Illinois credited most of the charges that are the source of this complaint as resolution of an informal bill dispute brought by Cbeyond. In fact, in March 2007, AT&T Illinois agreed to

waive the nonrecurring charges that are the source of this complaint but did not follow-up on that commitment and actually do so. In April 2007, AT&T stopped agreeing with Cbeyond on these informal bill disputes and stopped issuing Cbeyond bill credits for the loop nonrecurring charges imposed on transport grooming that are the foundation of this complaint” (Darnell Affidavit, ¶5). What Mr. Darnell fails to tell the Commission is that when AT&T Illinois processes a CLEC’s billing dispute, the CLEC is provided with an explanation as to why its claim was accepted or rejected. For example, on April 2, 2007 Cbeyond submitted claim number [*** Begin Confidential End Confidential***] to AT&T Illinois for February 2006 charges associated with USOC NR9OW on its Circuit ID [***Begin Confidential End Confidential***]. The billing dispute resolution text that was provided to Cbeyond informs the CLEC that its claim was, “Denied--due to settlement with BYG (Cbeyond) and Kitty Drennan Acct Manager, NR9OW should be billed if ACTL changes.” That is, AT&T Illinois believed that the parties had agreed to the terms of a settlement under which the parties agreed that USOC NR9OW (and certain other USOCs for nonrecurring charges) was applicable if the Access Carrier Terminal Location (“ACTL”) for a given DS1-EEL changed due to Cbeyond’s submitted service request. While AT&T Illinois believed that the parties had agreed to the settlement terms, Cbeyond never returned a signed copy of the Settlement Agreement nor did it forward a signed copy to AT&T Illinois for execution.

5. In discussing the Cbeyond-submitted Local Service Requests (“LSR”) in question in this matter, Mr. Darnell claims that, “Cbeyond specifically states on these orders that the loop is not to be disconnected.” (Darnell Affidavit, ¶25). Mr. Darnell mischaracterizes what is on the order and what it signifies. First, to be accurate, the orders do not specifically mention “loops” in connection with the “do not disconnect” instruction, contrary to Mr. Darnell’s assertion. Second, the instruction not to disconnect must be understood in the context of the project being a hot cut project – that is, the existing service is disconnected and the new service established typically during late hours, and with minimal down time so as not to impact the end user. The “do not disconnect” instruction – which typically comes along with a notation that the project is a hot cut – helps ensure that a technician does not disconnect any of the facilities in the existing service arrangement until disconnection can be coordinated with establishment of the new service arrangement. Mr. Darnell recognizes that the “do not disconnect” instruction is part and parcel of the hot cut, although he only does so in a footnote: “AT&T Illinois requires that Cbeyond designate in the remarks section of grooming orders that the order is for coordinated cut-over and for AT&T Illinois not to disconnect the loop. This note on the order is meant to ensure that no AT&T employee makes a huge mistake and erroneously takes down the whole circuit, disconnects the loop portion of the circuit, takes an active end user customer out of service and thereby requiring a new loop to be designed and installed.” Darnell Affidavit, ¶25 n.12. Mr. Darnell’s assertion that during the grooming process he addresses¹, disconnection does not occur is simply wrong. An AT&T Technician must disconnect the loop from its current

¹ “Cbeyond may later, for network efficiency and economic reasons, choose to change the transport portion of the EEL. That change is called ‘grooming’ of the network. The change of transport typically involves an order to disconnect up to twenty-eight (28) DS1 transport UNEs and ‘groom’ the loops attached to them to a new DS3 transport UNE” (Cbeyond Opening Brief p. 3).

transport equipment assignment and then connect the loop to its new facility specified by Cbeyond. It is simply inaccurate for him to claim that no disconnection takes place. AT&T Witness Mr. Schilling discusses this activity in more detail in his Affidavit.

6. Additionally, the "not to be disconnected" notation provides an indication to the AT&T Illinois circuit design organization to reassign the portion of the existing loop running from the Main Distributing Frame ("MDF") to the customer's premise when the new circuit is designed. In all cases, both the central office technician and the circuit design organization must be involved in the provisioning and design processes so that the end user receives the service he or she requested and so that accurate equipment and transport inventory records can be maintained within the Trunk Integrated Record Keeping System (TIRKS). The work activities associated with TIRKS and the rates associated with them were approved by this Commission in Docket No. 02-0864.

7. In his footnote 52, Mr. Darnell claims that, "Cbeyond disputes the Clear Channel Capability nonrecurring charge imposed on the initial connection of the circuit; however, this disputed initial Clear Channel Capability nonrecurring charge is not included in this complaint. At this time, Cbeyond has not filed a formal complaint against AT&T Illinois for its erroneous billing of CCC nonrecurring charges at the initial establishment of the clear channel DS1 circuit. Included in this formal complaint are only the clear channel capability nonrecurring charges that AT&T Illinois has billed when the transport portion of previously installed DS1 circuit was groomed." (Darnell Affidavit, ¶29, n.52). Mr. Darnell fails to recognize that the default signaling status of a given DS1 facility is not clear channel capability ("CCC" a.k.a Bipolar 8 (with) Zero Substitution ("B8ZS")). Rather, the default signaling status of a given DS1 facility is Alternate Mark Inversion ("AMI"). Thus, when a CLEC orders a facility with CCC, the facility must be modified from AMI to B8ZS to allow CCC. That includes DS1s that are moved from one facility to another. The facility that the DS1 is moved to must be modified for CCC in order for Cbeyond's end user to utilize CCC functionality. Additional information regarding CCC can be found in the Reply Affidavit of AT&T Illinois Witness Ms. Fuentes-Niziolek.

8. Mr. Darnell describes Confidential Exhibit GJD-4 to his affidavit as presenting, for a sample of seven circuits also listed in Confidential Exhibits GJD-1, GJD-2, and GJD-3, the details of his analysis of the circuits' "provisioning, billing and payment history." Darnell Affidavit, ¶¶ 28, 30. Confidential Exhibit GJD-4 is problematic in a number of significant ways, and the Commission should not rely on Mr. Darnell's statements about the exhibit's so-called analysis.

9. Confidential Exhibit GJD-4 has two parts. Besides the cover sheet, Part 1 of the exhibit consists of six pages: a one-page chart listing installation and billing information for seven circuits ("Circuit Chart"), followed by what appears to be excerpts from four LSRs. Besides the cover sheet, Part 2 of the exhibit consists of eight pages that appear to be excerpts from six LSRs. (It appears that Confidential Exhibit GJD-4 does not always include the same excerpted sections from the LSRs. For example, the third LSR excerpt in Part 1 does not include the circuit identification number.) There are handwritten notations on certain LSR pages

referring to specific pages of Confidential Exhibit GJD-1 where other information on the grooming of a particular circuit supposedly can be found.

10. As an initial matter, it is doubtful that the limited number of circuits that Mr. Darnell includes in Confidential Exhibit GJD-4 Parts 1 and 2 is sufficient to provide a meaningful picture of Cbeyond's ordering activities. Elsewhere in his affidavit, Mr. Darnell explains that the dispute involves two types of grooming, and that the circuit identification number for the post-grooming circuit varies depending on the type of grooming involved. That is, when a DS1/DS1 EEL is replaced by a DS1/DS3 EEL, the circuit ID begins with "HCFD." But when the DS1/DS1 EEL is replaced by a DS1 loop and an alternate form of transport (or Cbeyond collocation), the circuit ID begins with "DHDU." Darnell Affidavit, ¶ 23, nn. 10, 11. However, none of the circuits in the Circuit Chart begin with the "DHDU" designation, and thus Confidential Exhibit GJD-4 Parts 1 and 2 present no information about this second category of grooming that, according to Mr. Darnell, represents about 11 percent of the disputed charges. Darnell Affidavit ¶ 23, pp. 13.

11. Moreover, Mr. Darnell's sample is even smaller than the Circuit Chart suggests. For two of the seven circuits listed in the Circuit Chart [*** Begin Confidential End Confidential***], there appear to be no LSR excerpts included in Confidential Exhibit GJD-4.

12. More troubling, I found it impossible to follow most of Confidential Exhibit GJD-4. Aside from the handwritten notations referring to Confidential Exhibit GJD-1, neither Confidential Exhibit GJD-4 nor Mr. Darnell's affidavit makes an effort to provide a walk-through of even a single example of the circuits listed in the Circuit Chart, or to link those circuits to information in Confidential Exhibits GJD-2 or GJD-3. In fact, assuming that the references to Confidential Exhibit GJD-1 were erroneous and should be replaced with a reference to Exhibit A to Cbeyond's complaint, I could only find six of the seven DS1-EELs² in the Circuit Chart mentioned in the pages in Exhibit A to Cbeyond's complaint.

13. Nonetheless, Mr. Darnell asserts that these materials support all the statements he makes in paragraphs 29 and 30 of his affidavit regarding what services Cbeyond ordered, what work AT&T Illinois performed to fulfill those orders, what AT&T Illinois billed Cbeyond for the orders, and what charges Cbeyond did and did not pay. As explained in detail below, given the limited information in Confidential Exhibit GJD-4, and the numerous errors in that limited information, it is impossible to verify Mr. Darnell's analysis or to confirm the vast majority of the statements that he makes in paragraphs 29 and 30.

14. Based on information in Confidential Exhibits GJD-1, GJD-2, GJD-3 and GJD-4, I attempted to confirm the validity of certain statements Mr. Darnell makes in paragraphs 28 and

² DS1-EELs [***Begin Confidential]

[***Begin Confidential] End Confidential ***] were found in Complaint Exhibit A, while DS1-EEL [***Begin Confidential] End Confidential ***] was not.

30 regarding his data analysis. Mr. Darnell tells us that, "Exhibits GJD-1, GJD-2 and GJD-3, ...substantiate and support all of the statements made in this affidavit. To efficiently address and substantiate Cbeyond's claim in this affidavit, I have sampled circuits listed on these exhibits (the same DS1 circuits are in all three exhibits)" (Darnell Affidavit, ¶28). Mr. Darnell also tells us that, "The details of this analysis are provided as Exhibit GJD-4 to this affidavit" (Darnell Affidavit, ¶30). As noted above, I attempted to find the same DS1-EEL within Exhibit A to the Cbeyond Complaint as well as Confidential Exhibits GJD-2, GJD-3 and GJD-4 in order to validate Mr. Darnell's analysis. As noted above, I was able to find six of the seven specific DS1-EELs identified in Confidential Exhibit GJD-4 within Exhibit A to the Cbeyond Complaint. I then attempted to find, in Mr. Darnell's other exhibits, the first DS1-EEL Mr. Darnell mentions in his Confidential Exhibit GJD-4. That DS1-EEL [***Begin Confidential End Confidential ***] is found in Mr. Darnell's Confidential Exhibit GJD-3, but is not found in either of his Confidential Exhibits GJD-2 Part 1 or GJD-2 Part 2. The same is true for the next example found in Mr. Darnell's Exhibit GJD-4 which is for DS1-EEL [***Begin Confidential End Confidential ***].

15. The next DS1-EEL listed in Exhibit GJD-4, [***Begin Confidential End Confidential***], does not appear in Confidential Exhibits GJD-2 Part 1, GJD-2 Part 2 or Confidential Exhibit GJD-3 at all nor, as noted above, does it appear in Exhibit A to the Complaint. In fact, the first DS1-EEL listed in Exhibit GJD-4 that appears in all three Darnell Exhibits is the fourth DS1-EEL which is circuit identifier ("CKTID") [***Begin Confidential End Confidential ***]. From Confidential Exhibit GJD-2 Part 1 we can see that this CKTID was ostensibly part of a project designated [***Begin Confidential End Confidential***]. We can also see that Cbeyond apparently requested that the CKTID be moved from one DS1 facility to a T3 (DS3) facility and that the desired customer due date was 5/8/2007. (See page 9 of Confidential Exhibit GJD-2 Part 1). Unfortunately, Mr. Darnell does not provide the Local Service Request ("LSR") number, the Access Service Request ("ASR") number or the Service Order ("SORD") number in the last column of his Confidential Exhibit GJD-2, making it virtually impossible to know whether the charges Cbeyond disputes on page 45 of 99 of Confidential Exhibit GJD-3 for CKTID [***Begin Confidential End Confidential***] are actually for the work AT&T performed on behalf of Cbeyond for its service request with the desired due date of 5/8/2007. In the end, I found that CKTID [***Begin Confidential HCFD End Confidential***] is the only CKTID listed by Mr. Darnell in his Confidential Exhibit GJD-4 that appears in Confidential Exhibits GJD-2 (either Part) or GJD-3. The three remaining CKTIDs listed in Exhibit GJD-4 [***Begin Confidential End Confidential***] can be found in Confidential Exhibit GJD-3, but not in either Part 1 or Part 2 of Confidential Exhibit GJD-2.

16. Given the data that Mr. Darnell claims are found in all four of his Confidential Exhibits but are actually not there, given the inability to substantiate the charges Cbeyond disputes for even a single example of a CKTID that does appear in three of the four Darnell Exhibits and given that the one complete example Mr. Darnell actually provides cannot be considered a legitimate sample size given the overall number of circuits involved here, the Commission should not lend any credence to the analysis purportedly performed by Mr. Darnell.

While Mr. Darnell may believe that the details are unimportant because of the sheer volume of circuits at issue, his own disorganized exhibits show that the details are very significant and cannot be ignored.

17. In his Affidavit Mr. Darnell states that, "Prior to May of 2006, AT&T Illinois erroneously billed the stand-alone DS1 Loop connection charges when Cbeyond changed the transport portion of a previously installed DS1 loop/DS1 Cross Connection/DS1 Transport combination. However, as shown in Exhibit 1,³ most of the time in early 2006 and late 2005, responding to informal billing disputes submitted by Cbeyond, AT&T Illinois issued credits to Cbeyond for this erroneous billing." (Darnell Affidavit, ¶60). Mr. Darnell is correct that AT&T Illinois provided credits for charges associated with USOC NR9OU. I discuss that issue in more detail below.

18. Exhibit A to the Cbeyond Complaint purportedly identifies instances in which AT&T Illinois credited Cbeyond for some of the charges in question in this Complaint Docket. AT&T Illinois provided those credits based, in part, on an interim product management decision that non-recurring charges ("NRC") would not apply if the ACTL did not change on a given CLEC LSR. AT&T Illinois even offered those terms to Cbeyond in a proposed 2006 Settlement Agreement that Cbeyond never signed. In part, that proposed agreement stated, "In accordance with their ICA, the Parties agree that NRCs shall apply to grooming projects whether or not the loop facility changes, if the ACTL changes...and NRCs shall not apply to such projects when the ACTL does not change" (Parties' proposed settlement agreement ¶2). Subsequently, AT&T Illinois reconsidered the determination that NRCs should not apply if the ACTL did not change, primarily because AT&T Illinois still has work activities to perform on the loop between the MDF and the DSX-1 jack panel, as noted in the Affidavit of AT&T Witness Mr. Schilling. Nevertheless, AT&T Illinois did provide some credits to Cbeyond in anticipation of the parties' proposed Settlement Agreement which, as noted, Cbeyond never signed.

19. Mr. Darnell claims that, "Because Cbeyond always initially orders all DS1 circuits from AT&T Illinois with Clear Channel Capability, the separate \$70.32 Initial and \$8.87 Additional Clear Channel Capability nonrecurring charge never should apply to anything Cbeyond purchases from AT&T Illinois. Therefore, all of the clear channel charges listed in Exhibit 1⁴ were incorrectly billed by AT&T Illinois and Cbeyond should be credited all these clear channel capability charges" (Darnell Affidavit, ¶68). Mr. Darnell's claim in this regard is misleading. When a CLEC submits an LSR for a DS1 EEL, the CLEC includes the appropriate Network Channel and Network Channel Interface ("NC/NCI") codes which determine whether the DS1 is being ordered with Clear Channel Capability ("CCC"). As noted above, the default setting (the facility's normal inventory setting) for a given transport facility is not CCC (B8ZS), but rather AMI. So, if Cbeyond ordered its newly groomed DS1 EEL to have CCC functionality,

³ I am advised that Mr. Darnell's reference to Exhibit 1 is erroneous and should be considered a reference to Exhibit A to Cbeyond's Complaint.

⁴ See footnote 3.

the facility must be modified to recognize CCC signaling. Otherwise, the functionality Cbeyond seeks would not exist on the facility⁵. Thus, on a DS1 EEL grooming LSR (the movement of an existing DS1 EEL from one transport facility to a new transport facility for which CCC was ordered), the \$70.32 charge applies to the first circuit on the LSR and the \$8.87 charge applies to additional circuits on the same order.

20. Mr. Darnell also claims that, "AT&T Illinois' billing of DS1 Loop and Clear Channel Capability service ordering and provisioning nonrecurring charges, when the transport portion of a previously installed UNE DS1 Loop/UNE DS1 cross-connection/UNE DS1 Dedicated Transport combination is changed to multiplexed DS3 unbundled transport, inappropriately increases the cost to utilize high bandwidth transport by a staggering 1,380% over the cost determined by the Commission for this activity" (Darnell Affidavit, ¶81). Hyperbole aside, Mr. Darnell simply misses the point. The normal inventory state of an individual DS1, regardless of its transport type, is not CCC; rather it is AMI. Therefore, if any customer wishes to obtain a facility that requires CCC, the facility must be designed and engineered to provide that capability and the appropriate charges rendered to the cost causer. In this case, that is Cbeyond.

21. While Cbeyond's claims, as presented in Exhibit A to the Complaint, are a bit daunting to wade through, it should be noted that much of the complication stems from the complexity of the disaggregated rate structure mandated by the Commission in its decision in Docket No. 02-0864. The implementation of those Commission approved rates was complicated and, in fact, AT&T Illinois was unable to mechanically bill some of the rates for a period of time after the rates went into effect. That is, while the Commission's disaggregated rates were in effect beginning in March of 2005, AT&T Illinois was unable to implement all of the necessary billing system rates changes required by Docket No. 02-0864 until March of 2006. As a result, AT&T billed certain services at different (but lower) rates than would otherwise be applicable to those services and used different USOCs to bill for some of those services until the permanent USOCs reflecting the mandated rates were available. For example, the temporary rates/USOCs were employed in situations where there were different initial and additional rates for the same service element. The temporary rate was the mandated additional rate for the service, which was less than the mandated initial rate – meaning that in theory the CLEC was undercharged for its initial service ordered, not overcharged for it. AT&T Illinois stopped using these temporary rates/USOCs in mid-March 2006, when the aforementioned billing system upgrade allowed it to bill all of the Commission-mandated rates using newly established USOCs. The USOCs, NR9OU (design & CO connect charge), at a rate of \$200.75, and USOC NR9OW (carrier connect charge), at a rate of \$135.15, were among the temporary USOCs used prior to March of 2006. After March 2006, USOC NR9OW was replaced by six different USOCs including NKCBL (initial DS1 loop provisioning charge) and NKCBN (additional DS1 loop provisioning

⁵ In fact, the facility would not function at all since both ends (the Cbeyond end and the AT&T end) must agree on the signaling type. If Cbeyond's end was set up for CCC (B8ZS) and AT&T Illinois' end was set up for AMI, it is my understanding that the facility would not function electronically.

charge), at rates of \$248.22 and \$135.15, respectively. Similarly, USOC NR9OU stopped being used for billing of services related to EELs.

22. In addition, prior to the March 2006 billing system release, AT&T Illinois realized that it should not be billing CLECs for NR9OU (\$200.75) for the DS1-EEL services in question. AT&T Illinois gave various credits to Cbeyond for the improperly billed NR9OU charges billed prior to mid-March 2006. Confidential Exhibit FCC-1 is a summary spreadsheet that identifies credits given to Cbeyond for the time period of November 2005 through March of 2006. This Confidential Exhibit is organized by month and by USOC, and includes credits given to Cbeyond for USOC NR9OU. These credits were issued sometimes in response to individual claims submitted by Cbeyond and sometimes on a lump-sum basis covering a multi-month period. It is possible that AT&T Illinois did not find all of the erroneously NR9OU (\$200.75) charges billed prior to mid-March 2006, and thus did not credit Cbeyond for those charges. It may also be possible that AT&T Illinois provided multiple credits for NR9OU since it appears that Cbeyond submitted multiple claims for that USOC for the same circuit identifier.

FURTHER AFFIANT SAYETH NOT.

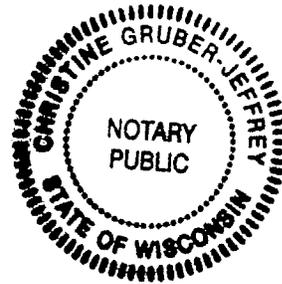
Frederick C. Christensen

Subscribed and sworn to

before me this 21st day

of October, 2010.

My Commission Expires 10-13-2013



November 2005 Credits	December 2005 Credits	January 2006 Credits	February 2006 Credits	March 2006 Credits	Total Five Month Credits Given To Cbeyond
***	Credit Previously Provided	***	***	***	
***	***	***	***	***	
***	***	***	***	***	
***	***	***	***	***	

				Total NR9OR Credits	***
				Total NR9OU Credits	***
				Total ORCMX Credits	***