

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Cbeyond Communications, LLC)
)
-vs-)
)
Illinois Bell Telephone Company d/b/a)
AT&T Illinois)
)
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

**CBEYOND COMMUNICATIONS, LLC’S MOTION
TO REOPEN THE RECORD FOR THE LIMITED PURPOSE OF FILING
THE FIRST AMENDED COMPLAINT *INSTANTER***

Cbeyond Communications, LLC (“Cbeyond”), pursuant Section 200.870 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code Part 200.870, respectfully requests that the Administrative Law Judge (“ALJ”) reopen the record for the limited purpose of permitting Cbeyond to file *instanter* the First Amended Complaint which is attached hereto as Exhibit 1, for which leave was granted on February 23, 2011. In support thereof Cbeyond states as follows:

1. On January 25, 2011, Cbeyond petitioned the ALJ for leave to file an amended complaint to include references to the interconnection agreement (“ICA”) and to include statutory sections relating to AT&T’s unjust and discriminatory practices. On February 18, 2011 Cbeyond included a redlined version of the proposed amendments to the complaint as Exhibit A to its Reply In Support Of Its Motion To Amend the complaint.

2. On February 23, 2011, the ALJ granted Cbeyond’s Motion To Amend its vomplaint in part. *See* February 23, 2010 Notice Of Administrative Law Judge’s Ruling (the

“February 23, 2011 Order”). Specifically the ALJ’s Order stated that “Cbeyond is granted permission to amend its complaint in order to specify the portion of the ICA that it believes AT&T has violated.”

3. On March 15, 2011, the ALJ marked this action “Heard and Taken.” *See* March 15, 2010 Notice Of Administrative Law Judge’s Ruling (the “March 15, 2011 Order”).

4. Pursuant to Section 200.870 of the Commission’s Rules of Practice, 83 Ill. Admin. Code Part 200.870, Cbeyond may motion the ALJ to hold additional hearings, stating the reasons for the motion, including any material changes of fact or of law. *See, e.g., Illinois Commerce Commission v. Commonwealth Edison Company*, 1995 WL 45967, Docket No. 90-0448 (I.C.C. Jan. 5, 1995).

5. Cbeyond respectfully requests that the ALJ reopen the record for the limited purpose of filing its First Amended Complaint. The ALJ’s February 23, 2011 Order permits Cbeyond to amend its complaint to add references to the interconnection agreement.

6. Cbeyond Communications, LLC’s First Amended Complaint is attached hereto as Exhibit 1. This version should be entered into by the clerk upon the granting of this motion.

7. In addition, a modified redline document pinpointing the provisions added to the complaint is attached as Exhibit 2. A comparison of this redline to the earlier redline line version submitted as Exhibit A to Cbeyond’s Reply In Support Of Its Motion To Amend the complaint demonstrates that Cbeyond’s attached amended complaint only includes changes related to the ICA agreement, as ordered by the ALJ in the February 23, 2011 Order.

WHEREFORE, for the above-stated reasons, Cbeyond Communications, LLC respectfully requests the Administrative Law Judge enter an Order reopening the record for the limited purpose of permitting Cbeyond Communications, LLC's to file its First Amended Complaint.

Dated: April 5, 2011

Respectfully Submitted,

CBEYOND COMMUNICATIONS, LLC



Henry T. Kelly
Kelley Drye & Warren LLP
333 West Wacker Drive, 26th Floor
Chicago, IL 60606
(312) 857-2350
HKelly@KelleyDrye.com

Charles (Gene) E. Watkins
Deputy General Counsel
Cbeyond Communications, LLC
320 Interstate N. Parkway, SE, Ste. 300
Atlanta, GA 30339
gene.watkins@cbeyond.net