

2008 AUG 26 AM 8:19

Jeffrey A. Masoner
Vice President
Partner Solutions
Interconnection Services Policy & Planning



1320 N. Court House Rd.
8th Floor, Room 0898
Arlington, VA 22201

Tel.: 703 974-4610
Fax: 703 974-1970
jeffrey.a.masoner@verizon.com

August 4, 2008

William Weber
VP and Corporate Counsel
Cbeyond Communications, LLC
320 Interstate Parkway North, Suite 300
Atlanta, GA 30339

Re: Requested Adoption Under Section 252(i) of the Communications Act

Dear Mr. Weber:

Verizon Northwest Inc. ("Verizon"), a Washington corporation, with principal place of business at 1800 41st Street, Everett, WA 98201, has received correspondence stating that Cbeyond Communications, LLC ("Cbeyond"), a Delaware limited liability company, with principal place of business at 320 Interstate Parkway North, Atlanta, Georgia 30339 wishes, pursuant to Section 252(i) of the Communications Act, to adopt the terms of the Interconnection Agreement between Ymax Communications Corp. ("Ymax") and Verizon that was approved by the Washington Utilities & Transportation Commission (the "Commission") as an effective agreement in the State of Washington, as such agreement exists on the date hereof (including, without limitation, Amendment 1 thereto) after giving effect to operation of law (the "Terms"). I understand Cbeyond has a copy of the Terms. Please note the following with respect to Cbeyond's adoption of the Terms.

1. By Cbeyond's countersignature on this letter, Cbeyond hereby represents and agrees to the following seven points:
 - A. Cbeyond adopts (and agrees to be bound by) the Terms and, in applying the Terms, agrees that Cbeyond shall be substituted in place of Ymax Communications Corp. and Ymax in the Terms wherever appropriate.
 - B. For the avoidance of any doubt, adoption of the Terms does not include adoption of any provision imposing an unbundling obligation on Verizon (i) that no longer applies to Verizon under the Report and Order and Order on Remand (FCC 03-

36) released by the Federal Communications Commission ("FCC") on August 21, 2003 in CC Docket Nos. 01-338, 96-98, 98-147 ("Triennial Review Order"), or the Order on Remand in WC Docket No. 04-313 and CC Docket No. 01-338, released by the FCC on February 4, 2005 (the "TRO Remand Order"), or (ii) that is otherwise not required by 47 U.S.C. Section 251(c)(3) or by 47 C.F.R. Part 51.

- C. Notice to Cbeyond and Verizon as may be required or permitted under the Terms shall be provided as follows:

To Cbeyond Communications, LLC:

Attention: William Weber
VP and Corporate Counsel
320 Interstate Parkway North, Suite 300
Atlanta, GA 30339
Telephone Number: (678) 370-2327, Ext.: None
Facsimile Number: (678) 424-2500
Internet Address: william.weber@cbeyond.net

To Verizon:

Director-Negotiations
Verizon Partner Solutions
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Facsimile Number: (972) 719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Deputy General Counsel
Verizon Partner Solutions
1515 N. Court House Road
Suite 500
Arlington, VA 22201
Facsimile: (703) 351-3664

- D. Cbeyond represents and warrants that it is a certified provider of local telecommunications service in the State of Washington, and that its adoption of the Terms will cover services in the State of Washington only.
- E. In the event an interconnection agreement between Verizon and Cbeyond is currently in effect in the State of Washington (the "Original ICA"), this adoption shall be an amendment and restatement of the operating terms and conditions of the Original ICA, and shall replace in their entirety the terms of the Original ICA. This adoption is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to the Original ICA. Any outstanding payment obligations of the parties that were incurred but not fully performed under the Original ICA shall constitute payment obligations of the parties under this adoption.
- F. [Intentionally Left Blank]

- G. Cbeyond's adoption of the Terms shall become effective on August 31, 2008. Verizon shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by Cbeyond as to the points set out in Paragraph One hereof. The term and termination provisions of the Terms shall govern Cbeyond's adoption of the Terms.
2. As the Terms are being adopted by Cbeyond pursuant to Section 252(i) of the Act, Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in the Terms as a result of Cbeyond's adoption of the Terms.
3. Nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commission, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
4. Verizon reserves the right to deny Cbeyond's application of the Terms, in whole or in part, at any time:
- A. when the costs of providing the Terms to Cbeyond are greater than the costs of providing them to Ymax;
 - B. if the provision of the Terms to Cbeyond is not technically feasible; and/or
 - C. to the extent that Verizon otherwise is not required to make the Terms available to Cbeyond under applicable law.
5. For the avoidance of any doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Internet Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.¹ Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Internet Order*, not pursuant to adoption of the Terms.² Moreover, in light of the *FCC Internet Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.³ In fact, the *FCC Internet Order* made clear that carriers may not adopt provisions of

¹ Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ("*FCC Remand Order*") ¶44, remanded, *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *FCC Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. See *WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5 (D.C. Cir. May 3, 2002).

² For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Internet Order* can be viewed at Verizon's Customer Support Website at URL www.verizon.com/wise (select Verizon East Customer Support, Business Resources, Customer Documentation, Resources, Industry Letters, CLEC, May 21, 2001 Order on Remand).

³ See, e.g., 47 C.F.R. Section 51.809(c).

an existing interconnection agreement to the extent that such provisions provide compensation for Internet traffic.⁴

6. Should Cbeyond attempt to apply the Terms in a manner that conflicts with Paragraphs Two through Paragraphs Five above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

7. In the event that a voluntary or involuntary petition has been or is in the future filed against Cbeyond under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding, an "Insolvency Proceeding"), then: (A) all rights of Verizon under such laws, including, without limitation, all rights of Verizon under 11 U.S.C. § 366, shall be preserved, and Cbeyond's adoption of the Terms shall in no way impair such rights of Verizon; and (B) all rights of Cbeyond resulting from Cbeyond's adoption of the Terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Verizon pursuant to 11 U.S.C. § 366.

⁴ *FCC Internet Order* ¶ 82.

SIGNATURE PAGE

Please arrange for a duly authorized representative of Cbeyond to sign this letter in the space provided below and return it to Verizon.

Sincerely,

VERIZON NORTHWEST INC.



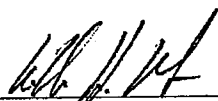
Jeffrey A. Masoner
Vice President
Interconnection Services Policy & Planning

8/18/08

DATE

Reviewed and countersigned as to Paragraph 1:

CBEYOND COMMUNICATIONS, LLC



William Weber
VP and Corporate Counsel

8/12/2008

DATE

AMENDMENT NO. 1
TO THE
INTERCONNECTION AGREEMENT
BETWEEN
VERIZON NORTHWEST INC.
AND
CBEYOND COMMUNICATIONS, LLC

This Amendment No. 1 (this "Amendment") shall be deemed effective on August 31, 2008 (the "Amendment Effective Date"), by and between Verizon Northwest Inc. ("Verizon"), a Washington corporation with offices at 1800 41st Street, Everett, WA 98201 and Cbeyond Communications, LLC ("Cbeyond"), a Delaware limited liability company with offices at 320 Interstate Parkway North, Atlanta, Georgia 30339. (Verizon and Cbeyond may be hereinafter referred to individually as a "Party" and, collectively, as the "Parties"). This Amendment only covers the services addressed herein that Verizon provides in its operating territory in the State of Washington (the "State").

WITNESSETH:

WHEREAS, pursuant to an adoption letter dated August 4, 2008 (the "Adoption Letter"), Cbeyond adopted in the State of Washington, the terms of the interconnection agreement between Ymax Communications Corp. and Verizon that was approved by the Washington Utilities & Transportation Commission (such Adoption Letter and underlying adopted interconnection agreement referred to herein, together with any amendment(s) thereto, collectively being the "Agreement"); and

WHEREAS, on April 18, 2001, in the Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68, 16 FCC Rcd 9151 ("Order"), the Federal Communications Commission affirmed its prior determination that Internet traffic is not subject to Reciprocal Compensation under Section 251(b)(5) of the Act, but exercised its authority under Section 201 of the Act to establish a transitional plan for intercarrier compensation for Internet traffic that is not V/FX Traffic; and

WHEREAS, in accordance with the Order, Verizon has elected to offer an optional Reciprocal Compensation rate plan for traffic subject to Section 251(b)(5) of the Act, under which such traffic exchanged between Verizon and a local exchange carrier or CMRS provider in Verizon's service territory in a given state will be subject to compensation at the same rate applicable to intercarrier compensation for Internet traffic (that is not V/FX Traffic) in Verizon's service territory in that state under the terms of the Order; and

WHEREAS, Cbeyond has requested that the Parties amend the Agreement to address the matters set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendment to Agreement. The Agreement is amended to incorporate the terms and conditions set forth in this Amendment, all of which shall apply to and be a part of the

Agreement (hereinafter referred to as the "Amended Agreement") notwithstanding any other term or condition of the Amended Agreement, a Tariff or a Verizon Statement of Generally Available Terms and Conditions ("SGAT").

1.1 Reciprocal Compensation Rate.

1.1.1 The Reciprocal Compensation Rate that shall apply pursuant to Section 251(b)(5) of the Act and Section 7 of the Interconnection Attachment of the Agreement for the transport and termination of Reciprocal Compensation Traffic shall be the Reciprocal Compensation Rate set out in Exhibit A to this Amendment.

1.1.2 [Intentionally Left Blank].

1.1.3 The Reciprocal Compensation Rate provided for in Section 1.1.1 above shall replace and apply in lieu of the Reciprocal Compensation Rate for the transport and termination of Reciprocal Compensation Traffic set out in the Agreement (including, but not limited to, the Reciprocal Compensation Rate set out in Appendix A to the Pricing Attachment, Section I.A., "Reciprocal Compensation Traffic Termination").

1.1.4 The Reciprocal Compensation Rate provided for in Section 1.1.1 above shall apply to the Parties in an equal and symmetrical manner.

1.1.5 The Reciprocal Compensation Rate (including, but not limited to, per minute of use rates) billed by Cbeyond to Verizon shall not exceed the Reciprocal Compensation Rate (including, but not limited to, per minute of use rates) billed by Verizon to Cbeyond.

1.1.6 The rates provided for in Section 1.1.1 above shall apply until such time as they are replaced prospectively by such new rates as may be approved or allowed into effect from time to time by the Commission pursuant to FCC orders and FCC regulations, or by the FCC, subject to a stay or other order issued by a court of competent jurisdiction.

1.2 Reciprocal Compensation shall not apply to traffic that is not subject to Reciprocal Compensation under Section 251(b)(5) of the Act.

1.3 "Internet Traffic" means any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.

1.4 [Intentionally Left Blank].

1.5 Reciprocal Compensation shall not apply to Internet Traffic, or to any traffic that does not originate and terminate within the same basic exchange area as defined by Verizon, based on the actual originating and terminating points of the complete end-to-end communication.

1.6 The Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic shall be governed by the terms of the Order and other applicable FCC orders and FCC regulations, including, without limitation, the Order in Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from

Application of the ISP Remand Order, 19 FCC Rcd 20179, WC Docket No. 03-171 (2004) (the "Core Order").

- 1.7 The determination of whether traffic is Reciprocal Compensation Traffic or Internet Traffic shall be performed in accordance with Paragraphs 8 and 79, and other applicable provisions, of the Order (including, but not limited to, in accordance with the rebuttable presumption established by the Order that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Internet Traffic, and in accordance with the process established by the Order for rebutting such presumption before the Commission), as modified by the Core Order and other applicable orders and rules of the FCC.

2. Miscellaneous Provisions.

- 2.1 Conflict Between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and conditions of the Agreement to the extent necessary to give effect to the terms and conditions of this Amendment. In the event of a conflict between the terms and conditions of this Amendment and the terms and conditions of the Agreement, this Amendment shall govern; provided, however, that the fact that a term or condition appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.
- 2.2 Capitalization. Capitalized terms used and not otherwise defined herein have the meanings set forth in the Amended Agreement.
- 2.3 Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
- 2.4 Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or condition of this Amendment.
- 2.5 Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in this Amendment and, except to the extent expressly set forth in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect after the Amendment Effective Date. For the avoidance of any doubt, nothing in this Amendment shall be deemed to amend or extend the term of the Amended Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Amended Agreement.
- 2.6 Joint Work Product. The Parties acknowledge that this Amendment is the joint work product of the Parties, that, for convenience, this Amendment has been drafted in final form by Verizon and that, accordingly, in the event of ambiguities in this Amendment, no inferences shall be drawn for or against either Party on the basis of authorship of this Amendment.
- 2.7 Amendments. No amendments or modifications shall be made to this Amendment unless in writing and signed by appropriate representatives of the Parties.

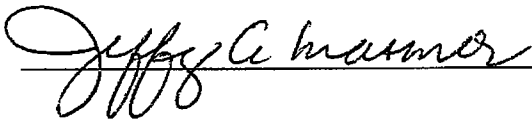
- 2.8 Waivers. A failure or delay of either Party to enforce any of the provisions of this Amendment, or any right or remedy available under this Amendment, or at law or in equity, or to require performance of any of the provisions of this Amendment, or to exercise any option that is provided under this Amendment, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.
- 2.9 Definitions. Notwithstanding any other provision in the Agreement, this Amendment or any Verizon Tariff or SGAT, the term "Tariff," as used in this Amendment, shall mean: (a) Any applicable Federal or state tariff of a Party, as amended from time to time; or (b) any standard agreement or other document, as amended from time to time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service. The term "Tariff" does not include any Verizon Statement of Generally Available Terms (SGAT) which has been approved or is pending approval by the Commission pursuant to Section 252(f) of the Act.
- 2.10 No Arbitrage. Cbeyond represents and warrants that as of the Amendment Effective Date, and covenants that so long as this Amendment and the Agreement remain in effect, neither Cbeyond, nor any competitive local exchange carrier controlled by or under common control with Cbeyond, shall exchange with Verizon, or any incumbent local exchange carrier controlled by or under common control with Verizon, Reciprocal Compensation Traffic or Measured Internet Traffic for the State of Washington at any rates other than the rates for such traffic as specified in this Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the Amendment Effective Date.

CBEYOND COMMUNICATIONS, LLC

VERIZON NORTHWEST INC.

By: 

By: 

Printed: William Weber

Printed: Jeffrey A. Masoner

Title: VP and Corporate Counsel

Title: Vice President – Interconnection Services

Date: 8/12/08

Date: 8/18/08

EXHIBIT A

A. SERVICES, FACILITIES, AND ARRANGEMENTS:

Service or Element Description:

Recurring Charges:

Non-Recurring Charge:

I. Reciprocal Compensation Traffic Termination

Reciprocal Compensation Traffic

Amendment Effective
Date and thereafter --
\$0.0007 per minute of
use

Not Applicable
