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June 5, 2007

Ms. Candrea Allen  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

RE: Cbeyond Communications, LLC's -- Response to Staff's 3<sup>rd</sup> set of Data Requests  
Docket No. T-020497A-06-0802

Dear Ms. Allen:

Enclosed please find the response to Staff's 3rd set of data requests to Cbeyond Communications, LLC.

Sincerely,

Michael W. Patten

MWP:mi  
Enclosures  
cc: Docket Control

Arizona Corporation Commission  
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CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S THIRD SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
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Please make certain that each numbered item and each part of the item is answered completely. In order for Staff to continue with its review of this application, the following information must be submitted:

- 3.1 According to the Applicant's response to question (A-11) of the application, the Federal Communications Commission (FCC) has initiated an investigation against Cbeyond. Staff understands that Cbeyond submitted documents relating to the FCC investigation confidentially. Please explain in detail the nature of the information and why Cbeyond believes such information to be confidential and why a protective agreement is necessary.

**RESPONSE:** Cbeyond seeks confidential treatment of the attached documents, because they contain detailed descriptions of Cbeyond's internal decision-making processes and business strategies that Cbeyond would not otherwise make publicly available. For example, the documents describe in significant detail Cbeyond's (1) internal procedures for selecting prospects for marketing campaigns; (2) employment policies and procedures; (3) procedures and processes for protecting proprietary data; and (4) compliance and internal auditing procedures. Also reflected in these documents are candid and detailed discussions with Cbeyond's senior management regarding these policies and procedures. Cbeyond would not release any of these documents in the ordinary course of business, because such release would result in serious competitive harm to Cbeyond.

This is the precisely the kind of information that government agencies treat as proprietary and to which access is granted, if at all, subject to strict protective order requirements. For example, the Federal Communications Commission ("FCC") has treated the exact information sought by the ACC here as proprietary. Indeed, the Freedom of Information Act permits the FCC to prevent any disclosure to the public of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 47 U.S.C. § 552(b)(4). Cbeyond's internal procedures for identifying prospects for marketing campaigns, its employment policies and the other information subject to the instant request clearly qualify as "commercial information" that is privileged and confidential.

Even where the FCC grants access to this kind of information, it does so subject to the strict requirements of a protective order that limits access and use of the documents and information. For example, in its pending review of Qwest's petitions for forbearance from unbundling obligations, the FCC has established two separate protective orders, one for information that

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submitting parties themselves designate as confidential and a second, stricter order, for "highly confidential information."<sup>1</sup> While all of the information subject to the instant request would be eligible for protection under the *Qwest First Protective Order* because Cbeyond has itself treated this information as confidential, some of the documents and information, such as those pertaining to "marketing strategies," would also be eligible for protection under the *Qwest Second Protective Order*. In all events, the information would and should be disclosed subject to a protective order "to facilitate and expedite the review of confidential information submitted by parties to th[e] proceeding, including privileged and confidential information, such as trade secrets or financial information."<sup>2</sup> There is no reason to treat the information subject to the instant request differently.

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<sup>1</sup> See, e.g., *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, First Protective Order*, WC Docket No. 07-97, DA 07-2292 (rel. Jun. 1, 2007) ("*Qwest First Protective Order*"); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, Second Protective Order*, WC Docket No. 07-97, DA 07-2293 (rel. Jun. 1, 2007) ("*Qwest Second Protective Order*").

<sup>2</sup> *Qwest First Protective Order* ¶ 1.