

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

QWEST CORPORATION

Petition for Commission Approval of
2007 Additions to Non-Impaired Wire
Center List

DOCKET NO. UT-073033

QWEST'S RESPONSE TO THE
PETITION TO INTERVENE OF
CBEYOND

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COMMISSION

- 1 On April 4, 2008, Cbeyond Communications LLC (“Cbeyond”) filed with the Washington Utilities and Transportation Commission (“Commission”) a Petition to Intervene in this proceeding.
- 2 On April 7, 2008, the Commission determined that responses to the petition, permitted under WAC 480-07-355, should be filed prior to the prehearing conference on April 17, 2008, and established a deadline of April 11, 2008 for such responses. Accordingly, Qwest Corporation hereby files its response in opposition to the petition to intervene.
- 3 Based on available information, Qwest opposes Cbeyond’s petition on the basis that it does not comply with the requirement for a proper petition to intervene and that it does not state a sufficient interest in the proceeding to be granted intervention.
- 4 WAC 480-70-355(1)(c) requires that a petition to intervene must disclose, among other things, the petitioner's interest in the proceeding, and the petitioner's position(s) with respect to the

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matters in controversy. WAC 480-07-355(4) provides that the Commission may dismiss an intervenor from a proceeding if the Commission determines at any time that the intervenor has no substantial interest in the proceeding, or that the public interest will not be served by the intervenor's continued participation. Read together, these provisions may reasonably be interpreted to require that the petition show, at the outset, that it has a substantial interest in the proceedings.

5 Cbeyond’s petition fails in two material respects. First, Cbeyond has not stated its position with regard to the matters in controversy as required by WAC 480-07-355(1)(c)(iii). Second, Cbeyond has not stated a substantial interest in this proceeding. The Commission should therefore deny Cbeyond’s petition.

6 The rule is clear that a petition must disclose the petitioner’s position with regard to the matters in controversy. WAC 480-07-355(1)(c)(iii). In this case, the matters in controversy are extremely limited, dealing only with the question of whether Qwest meets the threshold for a non-impairment designation in the following wire centers:

STATE	WIRE CENTER	CLL18	TIER	NO IMPAIREMENT FOR
WA	Bellevue Glencourt	BLLVWAGL	Tier 1	DS1 and DS3 Transport; DF
	Orchards	ORCHWA01	Tier 2	DS3 Transport & DF
	Spokane Walnut	SPKNWAWA	Tier 2	DS3 Transport & DF

7 Cbeyond must state its position with regard to these issues, or Qwest cannot fairly assess what position it should take on Cbeyond’s petition to intervene. Further, it is important to know Cbeyond’s position on these issues to test Cbeyond’s assertion that it will not broaden the scope of issues to be addressed in this docket. For example, the Commission has already ruled on what Qwest is required to provide and to show in terms of the business-line-counts necessary to meet the non-impairment threshold. If Cbeyond wishes to challenge that

standard, the parties and the Commission are entitled to know that now, and under WAC 480-07-355(1)(c)(iv) Cbeyond is required to provide information in support of its desire to broaden the issues.

8 The rule also requires that Cbeyond state a substantial interest in the proceeding. Based on the information supplied in the petition, Qwest does not believe that Cbeyond has anything more than a speculative interest in the proceeding. Cbeyond does not yet have any customers in Washington, is not operating in any wire centers, impaired or non-impaired, and has not provided any information from which to conclude that there is even a reasonable likelihood that its business plans or market entry will be even remotely impacted by a decision regarding the three wire centers at issue. Indeed, Cbeyond says nothing more than that it “may” soon compete in Washington and that the rates in these wire centers “could” affect its ability to compete.

9 Thus, while Cbeyond arguably has some superficial or speculative interest in this docket, that interest does not rise to the level of “substantial” as required by the rule.

DATED this 11th day of April, 2008.

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