

[Service Date: June 17, 2010]

**BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

QWEST COMMUNICATIONS
INTERNATIONAL INC. AND
CENTURYTEL, INC.

For Approval of Indirect Transfer of Control of
Qwest Corporation, Qwest Communications
Company LLC, and Qwest LD Corp.

Docket No. UT-100820

**CBEYOND'S MOTION FOR LEAVE
TO REPLY**

Cbeyond Communications LLC ("Cbeyond") hereby respectfully requests leave to respond to Qwest's and CenturyTel's Objection to Cbeyond's Late-Filed Petition to Intervene in this proceeding. Qwest and CenturyTel (the "Joint Applicants") have submitted a number of arguments contending that Cbeyond either had notice or should have been aware of the prehearing conference and the deadline for filing a timely petition to intervene. These arguments are inaccurate or misleading. Accordingly, Cbeyond request leave to correct these misrepresentations.

ARGUMENT

I. THE COMMISSION SHOULD PERMIT CBEYOND TO REPLY TO THE JOINT APPLICANTS' OPPOSITION IN ORDER TO REFUTE MISSTATEMENTS ABOUT THE NOTICE CBEYOND HAD OF THE PREHEARING CONFERENCE IN THIS CASE

1. In their opposition to Cbeyond's petition Qwest and Century Tel ("the Joint Applicants") argue that Cbeyond knew or should have known of the date of the prehearing conference (and

the deadline for submitting a timely petition to intervene) because (1) ten other entities, represented by various in-house and outside counsel, were all able to ascertain the date of the Washington prehearing conference and submit petitions to intervene prior to the date of the prehearing conference, (2) Cbeyond's outside counsel in this case also represents another party that had submitted a timely petition to intervene, and (3) there has been extensive publicity surrounding the merger announcement. These arguments are inaccurate and misleading. They ignore the fact that Cbeyond, as a new CLEC in Washington, was not on the Commission's master service list used by the Records Center and was not mailed the notice of the prehearing conference. They also ignore the facts that (1) Cbeyond did not become aware of the prehearing conference until after it had occurred, (2) while it expeditiously sought to retain outside counsel to represent it once it did become aware of the prehearing conference, it did not communicate about this case with him prior to that time, and (3) the notice periods provided were significantly shortened.

2. Cbeyond has a substantial interest in this proceeding, and its intervention would not prejudice any party. It would be a failure of due process to deny Cbeyond's petition to intervene because that petition was not filed by the date of the prehearing conference.

CONCLUSION

3. For these reasons, the Commission should permit Cbeyond to reply to the misleading arguments of the Joint Applicants. The proposed Response is appended hereto as Attachment A.

DATED this 17th day of June, 2010.

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By: 

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ATTACHMENT A

[Service Date: June 10, 2010]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of

QWEST COMMUNICATIONS
INTERNATIONAL INC. AND
CENTURYTEL, INC.

For Approval of Indirect Transfer of Control of
Qwest Corporation, Qwest Communications
Company LLC, and Qwest LD Corp.

DOCKET NO. UT-100820

REPLY IN SUPPORT OF LATE-FILED
PETITION OF CBEYOND
COMMUNICATIONS LLC TO
INTERVENE

Cbeyond Communications LLC (“Cbeyond”) hereby replies to Qwest’s and CenturyTel’s Joint Opposition to the Late-Filed Petition of Cbeyond Communications LLC to Intervene in the above-captioned docket.

1. In support of its petition to intervene, Cbeyond stated that it has good cause for late intervention because it did not become aware of the initial prehearing conference until after the prehearing conference had already occurred. In fact, Cbeyond was not included on the master service list for receiving notice of the prehearing conference in this case, and the Commission’s Record Center did not mail notice of the prehearing conference to anyone at Cbeyond. Cbeyond was first added to the service list on June 10, 2010, the date that it filed its late-filed petition to intervene. As stated in Cbeyond’s petition, Cbeyond first learned of the

initial prehearing conference, which was set on less than statutory notice, from counsel for one of the other parties on Friday, June 4, 2010. Cbeyond then expeditiously attempted to contact Arthur A. Butler to ask if he could serve as Cbeyond's local counsel in this proceeding and file a petition to intervene on Cbeyond's behalf; however, Mr. Butler was out of the state on business until Wednesday, June 10. Upon returning he promptly filed the petition.

2. In their opposition to Cbeyond's petition Qwest and Century Tel ("the Joint Applicants") argue that ten other entities, represented by various in-house and outside counsel, were all able to ascertain the date of the Washington prehearing conference and submit petitions to intervene prior to the date of the prehearing conference. But that simply reflects the fact that those entities were on the Commission's service list and were mailed copies of the notice of prehearing conference. As noted above, Cbeyond, as a new CLEC in Washington, was not on that list and was not mailed the notice.

3. The Joint Applicants also argue that Cbeyond's outside counsel in this case also represents one of the other timely intervenors, Level 3, suggesting that somehow his knowledge of the prehearing conference should be imputed to Cbeyond. However, as noted above and in Cbeyond's petition, Cbeyond did not contact Mr. Butler about representing Cbeyond in this proceeding and seeking to intervene on its behalf until after it first learned of the prehearing conference from one of the counsel for other parties; that was after the prehearing conference had already occurred. Cbeyond had had no prior communication with Mr. Butler about this case prior to that time.

4. Finally, the Joint Applicants argue that, in light of the significant publicity surrounding the merger announcement, Cbeyond should have been aware of the Washington proceeding. It should be noted that Washington was the first state in which the Joint Applicants filed an application for approval of their proposed merger. Also, the prehearing conference in this case was scheduled on very short notice. The application was filed on Thursday, May 13, 2010. The notice of the prehearing conference was mailed four calendar days later, on Monday,

May 17. The prehearing conference was scheduled for Tuesday, June 1, 2010, just 14 days later.

5. Given the shortness of the notice periods provided in this case and, more importantly, the fact that Cbeyond was not even on the service list and not mailed notice of the prehearing conference, it would be a failure of due process to deny its petition to intervene because that petition was not filed by the date of the prehearing conference.

6. As noted in Cbeyond's petition, no party will be prejudiced by granting late intervention to Cbeyond. At this point the case has just begun, and Cbeyond will not broaden the issues in the case. Moreover, the Joint Applicants do not dispute the fact that Cbeyond has stated a substantial interest in the proceeding.

WHEREFORE, Cbeyond requests leave to intervene late as a party to this proceeding, with a right to discovery, to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by counsel on brief and at oral argument.

RESPECTFULLY SUBMITTED this 17th day of June 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of June, 2010, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

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I hereby certify that I have this 17th day of June, 2010, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of June, 2010, at Seattle, Washington.


