

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET UT-100820
)	
QWEST COMMUNICATIONS)	ORDER 04
INTERNATIONAL INC. AND)	
CENTURYTEL, INC.)	ORDER GRANTING LATE-FILED
)	PETITIONS TO INTERVENE OF
For Approval of Indirect Transfer of)	CBEYOND COMMUNICATIONS
Control of Qwest Corporation, Qwest)	LLC AND SPRINT NEXTEL
Communications Company LLC, and)	CORPORATION
Qwest LD Corp.)	
)	
.....)	

1 **PROCEEDING.** On May 13, 2010, Qwest Communications International Inc. (QCII) and CenturyTel, Inc. (CenturyLink) filed a joint application for expedited approval with the Washington Utilities and Transportation Commission (Commission) of the indirect transfer of control of QCII’s operating subsidiaries, Qwest Corporation (Qwest Corp.), Qwest LD Corp. (QLDC) and Qwest Communications Company LLC (QCC) (collectively “Qwest”) to CenturyLink.

2 **PETITIONS TO INTERVENE.** On June 10, 2010, the Commission received a late-filed petition to intervene on behalf of Cbeyond Communications LLC (Cbeyond). On June 11, 2010, Sprint Nextel Corporation (Sprint) filed its late-filed petition to intervene with the Commission.

3 Cbeyond and Sprint state that they are competitively classified telecommunications carriers that compete with, and obtain interconnection and related services and facilities from, Qwest.¹ Both Cbeyond and Sprint assert that they have a substantial interest in the proceedings and would like to ensure that the proposed merger will not adversely affect their interconnection agreements and associated rights and abilities.²

¹ Cbeyond’s Petition, ¶ 3. Sprint asserts that it also competes with CenturyLink and obtains interconnection and related services and facilities from both Qwest and CenturyLink subsidiaries. Sprint’s Petition, ¶ 3

² *Id.*, ¶¶ 4 and 5.

With regard to the delay in filing its petition, Cbeyond claims that it learned of the prehearing conference on June 4, 2010, and that the prehearing conference was set on less than statutory notice.³ In addition, Cbeyond alleges that it contacted the office of its Washington counsel who was out of town until June 10, 2010.⁴

4 Sprint contends that its petition was just over one week late, that none of the parties would be prejudiced by its intervention, and that it has not missed any deadlines within the procedural schedule as a result of its untimely petition.⁵ Sprint also states that it is concerned that the merged company will not provide access services at appropriate rates, terms, and conditions.⁶

5 **OPPOSITION TO LATE-FILED PETITIONS.** On June 16, 2010, the Commission issued a notice inviting the existing parties to the proceeding to comment on the late-filed petitions by June 23, 2010. On that same day, Qwest and CenturyLink (collectively, Joint Applicants) filed a joint opposition to the late-filed petitions of Cbeyond and Sprint (Joint Applicants' Opposition).

6 Joint Applicants maintain that the petitions do not establish good cause for their lateness.⁷ The petitions, according to Joint Applicants, merely contend that Sprint and Cbeyond were unaware of the prehearing conference.⁸ Joint Applicants assert that Sprint has even raised issues, such as access charges, which are outside the scope of this merger.⁹

7 Joint Applicants argue that ten other parties were all able to determine the prehearing conference date without problem and submit timely petitions to intervene.¹⁰ Joint

³ *Id.*, ¶ 6.

⁴ *Id.*

⁵ Sprint's Petition, ¶¶ 7, 8.

⁶ *Id.*, ¶ 5.

⁷ Joint Applicants' Opposition, ¶ 7.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, ¶ 9.

Applicants point out that Cbeyond's local counsel also represents one of the other intervenors, Level 3, who filed a timely petition to intervene.¹¹

8 Joint Applicants propose that there has been significant publicity associated with the merger as well as "the long history of the Washington Commission proceedings addressing mergers," that Cbeyond and Sprint have no reason not to have been aware of the Washington proceedings.¹² Joint Applicants acknowledge that Cbeyond is a new carrier to the state of Washington, but argue that Sprint has been a carrier within the state for many years and was even involved in a merger proceeding of its own before the Commission in Docket UT-051291.¹³

9 Further, Joint Applicants contend that, contrary to Sprint's claims, Sprint is not a registered competitive local exchange carrier (CLEC) in the state of Washington.¹⁴ Sprint's intervention, according to Joint Applicants, will also broaden the issues to include an access charge complaint.¹⁵

10 **REPLIES TO OPPOSITION.** Cbeyond filed a motion for leave to reply and reply to Joint Applicants' Opposition on June 17, 2010. Cbeyond counters that it is a new CLEC in the state of Washington and was not on the service list used by the Commission's Records Center.¹⁶ As a result, Cbeyond argues that it did not receive the prehearing conference notice.¹⁷ Cbeyond reiterates that the Commission held the prehearing conference on less than statutory notice.¹⁸

¹¹ *Id.*

¹² *Id.*, ¶ 10.

¹³ *Id.*

¹⁴ *Id.*, ¶ 14. Joint Applicants claim that Sprint Nextel Corporation (formerly Sprint Corporation) d/b/a Sprint PCS, SprintCom, Inc., Sprint Spectrum, L.P., and WirelessCo., L.P., are not listed as registered as CLECs in the state of Washington. Joint Applicants' Opposition, n 2.

¹⁵ *Id.*, ¶ 15.

¹⁶ Cbeyond's Motion, ¶ 1.

¹⁷ *Id.*

¹⁸ Cbeyond's Reply, ¶ 4.

- 11 On June 22, 2010, Sprint filed its motion for leave to reply and reply to Joint Applicant's Opposition. Sprint states that it was not on the Commission's service list which provided notice of the prehearing conference.¹⁹ Sprint contends that the less than statutory notice of the proceeding, coupled with the medical difficulties suffered by its counsel, made it challenging to ascertain the status of the proposed merger over many jurisdictions.²⁰ Sprint also contests Joint Applicants' contention that Sprint is not a registered CLEC in the state of Washington.²¹ Sprint explains that Sprint Communications Company is the registered CLEC in Washington for the corporate parent, Sprint.²²
- 12 In addition, Sprint dismisses Joint Applicants' claim that it will broaden the issues in the case to include access charges.²³ Sprint asserts that the Commission has already granted the interventions of other CLECs that asserted their interests in the proceeding stem from their interconnection agreements with the Joint Applicants.²⁴ Sprint points out that these CLECs voiced concerns over the affect of the proposed merger on their interconnection agreements.²⁵ Sprint maintains that access services are an integral part of the interconnection services contained in its interconnection agreements with Joint Applicants.²⁶ Sprint argues that there is no fundamental difference between the interests of the CLECs previously granted intervention status and its own interests.²⁷

¹⁹ Sprint's Motion, ¶ 1.

²⁰ *Id.*, ¶¶ 2, 3.

²¹ *Id.*, ¶ 4.

²² *Id.*

²³ Sprint's Reply, ¶ 9.

²⁴ *Id.*, ¶ 8.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

- 13 Commission Staff filed its response regarding the late-filed petitions to intervene on June 23, 2010. Staff disagrees with Joint Applicants' argument that Sprint will broaden the issues to include access charges.²⁸ Staff argues that access charges are already at issue within the proceeding.²⁹ Staff recommends that the Commission grant Sprint's intervention since Sprint's participation in the proceeding could assist the Commission in its examination of the proposed merger without broadening the issues.³⁰
- 14 **COMMISSION DECISION.** We consider petitions to intervene according to the standard set forth in WAC 480-07-355. This rule provides that the Commission may grant a petition to intervene if the petitioner discloses a substantial interest in the subject matter of the proceeding or if the petitioner's participation is in the public interest. The Commission may grant a late-filed petition to intervene if a petitioner states good cause including a satisfactory explanation of why the petition is untimely.
- 15 We find that Cbeyond and Sprint have demonstrated good cause for their late-filed petitions. Cbeyond is a new carrier in the state of Washington and may not be cognizant of the Commission's practices and procedures for disseminating industry information and updates. Sprint's counsel experienced a medical issue that prevented her from discovering the Joint Applicants' filing in time. That being said, it is the responsibility of both petitioners, and all litigants before the Commission, to monitor the Commission's website and stay up-to-date with our proceedings.
- 16 As stated in their pleadings, Cbeyond and Sprint appear to have a substantial interest in the matter and have agreed not to broaden the issues or delay the proceedings. We grant Cbeyond's and Sprint's petitions. Further, since they appear to share common interests in the proceeding, we encourage both Cbeyond and Sprint to work with the other intervenor CLECs in presenting their cases so as to minimize resources and time.

²⁸ Staff's Response, ¶ 2.

²⁹ *Id.*, ¶ 4.

³⁰ *Id.*, ¶ 5.

ORDER

17 **THE COMMISSION ORDERS That** the late-filed petitions to intervene of Cbeyond Communications LLC and Sprint Nextel Corporation are granted.

Dated at Olympia, Washington, and effective June 24, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.