

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION C

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Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION)
OF CBEYOND COMMUNICATIONS, LLC) DOCKET NOS. T-20497A-15-0047
TO RESCIND BOND REQUIREMENT)
CONTAINED IN ACC DECISION NO.)
70644.)
)

APPLICATION

Cbeyond Communications, LLC (“Cbeyond” or “Applicant”) requests rescission of the bond/letter of credit requirement contained in Arizona Corporation Commission (“Commission”) Decision No. 70644.

BACKGROUND

Cbeyond was certified to provide facilities-based local exchange and resold long distance telecommunications services in Arizona on December 17, 2008. See Decision 70644. When Cbeyond was certified in 2008, the Commission required Cbeyond to procure and provide to the Commission a performance bond or an irrevocable sight draft letter of credit equal to \$110,000. Cbeyond complied with this request and delivered a \$110,000 letter of credit to the Commission. This letter of credit was renewed and when Cbeyond chose to change banks a letter of credit was also issued by Cbyeond’s new bank, PNC Bank. As the list below of the letters of credit held by

the Commission Business Office indicates, Cbeyond has more than complied with Commission Decision 70644 requiring a \$110,000 bond or letter of credit:

1. **Bank of America:** Original Irrevocable Standby Letter of Credit Number 68032867, dated January 27, 2009 (\$110,000) (This original letter of credit has expired).
2. **Bank of America:** Original Irrevocable Standby Letter of Credit Number 68050264, dated May 17, 2010, still valid and automatically renewing unless cancelled, but not beyond January 1, 2020 (\$110,000).
3. **PNC Bank, National Association:** Irrevocable Standby Letter of Credit 18123019-00-000, Issue Date: December 22, 2014 (\$110,000).

Cbeyond has complied with Commission regulations and orders since becoming certified.

The Commissioner has never drawn against the letter of credit provided by Cbeyond, and no customer complaint brought into question Cbeyond's reliability or conduct as a public service corporation. Cbeyond's certification occurred during a period where it was the general policy of the Commission to require a bond without a specific inquiry into the compliance record of the company. Cbeyond has shown itself to be a reliable and responsive public service corporation. The bond is not needed to ensure Cbeyond's compliance with Commission orders. Cbeyond respectfully asks that the Commission issue an order relieving Cbeyond of its bond obligation.

ANALYSIS

"In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust." A.A.C. R14-2-1105(D). Cbeyond is subject to the Arizona Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115, and must comply with all rules applicable to the provision of intrastate telecommunications services under the terms of its certification. Decision No. 70644, p.3, para. 6(a). While the Commission may require a performance bond prior to certification, for the reasons set forth below continuing this

requirement for Cbeyond, an established competitive telecommunications company, is unnecessary and costly.

1. Excellent Compliance

Cbeyond has been a certified carrier in Arizona since 2008. Through-out this period Cbeyond has complied with the requirements of its certification, including filing annual reports, paying annual assessments for funding the ACC, RUCO (A.R.S. §40-401; §40-401.01) and Arizona universal service. Any complaints against Cbeyond have been resolved and closed with no formal litigation, and without penalty to Cbeyond. Cbeyond is available to respond in a timely and responsive manner to any questions or concerns regarding customer service.

The letters of credit Cbeyond has on file with the Commission have never been drawn upon or requested. Obtaining and maintaining a letter of credit creates a significant expense for Cbeyond and will continue to do so. Moreover, purchasing the letter of credit diverts monies that Cbeyond could use to grow its network or improve its systems.

2. The Bond-LOC Requirement Is Not Necessary or Reasonable.

The Commission “*may* require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers.” A.A.C. R14-2-1105(D) (emphasis added). This rule was invoked by the Commission, as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) (*Eschelon Telecom of Arizona CC&N Application*). At that time, many providers were new to Arizona and few carriers had invested in equipment and facilities. The new competitive local exchange carriers (“CLECs”) did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal

obligations. Bonds were one way for the Commission to protect consumers from companies with little or no assets or few ties to Arizona.

Now, fifteen years later, the market is very different. Indeed, customer deposits and advances are no more at risk with an established, facilities-based CLEC like Cbeyond than they are with Qwest Corporation or Cox, which operate in competition with facilities-based CLECs but carry no performance bonds benefiting the Commission. Cbeyond has established through its operating history that customer deposits are not at risk. Therefore, a letter of credit is not necessary or reasonable.

3. The Commission is Moving Towards Requiring Bond Only If Necessary

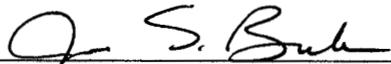
The Commission has issued orders in many proceedings eliminating bond-LOC requirements for competitive carrier requirements. *See e.g.* Broadvox-CLEC (Decision No. 74410), Gila Local Exchange Carrier, Inc. (Docket No. T-03943A-14-0013), tw telecom of arizona llc, and XO Communications Services, LLC (Docket No. T-04302A-14-0115); CenturyLink Communications Company, LLC (T-02811B-14-0211). Likewise, the Commission has approved a carrier certification request without requiring a bond of the applicant. *See* TNCI Operating Company, LLC T-20882A-13-0108. In recommending approval of the TNCI certification application, Staff recommended no bond reflecting an appropriate reaction to changes in the competitive telecom market. Staff has recommended a “case by case” analysis for assessing the need for a bond. This makes sense. The Commission retains full authority to impose a bond/LOC if Staff is concerned about a company’s managerial or technical ability to provide service in Arizona. Companies like Cbeyond, however, that have been providing service for years, show no history of unresolved customer complaints or problems, and have demonstrated their technical and managerial expertise to provide service, should not be required to post a bond or letter of credit.

4. Bond Documents

If this application is approved, Cbeyond requests that the letter of credit documents be returned to the following Cbeyond representative:

Becky Thompson
Director of Treasury
Birch Communications
320 Interstate North Parkway, SE
Suite 300
Atlanta, GA 30339

RESPECTFULLY SUBMITTED this 23rd day of February 2015

By: 
Joan S. Burke, 013687
LAW OFFICE OF JOAN S. BURKE, P.C.
1650 North First Avenue
Phoenix, Arizona 85003
Telephone: (602) 535-0396
Joan@jsburkelaw.com

Attorney for: Cbeyond Communications, LLC.

ORIGINAL and thirteen (13) copies of the foregoing filed this 23rd day of February 2015 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

