

ORIGINAL

OPEN MEETING



MEMORANDUM
Arizona Corporation Commission

DOCKETED

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TO: THE COMMISSION

MAR 31 2015

2015 MAR 31 A 10: 37

FROM: Utilities Division

DOCKETED BY

AZ CORP COMMISS
DOCKET CONTROL

DATE: March 31, 2015

RE: IN THE MATTER OF THE APPLICATION OF CBeyond COMMUNICATIONS, LLC FOR APPROVAL OF A RESCISSION OF THE BOND/LETTER OF CREDIT REQUIREMENT CONTAINED IN DECISION NO. 70644. (DOCKET NO. T-20497A-15-0047)

Introduction

On February 23, 2015, Cbeyond Communications, LLC (“Cbeyond”, “Applicant” or “Company”) submitted an Application requesting rescission of the bond or letter of credit requirement contained in Decision No. 70644.

Background

In Decision No. 70644, dated December 17, 2008, the Arizona Corporation Commission (“Commission”) ordered Cbeyond to procure a performance bond or irrevocable sight draft letter of credit (“ISDLOC”) in the amount of \$110,000, provide the original to the Commission’s Business Office and file copies with Docket Control. On January 29, 2009, Cbeyond docketed a copy of the \$110,000 ISDLOC it had obtained and delivered the original to the Business Office. This original ISDLOC expired on January 1, 2010 but a subsequent and original ISDLOC in the amount of \$110,000 was delivered to the Business Office as a replacement. This latter ISDLOC has not yet expired.

Cbeyond indicated in its Application that as the result of a recent change of banks, the new bank issued another ISDLOC in the amount of \$110,000. This ISDLOC was delivered to the Business Office in January of 2015 putting Cbeyond in the position of having two (2) current ISDLOCs on file with the Commission.

Staff has confirmed the Business Office is in possession of all three (3) original \$110,000 ISDLOCs mentioned here. Cbeyond is requesting the return of these three (3) original ISDLOCs to the contact listed below.

Compliance

According to the Corporations Division, Cbeyond is in good standing. The Compliance Section of the Utilities Division reports that Cbeyond is currently in compliance with the Compliance Database. The Consumer Services Section of the Utilities Division reports there have been no complaints or opinions about Cbeyond during the 2012-2015 time period and the Company is current with its Utilities Annual Report filings.

Staff Recommendations

The Commission has, in appropriate circumstances, relieved telecommunications providers of the obligation to maintain a performance bond or ISDLOC. Staff recommends Cbeyond be relieved of the \$110,000 performance bond or ISDLOC obligation contained in Decision No. 70644.

The Applicant states that in order to release the letters of credit, it is sufficient for the Commission to include in an ordering paragraph language authorizing the Applicant to cancel, rescind, discontinue and be released from the performance bond or ISDLOC requirements set by Decision No. 70644 and authorizing the cancellation of the letters of credit.

Cbeyond indicates in its Application that the three (3) letters of credit should be returned to the following name and address:

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



Steven M. Olea
Director
Utilities Division

SMO:MAC:red\CHH

ORIGINATOR: Matt Connolly

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BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

DOCKET NO. T-20497A-15-0047

DECISION NO. _____

ORDER

IN THE MATTER OF THE APPLICATION
OF CBeyond COMMUNICATIONS, LLC
FOR APPROVAL OF A RESCISSION OF
THE BOND/LETTER OF CREDIT
REQUIREMENT CONTAINED IN
DECISION NO. 70644.

Open Meeting
April 14 and 15, 2015
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 23, 2015, Cbeyond Communications, LLC (“Cbeyond”, “Applicant” or “Company”) submitted an Application requesting rescission of the bond or letter of credit requirement contained in Decision No. 70644.

Background

2. In Decision No. 70644, dated December 17, 2008, the Arizona Corporation Commission (“Commission”) ordered Cbeyond to procure a performance bond or irrevocable sight draft letter of credit (“ISDLOC”) in the amount of \$110,000, provide the original to the Commission’s Business Office and file copies with Docket Control. On January 29, 2009, Cbeyond docketed a copy of the \$110,000 ISDLOC it had obtained and delivered the original to the Business Office. This original ISDLOC expired on January 1, 2010 but a subsequent and original ISDLOC in the amount of \$110,000 was delivered to the Business Office as a replacement. This latter ISDLOC has not yet expired.

1 3. Cbeyond indicated in its Application that as the result of a recent change of banks, the
2 new bank issued another ISDLOC in the amount of \$110,000. This ISDLOC was delivered to the
3 Business Office in January of 2015 putting Cbeyond in the position of having two (2) current
4 ISDLOCs on file with the Commission.

5 4. Staff has confirmed the Business Office is in possession of all three (3) original \$110,000
6 ISDLOCs mentioned here. Cbeyond is requesting the return of these three (3) original ISDLOCs to
7 the contact listed below.

8 **Compliance**

9 5. According to the Commission Corporations Division, Cbeyond is in good standing. The
10 Compliance Section of the Commission Utilities Division reports that Cbeyond is currently in
11 compliance with the Compliance Database. The Consumer Services Section of the Utilities Division
12 reports there have been no complaints or opinions about Cbeyond during the 2012-2015 time period
13 and the Company is current with its Utilities Annual Report filings.

14 **Staff Recommendations**

15 6. The Commission has, in appropriate circumstances, relieved telecommunications
16 providers of the obligation to maintain a performance bond or ISDLOC. Staff recommends Cbeyond
17 be relieved of the \$110,000 performance bond or ISDLOC obligation contained in Decision No.
18 70644.

19 7. The Applicant states that in order to release the letters of credit, it is sufficient for the
20 Commission to include in an ordering paragraph language authorizing the Applicant to cancel, rescind,
21 discontinue and be released from the performance bond or ISDLOC required by Decision No. 70644
22 and authorizing the cancellation of the letters of credit.

23 8. Cbeyond indicates in the Application the three (3) letters of credit should be released
24 and returned to the following name and address:

25 Becky Thompson
26 Directory of Treasury
27 Birch Communications
28 320 Interstate North Parkway, SE
 Atlanta, Georgia 30339

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CONCLUSIONS OF LAW

1. Cbeyond Communications, LLC is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Cbeyond Communications, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated March 31, 2015, concludes that it is in the public interest to approve the Cbeyond Communications, LLC Application as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Application of Cbeyond Communications, LLC to terminate the performance bond or irrevocable sight draft letter of credit requirement contained in Decision No. 70644 be and hereby is approved.

IT IS FURTHER ORDERED that Cbeyond Communications, LLC may cancel, rescind, discontinue and be released from any performance bond, irrevocable sight draft letter of credit or other instrument obtained in compliance with the performance bond or irrevocable sight draft letter of credit requirements set by Decision No. 70644.

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1 IT IS FURTHER ORDERED that any letters of credit on file with the Commission on behalf
2 of Cbeyond Communications, LLC be returned to the following name and address provided by the
3 Applicant:

4 Becky Thompson
5 Directory of Treasury
6 Birch Communications
7 320 Interstate North Parkway, SE
8 Atlanta, Georgia 30339

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

11
12 CHAIRMAN

COMMISSIONER

13
14 COMMISSIONER

COMMISSIONER

COMMISSIONER

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16 IN WITNESS WHEREOF, I, JODI JERICH, Executive
17 Director of the Arizona Corporation Commission, have
18 hereunto, set my hand and caused the official seal of this
19 Commission to be affixed at the Capitol, in the City of
20 Phoenix, this _____ day of _____, 2015.

21 _____
22 JODI JERICH
23 EXECUTIVE DIRECTOR

24 DISSENT: _____

25 DISSENT: _____

26 SMO:MAC:red\CHH
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1 SERVICE LIST FOR: Cbeyond Communications, LLC
2 DOCKET NO. T-20497A-15-0047

3 Ms. Becky Thompson
4 Director of Treasury
5 Birch Communications
6 320 Interstate North Parkway, SE
7 Suite 300
8 Atlanta, Georgia 30339

9 Ms. Joan S. Burke
10 Law Office of Joan S. Burke, P.C.
11 1650 North First Avenue
12 Phoenix, Arizona 85003

13 Mr. Steven M. Olea
14 Director, Utilities Division
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 Ms. Janice M. Alward
19 Chief Counsel, Legal Division
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Ms. Lyn Farmer
24 Chief Administrative Law Judge
25 Arizona Corporation Commission
26 1200 West Washington Street
27 Phoenix, Arizona 85007

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