

William H. Weber  
Chief Administrative Officer  
320 Interstate North Parkway, SE  
Suite 300  
Atlanta, Georgia 30339  
Direct dial: 678.370.2327  
[william.weber@cbeyond.net](mailto:william.weber@cbeyond.net)



October 20, 2008

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Dkt. No. 08-94***

Dear Ms. Dortch:

Cbeyond, Inc. (“Cbeyond”), hereby submits this letter to urge the Commission to promptly approve the above-referenced applications for FCC consent to the transfer of wireless licenses and spectrum leases by Sprint Nextel Corporation and Clearwire Corporation (the “Applicants”) to a newly formed wireless broadband company (“New Clearwire”). New Clearwire will use these licenses and leases to deploy the first nationwide advanced mobile WiMAX network. As discussed herein, the proposed transaction (“Transaction”) will serve the public interest by, among other things, creating a much-needed alternative to incumbent local exchange carriers (“ILECs”) for last-mile connections used to provide integrated voice and data services to small and medium-sized businesses.

The record overwhelmingly shows that the Transaction is in the public interest. Indeed, nearly 100 parties filed comments in support of the Transaction and only a handful of parties filed petitions to deny it. As the Applicants have convincingly demonstrated, the Transaction will result in numerous public interest benefits, many of which the Commission has long sought to promote.<sup>1</sup> Arguably, the most important of these is the creation of a new end-user connection

---

<sup>1</sup> These include establishment of the United States as a global leader in wireless broadband innovation and use of historically underutilized Broadband Radio Service and Educational Broadband Service spectrum. *See, e.g.*, Description of the Transaction and Public Interest Statement, File No. 0003462540, at 25 & 28-30 (amended June 24, 2008) (“Public Interest Statement”); *see also* Comments of Wireless Communications Association International, WT Dkt. No. 08-94, at 4 (filed July 24, 2008) (“WCA Comments”) (explaining that the Transaction will promote “precisely the sort of accelerated broadband deployment that the Commission hoped to encourage by overhauling the 2.5 GHz bandplan [sic]”).

into American homes and businesses.<sup>2</sup> New Clearwire will substantially increase competition in the fixed broadband service market by providing a welcome alternative to incumbent wireline broadband providers.<sup>3</sup> According to the Applicants, New Clearwire's network will deliver broadband services "more than five times faster than today's current wireless services at speeds up to 6 Mbps." *Id.* at 3. In addition, the Applicants have voluntarily committed to allow "unaffiliated firms to purchase access to its WiMAX network on a non-exclusive wholesale basis and resell that service directly to consumers in competition with New Clearwire and other wireline and wireless providers." *Id.* at 21. Thus, the Transaction offers the only realistic possibility of creating an alternative, near-ubiquitous supplier of end-user connections that Cbeyond needs to serve its small and medium-sized business customers.

The prospect that competitors could rely on New Clearwire's end-user connections to serve business customers is significant because, as Cbeyond has explained at length in other proceedings, Cbeyond and other competitive local exchange carriers ("CLECs") have no alternatives to ILECs for local transmission facilities. Indeed, both the FCC and the Government Accountability Office ("GAO") have concluded that ILECs have overwhelming market power over the upstream loop and transport inputs required to serve small, medium, and large business customers.<sup>4</sup> For instance, in a November 2006 report, the GAO found that competitors had deployed transmission facilities to less than five percent of the buildings demanding at least DS-1 level service in the 16 markets studied.<sup>5</sup> More recently, in the *Qwest 272 Sunset Order*, the

---

<sup>2</sup> *Id.* at 18; *see also* Opposition of Google Inc. (to Petition to Deny of AT&T Inc.), WT Dkt. No. 08-94, at 2 (filed Aug. 4, 2008) ("An express and investment-backed goal of New Clearwire is to deliver precisely what the Commission and Congress have been striving for: the emergence of a strong broadband 'third pipe' for the American public."); Comments of Vonage Holdings Corporation, WT Dkt. No. 08-94, at 3-4 (filed Aug. 4, 2008) ("[B]y providing another widely available option for consumers to obtain broadband access, New Clearwire's nationwide WiMax network should spur competition in the provision of broadband service to the home--a market largely controlled by a duopoly of incumbent local exchange carriers and incumbent cable operators.").

<sup>3</sup> For example, as the Applicants have stated, New Clearwire will compete vigorously against Verizon Wireless' and AT&T's forthcoming "fourth generation" or "4G" offerings. *See* Public Interest Statement at 17 & n.35.

<sup>4</sup> *See, e.g.,* Opposition of Time Warner Telecom Inc., Cbeyond, Inc. and Eschelon Telecom, Inc., *In re Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Dkt. No. 07-97, at 14-17 (filed Aug. 31, 2007) ("Cbeyond et al. Opposition to Qwest 4-MSA Petition"); *see also* Opposition of Time Warner Telecom Inc., Cbeyond, Inc., and One Communications Corp., *In re Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Statistical Areas*, WC Dkt. No. 06-172, at 15-17 (filed Mar. 5, 2007).

<sup>5</sup> *See* Cbeyond et al. Opposition to Qwest 4-MSA Petition at 15 & n.8 (citing GAO Report to the Chairman, Committee on Government Reform, House of Representatives, *FCC Needs to*

Commission held that Qwest possessed exclusionary market power over essential local transmission facilities.<sup>6</sup>

It is also uneconomic for competitors such as Cbeyond to deploy their own loop facilities. There are numerous obstacles associated with self-deployment, including costs associated with obtaining access on reasonable terms and conditions to poles, ducts, conduits, rights-of-way, and commercial buildings, and a customer's willingness to enter into a long-term contract.<sup>7</sup> As the Commission found in the *TRRO*, it is "rarely if ever economic" for a reasonably efficient competitor to construct DS-1 loops in the vast majority of wire centers in the country.<sup>8</sup> For this reason, Cbeyond relies exclusively on DS-1 unbundled loops or enhanced extended links purchased from ILECs to serve its small and medium-sized business customers cost-effectively.

Finally, cable operators are not a viable alternative source of wholesale inputs such as DS-1 loops and DS-1 interoffice transport. To begin with, as the FCC found in the *6-MSA Order*, most cable operators' networks "are primarily in residential areas,"<sup>9</sup> not business districts. Furthermore, the FCC found in the *4-MSA Order* that there were no "significant alternative sources"—including cable operators—of wholesale inputs for carriers in the markets at issue.<sup>10</sup>

With a WiMAX network that will deliver broadband services at significantly higher speeds than that of a DS-1 circuit and a non-exclusive wholesale access business model, New Clearwire has the potential to be a "significant alternative source" of wholesale loops and

---

*Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80, at 22 (Nov. 2006)).

<sup>6</sup> See Cbeyond et al. Opposition to Qwest 4-MSA Petition at 16 & n.11 (citing *In re Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd. 5207, ¶ 47 (rel. Mar. 9, 2007) ("*Qwest 272 Sunset Order*").

<sup>7</sup> See Cbeyond et al. Opposition to Qwest 4-MSA Petition at 18.

<sup>8</sup> See *id.* at 16 (citing *In re Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd. 2533, ¶ 166 (2004) ("*TRRO*").

<sup>9</sup> *In re Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd. 21293, n.116 (2007) ("*6-MSA Order*").

<sup>10</sup> See *In re Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Memorandum Opinion and Order, 23 FCC Rcd. 11729, ¶ 37 & n.137 (2008) ("*4-MSA Order*") ("[W]e are unable to determine on this record that Cox is a significant provider of wholesale enterprise services in the [Phoenix] MSA.").

Marlene H. Dortch

October 20, 2008

Page 4

transport needed to serve business customers. But the Commission must first approve the Transaction in order for this potential to be realized. As the Applicants have explained, capital funding for two separate WiMAX networks was not available *even before* the current financial crisis.<sup>11</sup> Moreover, *only after* they combine their 2.5 GHz spectrum assets and technical and operational expertise will the Applicants receive the multi-billion dollar investment required to successfully build the first nationwide, open-access advanced wireless broadband network.<sup>12</sup>

For the aforementioned reasons, Cbeyond urges the Commission to approve the Transaction without delay.

Respectfully submitted,

/s/ William H. Weber

cc: Best Copy and Printing, Inc. (fcc@bcpiweb.com)  
B. Lynn F. Ratnavale, WTB (lynn.ratnavale@fcc.gov)  
Susan Singer, WTB (susan.singer@fcc.gov)  
Neil Dellar, OGC (neil.dellar@fcc.gov)

---

<sup>11</sup> See Public Interest Statement at 23 & n.44.

<sup>12</sup> See, e.g., *id.* at 2 & 22-25; see also WCA Comments at 4; Comments of IDT Spectrum, LLC, WT Dkt. No. 08-94, at 1 (filed July 24, 2008) (“IDT Spectrum believes that approval of the transaction will advance the public interest by both enabling substantial funding for wireless broadband services to be rapidly deployed nationwide and reducing build-out costs through volume purchase of network bandwidth and equipment.”).