



PUBLIC NOTICE

Federal Communications Commission
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DA 09-2591
December 14, 2009

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON PETITION FOR EXPEDITED RULEMAKING FILED BY CBeyond, INC.

MAILED

WC Docket No. 09-223

DEC 18 2009

Comments: January 22, 2010

Reply Comments: February 22, 2010

FCC Mail Room

On November 16, 2009, Cbeyond, Inc. (Cbeyond) filed a petition with the Federal Communications Commission (Commission) for expedited rulemaking concerning access by competitive providers to incumbent local exchange carriers' (LECs) fiber loops. Specifically, Cbeyond seeks adoption of rules that would require incumbent LECs to provide unbundled access – pursuant to section 251(c)(3) of the Communications Act of 1934, as amended (Act)¹ -- to packetized bandwidth of hybrid fiber-copper loops, fiber-to-the-home (FTTH) loops and fiber-to-the-curb (FTTC) loops at the same rates that incumbent LECs charge their own retail customers, for the purpose of serving small business customers.²

In its petition, Cbeyond argues, among other things, that the Commission has a “duty to reexamine its policy with respect to unbundling of hybrid and fiber loops in light of changed circumstances,”³ and that it should initiate an expedited rulemaking to determine the extent to which it should review prior deregulatory decisions.⁴ Cbeyond claims that with access to hybrid, FTTH and FTTC loops, as opposed to the limited bandwidth of T-1 circuits, it and other applications providers, can develop and deliver “big business” applications to small businesses.⁵

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-or two-

¹ 47 U.S.C. § 251(c)(3).

² See Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act, WC Docket No. 09-223 (filed Nov. 16, 2009) (Cbeyond Petition).

³ *Id.* at 11 (also claiming that “the available evidence shows that the major premise underlying the Commission's decision—that elimination of unbundling was necessary to remove disincentives to invest in next generation broadband facilities—appears to have been false.”).

⁴ *Id.* at 27.

⁵ *Id.* at 3-4 (arguing that “Efficiency-enhancing applications such as virtualized desktops, hosted digital image and file management, high-resolution video conferencing, broadcast/live video streaming, robust data protection, cloud-based backup, sophisticated video security systems, cloud computing and software as a service are tools that larger businesses use everyday and that small businesses could rely on to implement their business plans and create jobs.”).

§ 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or by e-mail to CPDcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. **PLEASE NOTE:** Through December 24, 2009, the Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. This filing location will be permanently closed after December 24, 2009. The filing hours at both locations are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating

A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail at fcc@bcpiweb.com.

For further information regarding this proceeding, contact Heather Hendrickson, Competition Policy Division, Wireline Competition Bureau, 202-418-7295.

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