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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

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IN RE:)	CHAPTER 11	COMMISSION
)		CLERK
LIGHTYEAR HOLDINGS, INC., ET AL.,)	CASE NO. 02-32257	
)		
DEBTORS.)	JOINTLY ADMINISTERED	
)		
)	HON. DAVID T. STOSBERG	
)		

NOTICE OF (A) SALE AND OPPORTUNITY TO BID, (B) PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) SALE HEARING

PLEASE TAKE NOTICE that, upon the DEBTORS' MOTION FOR ORDER: (A) ESTABLISHING AUCTION PROCEDURES TO SELL SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND TO ASSUME AND ASSIGN CERTAIN OF THE DEBTORS' EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (B) SETTING SALE HEARING DATE; AND (C) APPROVING FORM OF NOTICE dated June 20, 2003 (the "Bid Procedures Motion")¹ filed by LIGHTYEAR COMMUNICATIONS, INC., LIGHTYEAR TELECOMMUNICATIONS LLC, AND LIGHTYEAR COMMUNICATIONS OF VIRGINIA, INC., debtors and debtors possession (collectively, the "Debtors"), a hearing to approve the sale (the "Sale") described below has been scheduled before the Honorable David T. Stosberg, United States Bankruptcy Judge, on October 20, 2003 at 10:00 a.m. (EST) (the "Sale Hearing"), in Courtroom 3 at the United States Bankruptcy Court for the Western District of Kentucky, Louisville Division (the "Court"), 601 West Broadway, Louisville, Kentucky (the "Courtroom").

- AUS _____
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- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC _____
- OTH none

PLEASE TAKE FURTHER NOTICE that the Debtors shall conduct an auction (the

"Auction") at the offices of Frost Brown Todd LLC, 400 West Market Street, 32nd Floor,

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Louisville, KY 40202-3363, commencing at 10:00 a.m. (Eastern Standard Time) on October 14, 2003, pursuant to the following terms and conditions:

1. **PURCHASE AGREEMENT FOR SALE OF PROPERTY.** On July 30, 2003, the Debtors and LY Acquisition LLC, a Kentucky limited liability company ("LY Acquisition"), entered into an Asset Purchase Agreement (the "Purchase Agreement") for the sale (the "Sale") of substantially all of the assets of the Debtors (the "Purchased Assets") and the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases (the "Assumed Contracts and Leases").
2. **SALE OF PROPERTY.** The Debtors seek to sell to LY Acquisition pursuant to the Auction substantially all of the operating assets of the Debtors (the "Purchased Assets"). A complete list of the Purchased Assets is set forth in detail in the Purchase Agreement. The Debtors also seek to assume and assign certain executory contracts and unexpired leases (the "Assumed Contracts and Lease"), which shall be identified by LY Acquisition within ninety (90) days from the date of the Initial Closing.
3. **DISCLAIMER.** **COMPETING BIDS ARE SUBJECT TO THE REQUIREMENTS, LIMITATIONS AND PROCEDURES (THE "BIDDING PROCEDURES") SET FORTH HEREIN, WHICH BIDDING PROCEDURES WERE APPROVED BY ORDER OF THE COURT (THE "BID PROCEDURES ORDER").**
4. **SUBMISSION OF BIDS.** Only "Qualified Bidders" will be permitted to bid for the Purchased Assets and Assumed Contracts. To constitute a Qualified Bidder, no later than three (3) business days prior to the Auction, an individual or entity will be required to: (i) submit a competing bid (a "Competing Bid") for the purchase of the Purchased Assets in writing to (a) counsel for the Debtors at Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald E. Gold; (b) counsel for LY Acquisition at Sawyer &

¹ Capitalized terms used in this Notice shall have the meaning ascribed to them in the Bid Procedures Motion.

Glancy PLLC, 3120 Wall Street, Suite 310, Lexington, Kentucky 40513, Attn: Robert V. Sartin; (c) counsel for U.S. Bank, National Association, and Deutsche Bank AG New York Branch and/or Cayman Islands Branch (the "Banks"), Bingham McCutchen LLP, One State Street, Hartford, Connecticut 06103-3178, Attn: Robert Dombroff and Mark Fucci; and (d) counsel for the Official Committee of Unsecured Creditors of Lightyear Holdings, Inc. (the "Committee"), Fleischman and Walsh LLP, 1400 Sixteenth Avenue, N.W., Washington, D.C. 20036, Attn: Lawrence R. Freedman, (ii) deposit with counsel for the Debtors a good faith earnest money deposit equal to \$2,000,000 (each a "Deposit" and collectively, the "Deposits") on the terms set forth below; (iii) provide the Debtors with evidence that it has the financial ability to pay the balance of the purchase price in cash at closing and obtain the necessary regulatory approval to approve the transaction; and (iv) submit to the Debtors, and each of the parties set forth above, a purchase agreement substantially similar to the Purchase Agreement, marked to show any modifications made to the Purchase Agreement, including the amount of consideration, the name of purchaser, and other conforming changes that must be made to reflect the purchaser and its bid, and such bid must not be subject to due diligence review, board approval, obtaining financing, or the receipt of any non-governmental consents. If such individual or entity is unable to satisfy the Debtors, the Banks, and the Committee prior to the Auction of its ability to close the purchase of the Purchased Assets in accordance with the Purchase Agreement, such individual or entity will not be permitted to bid at the Auction.

5. **TERMS OF THE DEPOSIT** The full amount of the Deposit required hereunder will be payable by cashier's or certified check or wire transfer of immediately available funds and must accompany each bid. The Deposits will be held in escrow in a segregated, interest bearing account at the Louisville, Kentucky branch of U.S. Bank, National Association. Upon the closing of the sale of the Purchased Assets, the Deposit submitted by the successful bidder at the Auction and the Sale Hearing shall be applied toward the Purchase

Price, in accordance with the terms of the Purchase Agreement and the Bid Procedures Order. The Deposit submitted by each unsuccessful bidder at the Auction will be returned to the applicable unsuccessful bidder as soon as reasonably practicable upon the earlier of (a) the closing of the sale of the Purchased Assets to the winning bidder or (b) at such time as such bids are no longer binding pursuant to the Bidding Procedures as approved by this Court or (c) the Initial Closing (as defined below).

6. **NON-CONFORMING BIDS.** Bids that do not conform to the terms of the Purchase Agreement and/or the procedures set forth in the Bid Procedures Motion will not be accepted for bidding at the Auction.
7. **PURCHASE PRICE.** The purchase price (the "Purchase Price") to be paid by LY Acquisition to the Debtors for the Purchased Assets shall be an amount equal to the following: (i) the balance of the DIP Loan Facility² as of the Final Closing (defined below), which for purposes of the Purchase Agreement shall mean all "Obligations" of the Debtors as defined in the DIP Loan Facility; (ii) all chapter 11 administrative expenses of the Debtors owing on the Final Closing; (iii) an amount not to exceed \$300,000 which shall be paid by LY Acquisition to the Debtors solely to fund the conclusion of the Bankruptcy Cases after the Final Closing; (iv) all amounts necessary to cure any defaults under any Assumed Contracts or Leases; (v) any other payments due to be paid by LY Acquisition to the Debtors on either the Initial Closing or the Final Closing (defined below), all as more particularly set forth in the Purchase Agreement and including but not limited to a payment to the Debtors to reimburse for a payment to MCI WorldCom ("WCOM") in an amount equal to \$2.5 million; and (vi) an amount equal to \$500,000 which shall be paid to the Debtors on the Final Closing solely for the benefit of allowed general unsecured claims.

² The "DIP Loan Facility" means the Credit Agreement between the Debtors and U.S. Bank National Association and Deutsche Bank AG New York Branch and/or Cayman Islands Branch (collectively the "Banks") dated as of April 29, 2002, as amended.

8. **INITIAL BID.** Any opening competing bid (a "Competing Bid") from a Qualified Bidder must exceed the Purchase Price by at least \$750,000 cash.
9. **BIDDING INCREMENTS.** Subsequent bidding will be in increments of at least \$200,000 cash; provided, however, that no bid can be of the same amount as any other bid.
10. **JURISDICTION OF COURT.** All bidders are deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to the Auction and Sale and the terms and conditions of the transfer of the Purchased Assets.
11. **APPEARANCE AT AUCTION.** All bidders shall appear in person, or through a duly authorized representative, at the Auction.
12. **SALE AFTER AUCTION.** If the Debtors accept a bid at the Auction in accordance with the preceding procedures, the Debtors will seek the Court's approval of such bid as the highest and best bid at the Sale Hearing. If the Court approves the sale at the Sale Hearing, the Purchased Assets will be sold to the Qualified Bidder submitting the highest and best bid in accordance with the terms of the Purchase Agreement.
13. **EXPENSES REIMBURSEMENT/BREAK-UP FEE.** In consideration of the substantial time and expense to be incurred by LY Acquisition during the due diligence and negotiating process, if a Termination Event (as defined in the Purchase Agreement) occurs after approval of the Bid Procedures Order, other than approval by the Bankruptcy Court of the Sale to a bidder submitting a Competing Bid at the Auction (a "Competing Bidder") or a Termination Event based on a material breach of the Purchase Agreement by LY Acquisition resulting in the failure to consummate the purchase of the Purchased Assets, LY Acquisition shall be entitled to receive an amount from the Debtors equal to its actual and documented reasonable out of pocket expenses incurred in negotiating and documenting the transactions contemplated by the Purchase Agreement, including all reasonable expenses of its professionals and consultants (the "Expense Reimbursement") in an amount not to exceed \$350,000. The Expense Reimbursement shall be (i) paid within five (5)

business days following the Termination Event and (ii) entitled to administrative expense claim status under 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(1).

In the alternative, if the Purchase Agreement is terminated because of the consummation of the Sale to a Competing Bidder, then, in addition to the return of LY Acquisition's Deposit, LY Acquisition shall be entitled to receive from the Debtors a payment in an amount equal to \$500,000 (the "Break-Up Fee"). Such Break-Up Fee shall be paid from the Deposit of the Competing Bidder submitting the highest and best bid, as determined by the Debtors, the Committee, and the Banks, within five (5) business days following the Initial Closing without the requirement of any notice or demand from LY Acquisition. LY Acquisition will not be entitled to a Break-Up Fee in the event the contemplated transactions are not concluded as a result of a breach of the Purchase Agreement by LY Acquisition. In no event will LY Acquisition be entitled to receive both an Expense Reimbursement and a Break-Up Fee.

14. COMPETING BIDDERS' EXPENSES Any Competing Bidders presenting a Competing Bid shall bear their own expenses in connection with the sale of the Purchased Assets, as the case may be, whether or not such sale is ultimately approved.

15. BANKRUPTCY COURT APPROVAL. The Sale contemplated herein is subject to the entry of an order by the Court (i) approving the sale and transfer of the Purchased Assets to the successful bidder, free and clear of any and all mortgages, security interests, liens, encumbrances and other interests of any kind or nature whatsoever to the extent permitted by law (other than permitted liens agreed to by the parties), with all valid liens, claims and encumbrances attaching to the sales proceeds at Closing and (ii) containing a finding that each purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code.

16. CLOSING. The initial closing of the Sale (the "Initial Closing") will take place on the next business day after the order approving the Sale (the "Sale Order") is entered by the Court

and not subject to further stay or appeal. The final closing of the Sale (the "Final Closing") shall be held on the first business day as soon as possible after the successful bidder obtains (a) all approvals and licenses required for the consummation of the transactions contemplated by the Purchase Agreement, or (b) if all such approvals and licenses are not obtained on or before March 24, 2004, the Required Material Regulatory Approvals (as defined in the Purchase Agreement), which day shall not be greater than five (5) business days following said date unless otherwise agreed to in writing by the Sellers, the Buyer, and the Banks.

17. SUCCESSFUL BIDDER DEFAULT. If a successful Qualified Bidder fails to close the purchase in accordance with the terms of the Purchase Agreement by the Initial Closing for any reason, the Debtors, shall: (i) retain (except as otherwise agreed with LY Acquisition), and pay to the Banks, if amounts are still outstanding under the DIP Loan Facility, such bidder's Deposit (but not as liquidated damages), and the Debtors reserve the right to pursue all available remedies, whether legal or equitable, available to it against said party; and (ii) be free to consummate the proposed sale of the Purchased Assets with the next highest and best bidder at the final price bid by such Competing Bidder at the Auction (or, if that Competing Bidder is unable to consummate the purchase of the Assets at that price, the Debtors may consummate the transaction with the next highest and best Competing Bidder, and so forth) without the need for an additional hearing or order of the Court.

18. BIDS BINDING. All bids are irrevocable until the earlier to occur of (i) the Initial Closing of the sale of the Purchased Assets, or (ii) sixty (60) days following the last date of the Auction (as may be adjourned).

19. ADDITIONAL TERMS. Additional terms and conditions, as approved by the Court to the extent necessary, may be imposed and announced at the Auction.

- 20. ADDITIONAL INFORMATION.** Questions regarding these bidding procedures can be directed to counsel for the Debtors, Ronald E. Gold, Esq., FROST BROWN TODD LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, (513) 651-6800.
- 21. ACCESS TO INFORMATION.** The Debtors will provide access to their books and records and, upon reasonable notice, to interested persons for the purpose of conducting due diligence, provided that such persons (i) execute a written confidentiality agreement, including a non-solicitation provision prohibiting the solicitation of the current employees or customers of the Debtors, and (ii) provide evidence acceptable to the Debtors that such person has the present ability to fund a bid to purchase the Purchased Assets. All due diligence of all potential bidders must be completed before the Auction.
- 22. COPIES OF PLEADINGS AND AGREEMENTS.** Interested parties may obtain copies of the Bid Procedures Motion, Bid Procedures Order, the Purchase Agreement, the Bid Procedures Order and other related pleadings and agreements from the following web site: www.fbtexttra.com/LY.
- 23. ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** Pursuant to the Purchase Agreement, LY Acquisition, if the successful bidder at the Auction and Sale Hearing, shall have ninety (90) days from the date of the entry of the Sale Order to designate the Assumed Contracts and Leases that it intends for the Debtors to assume and assign to LY Acquisition, pursuant to section 365 of the Bankruptcy Code. LY Acquisition shall pay all amounts necessary to cure any monetary defaults under the Assumed Contracts and Leases, as required by section 365 of the Bankruptcy Code.
- 24. CURE AMOUNTS; OBJECTIONS.** A schedule of the Debtors' calculation of the amount that the Debtors believe must be paid to cure all defaults under each of their executory contracts and unexpired leases (the "Cure Amounts") will be filed and served upon all parties to the Debtors' executory contracts and unexpired leases within five (5) business days of the date of entry of the Bid Procedures Order. The Cure Amounts scheduled are

deemed to include any actual or pecuniary losses from an existing default, if any, under each executory contract or unexpired lease. Unless a party to an executory contract or unexpired lease files with the Court and serves upon counsel for the Debtors, Ronald E. Gold, Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, an objection to its scheduled Cure Amount **on or before three (3) business days prior to the Sale Hearing**, such party to an executory contract or unexpired lease shall be forever barred from objecting to the Cure Amount, and from asserting any additional cure or other amounts with respect to its executory contract or unexpired lease, and the Debtors will be entitled to rely solely upon the Cure Amounts. Any objections to a scheduled Cure Amount shall be heard at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that all bids submitted in accordance with the preceding requirements will be considered at the Auction upon the terms and conditions of the Bidding Procedures. All parties submitting such bids will be entitled to submit further bids at the Auction in the event that a higher and better offer than that which they initially submitted is received by the Debtors. Subject to the terms and conditions of the Bidding Procedures, the Debtors will seek Court approval of the highest and best bid for the Purchased Assets.

PLEASE TAKE FURTHER NOTICE THAT OBJECTIONS to the relief requested in the Sale Motion must: (a) be in writing and filed with the Court (such as to be received by) the following **on or before October 15, 2003 at 4:00 p.m. (EST)**: (i) counsel for the Debtors, Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald E. Gold; (ii) counsel for LY Acquisition, Sawyer & Glancy PLLC, 3120 Wall Street, Suite 310, Lexington, Kentucky 40513, Attn: Robert V. Sartin; (iii) counsel for U.S. Bank and Deutsche Bank, Bingham McCutchen LLP, One State Street, Hartford, Connecticut 06103-3178, Attn: Robert Dombroff and Mark Fucci; (iv) counsel for the Official Committee of Unsecured Creditors in the Lightyear Holdings, Inc. bankruptcy case, Fleischman and Walsh LLP, 1400 Sixteenth Avenue, N.W., Washington D.C. 20036, Attn: Lawrence R. Freedman; and

(v) the Office of the United States Trustee, Joseph J. Golden, United States Trustee, 512 Gene Snyder Courthouse, 601 West Broadway, Louisville, Kentucky 40202; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; and (c) set forth the names of the objector and the nature and the amount of any claim or interest alleged by such objector against the Debtors' estates or property. All timely filed objections to the Sale Motion must be presented to the Court at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing may be adjourned without further notice, other than an announcement of such adjournment in open court at the Sale Hearing.

Dated: August 18, 2003

Respectfully submitted,

FROST BROWN TODD LLC

By: /s/ Beth A. Buchanan

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**ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION**