

REQUEST TO ESTABLISH DOCKET
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040331-TI
W

Date April 13, 2004 Docket No.

1. Division Name/Staff Name: Competitive Markets & Enforcement/T.Williams

2. OPR: T.Williams

3. OCR:

4. Suggested Docket Title: Acknowledgement of registration as intrastate interexchange telecommunications company effective March 31, 2004, by Lightyear Network Solutions, LLC

5. Suggested Docket Mailing List (attach separate sheet if necessary)

- A. Provide NAMES OR ACRONYMS ONLY if a regulated company.
- B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):

2. Interested persons and their representatives (if any):

6. Check one:

- Documentation is attached.
- Documentation will be provided with recommendation.

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December 12, 2003

BY OVERNIGHT MAIL

Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Joint Application for Approval of Transfer of Assets and Transfer of
Certificates to Provide Interexchange and Local Telecommunications
Service and Related Transactions

Dear Ms. Bayó:

Lightyear Communications, Inc. ("Lightyear"), Lightyear Telecommunications, LLC ("LLC," and collectively, the "Lightyear Companies"), along with Lightyear Network Solutions, LLC ("New Lightyear," and collectively with the Lightyear Companies, "Applicants"), through their undersigned counsel and pursuant to Section 364.33 of the Florida Statutes, FLA. STAT. ANN. § 364.33, and Commission Rules 25-4.005, hereby respectfully request that the Florida Public Service Commission ("Commission") grant authority, to the extent necessary, to permit Applicants to consummate a series of transactions through which the Lightyear Companies will emerge from bankruptcy through the transfer of substantially all of its assets to New Lightyear. Additionally, New Lightyear will engage in a financial transaction whereby it will secure additional operating capital for future operations concurrent with the transfer of the assets from the Lightyear Companies. Immediately after regulatory approval and completion of the transaction, New Lightyear will commence providing service to the current customers of the Lightyear Companies under the name Lightyear Network Solutions, LLC. As described below, because the proposed transaction is part of a larger proceeding conducted under the supervision of the U.S. Bankruptcy Court, it is not anticipated that the transaction will change the rates, terms or conditions of service currently offered by the Lightyear Companies. The Applicants therefore respectfully request that the Commission grant any and all authority necessary to permit the Applicants to consummate the aforementioned transactions.

Since April 29, 2002, the Lightyear Companies have been operating under the protection of

the United States Bankruptcy Code in a case pending in the Bankruptcy Court for the Western District of Kentucky ("Bankruptcy Court"). The transactions described below will allow a reorganization of the Lightyear Companies by transferring substantially all of the assets to New Lightyear, under the control of a new set of investors, with access to the capital required to allow New Lightyear to continue operating after the completion of the reorganization. The transaction will thus ensure that the Lightyear Companies' telecommunications customers will continue to receive services on an uninterrupted basis. Because the proposed transactions will allow New Lightyear to provide high quality services in Florida by allowing the assets of the Lightyear Companies to be transferred to a revitalized set of investors, and resume the earlier growth as a competitor in the Florida marketplace, the proposed transactions serve the public interest. As such, the Applicants have an urgent need to complete the proposed transactions as soon as possible, but in no event later than March 1, 2004.

Applicants have also attached an Application for Alternative Local Exchange Authority for New Lightyear as Attachment 1. In support of this Application, the Applicants state as follows:

I. The Applicants

A. Lightyear Network Solutions, LLC

New Lightyear is a newly created limited liability company formed and existing under the laws of the State of Kentucky with offices located 1901 Eastpoint Parkway, Louisville, Kentucky 40223. New Lightyear is a wholly owned subsidiary of LY Acquisition, LLC ("Acquisition"), a Kentucky limited liability company also located at 1901 Eastpoint Parkway, Louisville, Kentucky 40223.

As demonstrated below, New Lightyear is well qualified managerially, technically and financially to own and control the assets of the Lightyear Companies.

1. Managerial Qualifications

New Lightyear possesses the qualifications necessary to provide competitive telecommunications services throughout Florida.

Mr. Henderson, the current President and Chief Executive Officer of Lightyear Holdings, Inc., the parent of the Lightyear Companies, is also an investor in Acquisition. It is expected that he will have a similar executive position in Acquisition after the completion of this transaction and thus will be active in the day-to-day management of New Lightyear. Mr. Henderson has extensive managerial experience in the telecommunications industry.

The reorganization also contemplates that members of the senior management team responsible for the day-to-day operations of the Lightyear Companies will remain employed by New Lightyear, as more fully described below. Thus, New Lightyear's acquisition of the assets of the Lightyear Companies will bring together the experienced management team already in place at the Lightyear Companies with the new investment capital being brought in by the investors of New Lightyear. Mr. Henderson's experience owning, managing, developing and growing telecommunications and other domestic and global businesses will remain. As much of the existing leadership of the Lightyear Companies will serve in similar positions in New

Lightyear or Acquisition, the management team is well qualified to manage, operate and expand New Lightyear as a telecommunications carrier. Biographies of the New Lightyear management are attached as **Exhibit A**.

2. Technical Qualifications

New Lightyear possesses the technical expertise to operate the assets of the Lightyear Companies. As described above, Mr. Henderson, the CEO of Lightyear Holdings, Inc. holds ownership and managerial interests in Acquisition.

In managing the technical operations of New Lightyear, Mr. Henderson will draw upon the skills of the Lightyear Companies' existing team of technical experts. Biographies of key technical personnel are included in **Exhibit A**.

New Lightyear is technically qualified to continue providing the telecommunications services currently provided by the Lightyear Companies and expanding such offerings in the future.

3. Financial Qualifications

New Lightyear, through the available assets of Acquisition has substantial financial wherewithal and can satisfy the Commission's requirements for certification. Financial information for Acquisition is provided in **Exhibit B**.

Pursuant to FL ST § 366.093 and FPSC Rules of Practice and Procedure 25-22.006, Applicants respectfully request confidential treatment of the financial information attached as **Exhibit B** and submitted under protective seal. The financial information contained in **Exhibit B** is confidential and proprietary, and because Applicants are privately-held companies, this information is not available to the public. Moreover, Applicants' competitors in the telecommunications industry would obtain significant economic benefit from this information, which outlines Applicants' projected budget, expenditures, and revenues and which would place Applicants at a competitive disadvantage in the telecommunications marketplace. Therefore, Applicant respectfully requests that the Commission protect **Exhibit B** and not release them to the public without Applicants' consent.

B. Lightyear Communications, Inc.

Lightyear is a privately held corporation organized and existing under the laws of the State of Kentucky with principal offices located at 1901 Eastpoint Parkway, Louisville, Kentucky 40223. Lightyear is a wholly owned subsidiary of Lightyear Holdings, Inc., a privately held corporation.

Lightyear is authorized by the Commission to provide telecommunications services in Florida as a facilities-based interexchange and local exchange carrier pursuant to Order No. PSC-93-1651-FOF-TI issued on November 29, 1993; Docket No. 98-1225-TX and Order No. PSC-98-1696-FOF-TX issued on December 15, 1998; and Docket No. 98-1313-TX and Order No. PSC-98-1696-FOF-TX issued on January 6, 1999. In Florida, Lightyear currently has approximately 6,276 long distance customers and 1,702 local customers.

C. Lightyear Telecommunications, LLC

LLC is a privately held limited liability company organized and existing under the laws of the State of Kentucky with principal offices also located at 1901 Eastpoint Parkway, Louisville, Kentucky 40223. LLC is also wholly owned subsidiary of Lightyear Holdings, Inc., a privately held corporation.

LLC is authorized by the Commission to provide telecommunications services in Florida as an interexchange carrier pursuant to Certificate No. 3960 issued on January 10, 1995. LLC currently has no customers in Florida.

II. Contacts

Questions or inquiries concerning this Application may be directed to the following counsel for the Applicants:

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III. Description of the Transactions

Applicants propose to complete a series of transactions ("Transactions") whereby New Lightyear will acquire substantially all of the assets of Lightyear and LLC, and thus become the provider of telecommunications services to current customers of the Lightyear Companies.

The sale of assets has been approved pursuant to an auction conducted under the supervision of the U.S. Bankruptcy Court for the Western District of Kentucky on October 28, 2003. Pursuant

to the terms of the Asset Purchase Agreement executed by Acquisition and the Lightyear Companies, Acquisition agreed to an estimated purchase price of \$33.5 million through a combination of cash payment and debt assumption of the debtors to satisfy the creditors of the Lightyear Companies. At the time of closing, the assets of the Lightyear Companies will be transferred to Acquisition and then immediately transferred to New Lightyear. After the transfer of assets to New Lightyear, New Lightyear will operate as a certificated carrier in Florida, and will provide telecommunications service to all current Lightyear and LLC customers. New Lightyear will continue to conduct its operations in substantially the same manner in which those operations are currently conducted by the Lightyear Companies. Immediately after the Transactions are completed, current customers of the Lightyear Companies will continue to receive service under the same rates, terms and conditions that currently apply to their services. As a result, the proposed asset sale will be virtually transparent to customers in terms of the services that they receive.¹

In addition, it is expected that Acquisition will be entering into a variety of financing arrangements at the time of consummating the aforementioned asset purchase. While the details of this transaction have not yet been finalized, this financing will involve Acquisition receiving a bank loan of approximately 14 million dollars, secured by a guarantee of the assets of New Lightyear, including the newly acquired assets from the Lightyear Companies. This transaction will occur simultaneously with New Lightyear's becoming a certificated telecommunications carrier in Florida, and thus may not technically require the approval of the Commission under Florida Statutes. Nonetheless, the Applicants provide this information in the interest of completely and accurately describing the Transactions. To the extent that the Commission believes this portion of the Transactions requires approval, the Applicants hereby request such approval.

The proposed Transactions are also not expected to materially change the Lightyear Companies' current management team which is expected to oversee New Lightyear's operations after the completion of the Transactions.

IV. PUBLIC INTEREST CONSIDERATIONS

Applicants respectfully submit that the proposed Transactions serve the public interest. In particular, Applicants submit that (1) New Lightyear holds the managerial, technical, and financial qualifications to acquire the assets of the Lightyear Companies; (2) the Transactions will benefit competition in the Florida telecommunications market by enabling the Lightyear Companies to resume its growth as an effective competitor in the State; and (3) the Transactions will assure that there is no disruption of service and will be virtually transparent to existing customers of the Lightyear Companies.

As demonstrated above, New Lightyear is well qualified, managerially, technically and financially, to acquire the assets of the Lightyear Companies. The above qualifications considered, approval of the transactions and transfer of the assets of the Lightyear Companies to New Lightyear serves the public interest.

¹ An organizational chart illustrating before and after the Transactions is provided as Exhibit C.

The Lightyear Companies' current financial position has effectively precluded it from growing as a competitor in the telecommunications market. As a practical matter, although no services to customers have been discontinued or interrupted as a result of the Lightyear Companies' bankruptcy, the Lightyear Companies have not been able to compete effectively for new customers or expand its business operations during this period. Moreover, because some of its competitors have capitalized on the uncertainty inherent in bankruptcy, the Lightyear Companies have also seen an erosion in its customer base during this time.

The Transactions will further the public interest by fostering competition. The completion of the proposed Transactions will remove the financial and operational factors that currently constrain the Lightyear Companies, thereby allowing New Lightyear to compete effectively in the Florida telecommunications market and continue to offer alternative high-quality, competitively priced telecommunications service to Florida customers. As a result, the proposed Transactions are expected to increase competition in Florida and provide Florida customers a stronger alternative to incumbent and other competitive local and long distance service providers.

Existing customers, in particular, will realize significant public interest benefits from the proposed Transactions. The proposed Transactions will allow the Lightyear Companies to avoid liquidation and ensure that existing customers will continue to receive service from New Lightyear without disruption, interruption or customer migration. Those customers will continue to receive the same high quality, affordable telecommunications services that they currently receive. The assets of the Lightyear Companies will therefore emerge from bankruptcy in a manner that is virtually transparent to existing customers.

Applicants also intend to keep customers informed of any significant changes to their services. All customers will be notified by letter of the Transactions and given assurances regarding the continued provision of Lightyear services. A copy of that customer letter is attached hereto as **Exhibit D**. In accordance with Commission Rules 25-4.005, the Applicants request this letter be approved by the Commission.

As demonstrated above, the proposed Transactions do not present novel or complex issues for Commission consideration. The Lightyear Companies are non-dominant competitive carriers that do not control a substantial portion of the Florida telecommunications market. Because New Lightyear is led by a highly capable management team and most of the existing senior management of the Lightyear Companies will oversee day-to-day New Lightyear operations, the proposed Transactions will be seamless in nature. Accordingly, Applicants respectfully submit that the information presented in this Application is sufficient to permit the Commission to rule on the Transaction and that, due to its non-controversial nature, further submit that this matter is appropriate for expedited consideration.

CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this instant Application, failure to grant it would directly harm the public interest. In light of the exigent circumstances and, in particular the need to ensure continuity of service to existing customers, Applicants respectfully request expedited treatment to permit Applicants to consummate the proposed Transactions as soon as possible, but in no event after March 1, 2004.

An original and six (6) copies of this filing are enclosed. A check for \$250.00 to cover the requisite filing fees is also enclosed. Please date-stamp and return the enclosed extra copy of this filing in the postage-prepaid addressed envelope provided. If there are any questions regarding this filing, please contact Danielle Burt at (202) 295-8439.

Respectfully submitted,



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Foreign Limited Liability

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