

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** November 18, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Isler)  
Office of the General Counsel (Scott)

**RE:** Docket No. 041183-TI – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TI189 issued to Lightyear Communications, Inc., effective March 31, 2004.

**AGENDA:** 11/30/04 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\041183.RCM.DOC

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### Discussion of Issues

**Issue 1:** Should the Commission grant Lightyear Communications, Inc. cancellation of its tariff and removal from the register with an effective date of March 31, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees, including statutory late payment charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing interexchange telecommunications services in Florida?

**Recommendation:** Yes. (Isler; Scott)

**Staff Analysis:** See attached proposed Order.

Docket No. 041183-TI  
Date: November 18, 2004

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no protest is filed and upon issuance of a Consummating Order.  
**(Scott)**

**Staff Analysis:** The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TI189 issued to Lightyear Communications, Inc., effective March 31, 2004.	DOCKET NO. 041183-TI ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION ORDER  
GRANTING CANCELLATION OF INTRASTATE INTEREXCHANGE  
TELECOMMUNICATIONS COMPANY TARIFF AND  
REMOVAL FROM THE REGISTER DUE TO CHAPTER 11 BANKRUPTCY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Lightyear Communications, Inc. currently holds Registration No. TI189, issued by this Commission on December 2, 1993, authorizing the provision of intrastate interexchange telecommunications service.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 by January 30 of the subsequent year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On May 6, 2002, this Commission received notice that this company had filed for Chapter 11 bankruptcy protection on April 10, 2002. On June 22, 2004, our staff received a request for cancellation of Lightyear Communications, Inc.'s IXC tariff and removal of Registration No. TI189. The company paid the 2004 Regulatory Assessment Fee on September 21. The only outstanding debt with this Commission is the company's 2001 late payment charges totaling \$690.02, which is considered pre-petition debt.

The company has filed for bankruptcy, and pursuant to Section 362(b)(5) of the US Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory Assessment Fees, late payment charges, and penalties owed by a company to the Florida Public Service Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. Therefore, this Commission would be prevented from collecting the statutory late payment charges owed by this company, and from assessing and collecting a penalty for failure to pay the fees.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, and 364.285, Florida Statutes. Accordingly, we hereby find that Lightyear Communications, Inc. shall be granted cancellation of its IXC Registration No. TI189 due to Chapter 11 bankruptcy, effective March 31, 2004. In addition, the 2001 statutory late payment charges shall not be sent to the Florida Department of Financial Services for collection, and permission for this Commission to write-off the uncollectible amount shall be requested. Lightyear Communications, Inc. shall immediately cease and desist providing intrastate interexchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lightyear Communications, Inc.'s IXC Registration No. TI189 to provide intrastate interexchange telecommunications service is hereby cancelled, effective March 31, 2004. It is further

ORDERED that the outstanding statutory late payment charges shall not be sent to the Department of Financial Services for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request permission to write-off the uncollectible amount. It is further

ORDERED that if Lightyear Communications, Inc.'s Registration No. TI189 is cancelled in accordance with this Order, that entity shall immediately cease and desist providing intrastate interexchange telecommunications services in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this \_\_\_\_ day of \_\_\_\_\_.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on \_\_\_\_\_.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.