

DT 03-231

**LIGHTYEAR NETWORK SOLUTIONS, LLC
LIGHTYEAR COMMUNICATIONS, INC.
LIGHTYEAR TELECOMMUNICATIONS, LLC**

**Joint Application to Transfer Substantially All Assets
and to Assign Authority to Operate as a
Competitive Local Exchange Carrier in New Hampshire**

**Order Approving the Reassignment of CLEC Certification to
Lightyear Network Solutions, LLC and
Acknowledging Transfers of Control and Customer Base
and Certain Financial Transactions**

O R D E R N O. 24,286

March 5, 2004

I. INTRODUCTION AND BACKGROUND

On December 11, 2003, Lightyear Network Solutions, LLC, (New Lightyear); Lightyear Communications, Inc. (Lightyear); and Lightyear Telecommunications, LLC (LLC) (collectively, the Petitioners,) filed with the Commission notification of the intent to transfer substantially all of the assets, including any customers, of Lightyear and LLC to New Lightyear. The petition includes complete applications for Competitive Local Exchange Carrier (CLEC) and Competitive Toll Provider (CTP) authority for New Lightyear. The Petitioners aver that upon the approval of the Commission, LLC and Lightyear will cease operating in the State of New Hampshire and those operations authorized by the Commission will be undertaken by New Lightyear. Also included with the petition is notice of a variety of financial

transactions. The total effect of these transactions will be to conclude the Chapter 11 Bankruptcy cases of Lightyear and LLC pending in the Bankruptcy Court for the Western District of Kentucky.

LLC is an authorized CLEC operating under authority granted by Commission Order Nisi No. 22,711 with an effective date of October 6, 1997 and as a CTP under IXC No. 22297. The Commission originally granted these certifications when the company operated under the name Metracom Corporation. LLC currently has no customers in New Hampshire, according to the Petitioners.

Lightyear is certified in New Hampshire as a CTP under IXC No. 05097. The Petitioners aver that, in New Hampshire, Lightyear currently has approximately 345 interexchange customers.

New Lightyear is a newly-created limited liability company organized and existing under the laws of the Commonwealth of Kentucky and wholly-owned by LY Acquisition, LLC. New Lightyear is registered with the New Hampshire Secretary of State and is authorized to do business in the State. The Petitioners submit that New Lightyear has the managerial, technical and financial qualifications to be authorized as a CLEC and to conduct the operations of both Lightyear and LLC.

The petition indicates that the Petitioners intend the transfer to have minimal effect on customers. The Petitioners aver that current customers of both Lightyear and LLC will continue to receive service under the same rates, terms and conditions that currently apply to their service.

According to the Petitioners, the public interest will be served by the transactions described in the petition. They argue that competition will be promoted in the telecommunications marketplace in the state of New Hampshire. The petition further avers that the transactions are not anticipated to materially change the current management team.

II. STAFF'S RECOMMENDATION

Commission Staff (Staff) notes that the cessation of service by a CTP is contingent upon the conditions established in New Hampshire Administrative Rule Puc 411.04, *Transfer or Lease of a CTP or Right to Service a Customer*. Adopted pursuant to RSA 374:28-a, the rule protects customers against slamming, i.e., the unauthorized change of carriers. Staff notes that the rule requires that the transferor provide a minimum of 14 days written notice to the customer that their toll provider will no longer be providing services and the date when that service will be terminated and that a copy of said notice be forwarded to the Commission at the time it is mailed. The notice must also inform the customer that absent the selection of an alternate carrier

the customer will be assigned to the transferee and that the change will be at no cost to the customer. Commission Rule Puc 411.04(b)(1) e. 1. requires a clear statement of any difference in rates and/or terms and conditions of service and the rates and/or terms and conditions of service of the proposed transferee. Staff contends the Petitioners' plans to notify the customers laid out in the customer notification included with the petition are adequate to meet the requirements of the above-referenced rule. In accordance with Puc 411.04(b)(1), Lightyear must make the notification at least 14 days prior to the implementation of the transaction. Staff notes as well that Puc 411.04(b)(3) requires that within 30 days of the change, the company ceasing operations shall refund to its customers any applicable amounts owed. Lightyear and LLC will request withdrawal of their CTP authority upon consummation of the transaction. Staff recommends that the Commission acknowledge the CTP transactions.

Staff recommends that, to facilitate the orderly conduct of this proceeding and to preserve numbering resources, LLC's CLEC certification be reassigned to New Lightyear rather than issuing a new certification. The reassignment should become effective concurrently and conditioned upon the consummation of the transaction. Staff understands that to authorize the transfer, the Commission will have to waive Puc 1304.03(e)

pursuant to its authority under Puc 201.05. The CLEC application included with the Petition has satisfactorily provided all of the information required in Puc 1304.02 and provides evidence that New Lightyear meets the standards for financial resources, managerial qualifications and technical competence. New Lightyear will remain responsible for meeting the conditions imposed in Order Nisi No. 22,711.

Staff concludes that the transactions outlined in the petition appear to be in the public good as they ensure that customers maintain service without interruption and as they enhance the responsiveness of the free market.

III. COMMISSION ANALYSIS

We agree with the Petitioners and the Staff that the transactions described will serve the public good. We also note that while the corporate organizational changes described in the petition do not require prior Commission approval, see RSA 374:22-o, Lightyear and LCC are nonetheless required to adhere to the notice provisions of RSA 374:28-a and Rule Puc 411.04(b)(1). Therefore, we will acknowledge the transfer of Lightyear's and LLC's assets, operational control and right to service customers to New Lightyear on the condition that Lightyear notifies its customers in writing 14 days prior to the change in accordance with the conditions detailed in the proposed notification and that it provide any appropriate refunds to its customers. We

also acknowledge the various financing arrangements that will be required to facilitate the transactions and assure the viability of New Lightyear.

The standard for waiving our rules is contained in Puc 201.05. Pursuant to subsection (a) of that rule, a waiver shall be granted when the Commission finds that the waiver serves the public interest and will not disrupt the orderly proceeding of the Commission. Subsection (e) provides that the Commission shall waive a rule if compliance would be onerous in the circumstances and if the purpose of the rule can be satisfied by an alternative method.

Inasmuch as New Lightyear meets the qualifications for managerial and technical competence and for financial resources required for CLEC certification in New Hampshire, we find it appropriate to waive Puc 1304.03(e) and to order the transfer of CLEC status from LLC to New Lightyear as to do so will serve the public interest by conserving number resources of the 603 area code and will not disrupt the orderly proceeding of the Commission. We therefore grant authority for New Lightyear to assume the privileges and responsibilities of operating as a CLEC under Order Nisi No. 22,711 conditioned upon and effective concurrently with the consummation of the transaction rather than assigning a new CLEC certification. We, therefore, approve the petition.

Based upon the foregoing, it is hereby

ORDERED, that Puc 1304.03(e) is waived and the certification of LLC to provide local exchange service under Order Nisi No. 22,711 is reassigned to New Lightyear which remains bound by the commitments and requirements of that Order, and that LLC shall upon consummation of the transaction, cease operations as a CLEC in the State of New Hampshire; and it is

FURTHER ORDERED, that New Lightyear, within 30 days of the date of this Order, file tariff pages adopting the current tariffs of Lightyear and LLC.

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary