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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF LIGHTYEAR NETWORKS SOLUTIONS, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE COMPETITIVE RESOLD AND FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN ARIZONA.	DOCKET NO. T-04229A-03-0915 DECISION NO. 67435 **OPINION AND ORDER**

DATE OF HEARING: May 24, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope

APPEARANCES: Michael W. Patten, ROSHKA HEYMAN & DEWULF, P.L.C., on behalf of Lightyear Networks Solutions, LLC; and

Jason D. Gellman, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On December 23, 2003, Lightyear Network Solutions, LLC ("Lightyear" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold and facilities-based local exchange and interexchange telecommunications services within the State of Arizona ("Application"). The Application petitioned the Commission for determination that its proposed services should be classified as competitive.

2. On February 24, 2004, the Commission's Utilities Division Staff ("Staff") filed its Staff Report, which recommended approval of the Application and included a number of additional

recommendations.

3. On March 8, 2004, a Procedural Order was issued setting this matter for hearing on May 24, 2004 and setting various procedural deadlines.

4. On May 13, 2004, Applicant docketed an Affidavit of Publication that complies with Commission rules.

5. On May 20, 2004, Lightyear filed a Notice of Appearance and Request for Witness to Appear by Telephone, which indicated that it was represented by Michael W. Patten and requested permission for its witness to appear telephonically at the May 24, 2004 hearing.

6. On May 24, 2004, a full public hearing in this matter was held as scheduled. Lightyear appeared telephonically and was represented by counsel. Staff appeared and was represented by counsel. The hearing was conducted before a duly authorized Administrative Law Judge. Evidence was presented and testimony was taken.

7. In its opening remarks, Staff referenced several supplemental pages as amendments to the Staff Report, which were later offered as evidence and admitted into the record as Exhibit S-2. Specifically, Staff noted that in accordance with prior Commission decisions, its recommendation with regard to bond cancellation should be limited to Lightyear's resold interexchange service.

8. Additionally, Staff argued that based upon the recent decision in *Phelps Dodge,*[1] Lightyear should provide information regarding its intended rates and charges for its resold and facilities-based local exchange service.[2] Staff indicated that this information is necessary to make a determination as to the comparability and to the justness and reasonableness of the proposed rates.

9. In response thereto, Lightyear argued that Staff's concerns can be addressed by withholding a just and reasonable determination of its rates until such time as it submits its tariff 30 days prior to offering service. Lightyear further argued that based upon the uncertainty surrounding its interconnection agreements, submission of the information proposed by Staff may result in a large number of changes that would necessitate subsequent updates to its tariff.

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[1] *Phelps Dodge Corp. v. Arizona Elec. Power Cooperative*, 207 Ariz. 95, 83 P.3d 573, 418 Ariz. Adv. Rep. 10 (App. 2004).

[2] Staff noted that Lightyear had previously provided a tariff for its proposed interexchange services for which Staff had made a determination as to the justness and reasonableness of those rates.

10. Based upon the arguments presented, Lightyear was ordered to file proposed rates for its resold and facilities-based local exchange service, and Staff was ordered to respond thereto by way of amendment to its Staff Report within 30 days of that filing.

11. At the conclusion of the hearing, the Administrative Law Judge took the matter under advisement.

12. On June 9, 2004, Lightyear filed a Notice of Filing Pro Forma Local Exchange Tariff as Late-Filed Exhibit, which set forth its proposed rates for its resold and facilities-based local exchange service.

13. On July 15, 2004, a Procedural Order was issued by which Staff was ordered to file its response to Lightyear's pro forma local exchange tariff on or before July 19, 2004.

14. On July 16, 2004, Staff filed a Motion for a Continuance, which requested an additional 45 days to acquire and consider information related to the reasonableness of Lightyear's proposed rates in accordance with data requests designed to elicit information to assist in this analysis.

15. On July 16, 2004, Staff issued its Second Set of Data Requests to Lightyear by which Staff requested additional information relating to Lightyear's local exchange rates.

16. By Procedural Order dated July 19, 2004, Staff was ordered to file its response to Lightyear's pro forma tariff no later than August 30, 2004, and the timeclock provisions for processing the Application were suspended.

17. On August 23, 2004, Lightyear and Staff filed a Stipulation, which indicated that the parties agreed to September 28, 2004 as the date by which Staff should be required to file its response to Lightyear's pro forma tariff. Additionally, the parties agreed that the timeclock provisions should be suspended.

18. On August 23, 2004, Lightyear filed its responses to Staff's Second Set of Data Requests.

19. On August 24, 2004, a Procedural Order was issued by which the terms of the parties' Stipulation were approved and accordingly, Staff was ordered to file its response to Lightyear's filing by September 28, 2004. Additionally, the timeclock provisions remained suspended.

20. On October 15, 2004, Staff filed its Supplemental Staff Report in response to Lightyear's pro forma tariff filing, which recommends approval of the Application and proposes an amendment to its February 24, 2004 Staff Report related to Lightyear's proposed rates.

21. Lightyear is incorporated under the laws of the State of Kentucky and is authorized to do business in Arizona.

22. Applicant has the technical capability to provide the services that are proposed in its Application.

23. Currently there are several incumbent providers of local exchange and interexchange services in the service territory requested by Applicant, and numerous other entities have been authorized to provide competitive local and interexchange services in all or portions of that territory.

24. It is appropriate to classify all of Applicant's authorized services as competitive.

25. According to Staff, Lightyear submitted unaudited financial statements of its parent company LY Acquisition, LLC[3] for the five month period ending November 30, 2003. These financial statements list assets of $7.5 million, equity of $1.4 million, and a net loss of $569,568.

26. Staff recommended that Lightyear's Application for a Certificate to provide competitive resold and facilities-based local exchange and interexchange telecommunications services be granted subject to the following conditions:

(a) that, unless it provides services solely through the use of its own facilities, Lightyear be ordered to procure an Interconnection Agreement, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, that must remain in effect until further order of the Commission, before being allowed to offer local exchange service;

(b) that Lightyear be ordered to file with the Commission, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases;

(c) that Lightyear be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;

(d) that Lightyear be ordered to abide by and participate in the AUSF mechanism

[3] According to Lightyear's testimony, subsequent to an asset sale consummated on March 31, 2004, LY Acquisition, LLC underwent a name change and is now referred to as LY Holdings, LLC.

instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498);

(e) that Lightyear be ordered to abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;

(f) that in areas where it is the sole provider of local exchange service facilities, Lightyear be ordered to provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws and federal rules;

(g) that Lightyear be ordered to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 365 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;

(h) that Lightyear be ordered to abide by all the Commission decisions and policies regarding CLASS services;

(i) that Lightyear be ordered to provide 2-PIC equal access;

(j) that Lightyear be required to notify the Commission immediately upon changes to its name, address or telephone number;

(k) that Lightyear be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;

(l) that Lightyear be ordered to maintain its accounts and records as required by the Commission;

(m) that Lightyear be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;

(n) that Lightyear be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(o) that Lightyear be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;

(p) that Lightyear be ordered to participate in and contribute to a universal service fund, as required by the Commission; and

(q) that Lightyear be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that Lightyear provides essential services or facilities that potential competitors need in order to provide their services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules.

27. Staff additionally recommended that Lightyear's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

(a) Lightyear be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;

(b) If the above timeframe is not met, that Lightyear's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted;

(c) if Lightyear desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107; and

(d) Lightyear should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, and any failure to do so should result in forfeiture of the Applicant's performance bond.

28. Based upon Lightyear's indication that it collects advances, deposits, and/or prepayments from its customers, Staff recommended:

(a) that Lightyear should be ordered to procure a performance bond equal to $235,000. The minimum bond amount of $235,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Lightyear's customers. The bond amount should be increased in increments of $117,500 whenever the total amount of the advances, deposits and prepayments is within $23,500 of the bond amount;

(b) that Lightyear should docket proof of the performance bond within 365 days of the effective date of this Order or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission;

(c) if at some time in the future, Lightyear does not collect from its resold interexchange customers an advance , prepayment, or deposit, that Lightyear should be allowed to file with the Commission a request for cancellation of its established performance bond for the resold interexchange portion of the bond only. Staff stated that after Staff's review of such filing, Staff would forward its recommendation on the matter to the Commission for a Decision; and

(c) If the above timeframe is not met, that Lightyear's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

29. Lightyear testified that in reference to Staff's bond recommendation, it requests the option of setting up an escrow account under terms and conditions satisfactory to Staff as an alternative means of meeting Staff's security requirements.

30. Staff testified that based upon the language in Arizona Administrative Code ("A.A.C.") R14-2-1105.D, an escrow account may be set up to hold advances or deposits. Staff further indicated that it has no reason to request a waiver of that rule in this instance; however, any proposed escrow account must perform the same function as the performance bond. Furthermore, Staff indicated that it would be willing to work with Lightyear in pursuing such an option if it is determined that Lightyear is unable to procure the recommended performance bond.

31. While A.A.C. R14-2-1105.D provides that customer advances and/or deposits may, as an alternative to the procurement of a performance bond, be held in an escrow or trust account, we do not believe that the establishment of such an account is in the public interest as the performance bond requirement is intended not only as a safeguard for customers of companies that collect advances, deposits, or prepayments, but also provides a non-subjective and non-discriminatory means of protecting customers from the inconvenience associated with potential future insolvency of the telecommunications provider.[4] We do not believe that the creation of an escrow account would provide the necessary safeguards, and therefore, we decline to authorize Lightyear's request.

32. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Lightyear's fair value rate base is zero, and is too small to be useful in a fair value analysis.

33. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation, and Staff reviewed the rates to be charged by the company and believes that they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers, several operating long distance carriers, and comparable to the rates that Lightyear charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by Lightyear, the fair value rate base information provided should not be given substantial weight in this analysis.

[4] *See* Decision No. 66940 (April 21, 2004).

34. Staff's recommendations, as set forth herein, are reasonable.

35. Lightyear's fair value rate base is determined to be zero for purposes of this proceeding.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the Application.

3. Notice of the Application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its Application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive resold and facilities-based local exchange and interexchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Applicant's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

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ORDER

IT IS THEREFORE ORDERED that the Application of Lightyear Network Solutions, LLC for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange and interexchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon Lightyear Network Solution's timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that Lightyear Network Solutions, LLC shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that Lightyear Network Solutions, LLC shall procure and docket proof of a performance bond equal to $235,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service.

IT IS FURTHER ORDERED that Lightyear Network Solutions, LLC shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that if Lightyear Network Solutions, LLC fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

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IT IS FURTHER ORDERED that if Lightyear Network Solutions, LLC fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Lightyear Network Solutions, LLC's performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN | COMMISSIONER | COMMISSIONER

COMMISSIONER | COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 3rd day of Dec., 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mlj

SERVICE LIST FOR: LIGHTYEAR NETWORK SOLUTIONS, LLC

DOCKET NO.: T-04229A-03-0915

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