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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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2005 NOV 30 P 4: 38

AZ CORP COMMISSION DOCUMENT CONTROL

_____)
)
 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

PETITION FOR MODIFICATION OF PERFORMANCE BOND CONDITION OR ALTERNATIVELY FOR EXTENSION OF TIME

Lightyear Network Solutions, LLC by its undersigned counsel, respectfully requests the Commission to modify the performance bond condition set forth in Decision No. 67435 (December 6, 2004), which requires Lightyear Network Solutions, LLC to procure a performance bond in the amount of \$235,000. Lightyear Network Solutions, LLC proposes to provide the Commission with an irrevocable Letter of Credit in lieu of the bond. Alternatively, Lightyear Network Solutions, LLC requests the Commission to grant an extension of time to comply with the Commission's Decision No. 67435, as it has been impossible for Lightyear Network Solutions, LLC, despite diligent efforts, to procure the performance bond.

In support of this Petition, Lightyear Network Solutions, LLC states as follows:

I. BACKGROUND

In 2003, New Lightyear acquired all assets of its predecessor Lightyear companies (Lightyear Communications, Inc. and Lightyear Telecommunications, LLC) as part of a

bankruptcy reorganization authorized under the U.S. Bankruptcy Court for the Western District of Kentucky. Pursuant to this reorganization, New Lightyear planned to continue to provide resold long distance service to the customers of the Lightyear Companies, including those in the State of Arizona, under the name Lightyear Network Solutions, LLC (hereinafter Lightyear).

Pursuant to Arizona law, New Lightyear was not able to merely accept a transfer of the Lightyear companies certificates of convenience and necessity, but rather was required to obtain new certificates to provide services. As such, on December 23, 2003, Lightyear filed with the Commission an application for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange and interexchange telecommunications within the State of Arizona. Following a hearing on the matter, the Commission, in its Decision and Order No. 67435, granted Lightyear's Certificate of Convenience and Necessity provided it comply with certain conditions. The condition pertinent to this petition, required Lightyear to procure and docket proof of a performance bond in the amount of \$235,000 by December 6, 2005 or 30 days prior to the commencement of service, whichever came first. Despite diligent efforts to procure the performance bond, Lightyear has been unable to do so and hereby petitions for a waiver of this requirement.

II. REQUEST FOR WAIVER OF PERFORMANCE BOND REQUIREMENT

As demonstrated below, Lightyear has made more than reasonable efforts to secure the performance bond and due to the near impossibility of such a requirement has been unsuccessful. However, Lightyear is willing to offer an irrevocable Letter of Credit as a substitute. Public policy encourages the Commission's waiver of this particular bond requirement as Lightyear is currently providing long-distance services to Arizona customers and to require the performance bond will preclude Lightyear from continuing to provide Arizona residents with resold long

distance service. It should also be noted that Lightyear is not currently providing facilities-based long distance service, which account for \$100,000 of the \$235,000 bond requirement. Nor is Lightyear providing local exchange service, which accounts for \$125,000 of the requirement. Moreover, Lightyear does not hold any prepayments or deposits in connection with the resold long distance service that it continued to provide through the reorganization

A. Diligent efforts have been made by Lightyear to secure the performance bond.

As described more fully in the attached affidavit (Attachment A), Lightyear has made repeated attempts to obtain the necessary performance bond over the past year. These attempts included approaching numerous bonding companies and offering upfront payment of the bond. Unfortunately, the current bonding market for telecommunications companies is extremely tight. Many bonding companies refuse to issue bonds to telecommunications companies, even if these bonds are secured by the company (*i.e.*, the company deposits the full amount of the bond with the bonding company as Lightyear offered to do). Furthermore, Lightyear found that some of the bonding companies were only prepared to consider Lightyear's request for financing if one of Lightyear's members would personally guarantee the bond, or alternatively, if Lightyear would pledge 100% of its collateral as a security, in addition to paying the bond premiums. This requirement would put an unfair financial burden on the personally guaranteeing member or on Lightyear. Furthermore, even if Lightyear were prepared to post 100% of its collateral, it does not yet have the necessary two to three years of strong financials needed for bond approval. In fact, the only financial history Lightyear has at this time is that which was acquired with the asset purchase of four other companies and the one year since the closing of this acquisition.

The requirement for bonding places an unfair barrier to entry on those companies seeking entry into Arizona's telecommunications marketplace. By requiring an impossibility, the

Commission effectively stifles any chance of new competition. This bond requirement can certainly be characterized as the sort of “economic regulation” and prevention of competitive forces that the Commission seeks to avoid. As the current state of the market essentially renders the Commission’s requirement of a performance bond an impossibility for Lightyear, it is respectfully requested that the Commission waive this requirement.

B. Lightyear will provide the Commission with a Letter of Credit in lieu of the bond.

Lightyear proposes to provide an irrevocable Letter of Credit in the amount specified by the Commission. As described in the attached exhibits, a Letter of Credit provides identical protections to the Commission as does a bond. Indeed, a Letter of Credit provides superior protections to the Commission as these Letters of Credit cannot be cancelled absent permission from the beneficiary of the Letter of Credit (in this instance, the Commission).

Additionally, as indicated in the attached sample Letter of Credit (Attachment B), language satisfactory to the beneficiary can be inserted that identifies the “trigger” mechanism for the beneficiary to draw on some or all of the Letter of Credit. Lightyear and Commission staff can work together to identify sufficient language to provide the Commission with adequate protection. The bond requirement gives the Commission a security for prepayments or deposits collected from Lightyear’s customers. This Letter of Credit that Lightyear is offering will offer the same level of protection as a performance bond, if not more.

Due to the current market conditions, this request is becoming increasingly common. Numerous other state commissions that normally require some form of security from a bonding requirement have accepted alternative forms of security in the form of Letters of Credit or similar mechanisms. For example, having faced a similar hurdle in Delaware, the Delaware

Public Utility Commission recently allowed Lightyear to substitute an irrevocable Letter of Credit in lieu of a bond.¹

C. Lightyear already provides long distance to Arizona customers.

Prior to the New Lightyear/ Lightyear companies reorganization, the Lightyear companies had provided resold long distance services to Arizona customers, and currently continue to do so. If, due to Lightyear's inability to procure the bond requirement, the Commission is unable to complete the approval of the license to Lightyear, remaining Arizona customers of the predecessor company will face termination of services. As such, the public interest is greatly served by granting a waiver of the bond requirement and allowing Lightyear to provide the Commission with a Letter of Credit in lieu of a bond. Such a waiver will not jeopardize the protection the Commission would ordinarily receive from a bond and a failure to grant a waiver could result in loss of service to a substantial number of Arizona residents.

D. Lightyear is not using its facilities-based long distance systems which comprise \$100,000 of the bond

The breakdown of the bond required by each service Lightyear offers is as follows: resold long distance \$10,000 for advances, deposits and/or prepayments collected; resold local exchange \$25,000; facilities-based long distance \$100,000; and facilities-based local exchange \$100,000. Inasmuch as Lightyear is not currently utilizing its facilities-based long distance services, it respectfully requests that the bond amount be reduced by \$100,000.²

¹ See Matter of the Application of Lightyear Network Solutions, Inc., Delaware PSC Order No. 6679 (July 19, 2005); PSC Order No. 6437 (June 22, 2004).

² In fact, Lightyear is willing to commit to an immediate withdrawal of its license for facilities-based long distance because it has no intention to ever use them.

III. REQUEST FOR AN EXTENSION OF TIME TO REPLY

In the alternative, Lightyear requests an extension of time to comply with the performance bond condition. As previously stated, Lightyear has made diligent efforts, including offering to purchase the bonds upfront from numerous bonding companies, yet has been unsuccessful. Due to the near impossibility of securing this bond, it is respectfully submitted that Lightyear should be granted an extension of time to reply.

Additionally, because the Commission is currently conducting a generic docket on bond issues, allowing a delay in Lightyear's compliance with Decision and Order No. 67435 is appropriate. That docket, T-0000J-04-0912, is considering, in part, whether relief similar to that requested by Lightyear is in the public interest, including, for example, whether deposits into an escrow account should be accepted as an alternative to the current bonding requirement, or if a letter of credit would likewise be a suitable alternative. It appears that the Commission is well aware of the current state of the bonding market and has prepared itself to review questions surrounding it in the near future. Thus, the question of whether the bonding requirement can be satisfied by alternative measures appears to be presently unsettled at the Commission. As such, Lightyear requests that it be allowed to continue to provide resold long distance service until the Commission clarifies its position with respect to the appropriate bonding policy.

IV. CONCLUSION

For the reasons stated above, Lightyear respectfully requests the Commission to modify the performance bond condition in Decision No. 67435 by allowing Lightyear to provide an irrevocable Letter of Credit in lieu of the bond, or in the alternative, grant Lightyear an extension of time to comply with the bond condition.

RESPECTFULLY SUBMITTED this 30th day of November, 2005.

By 

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By Mary Appolito

ATTACHMENT

A

ATTACHMENT

B

U.S. BANK NATIONAL ASSOCIATION
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TELEPHONE: 877-716-5696
FACSIMILE: 314-418-1376

DATE: [DATE]

BENEFICIARY: [TO BE NAMED]

OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SLCLSTL00XXX

GENTLEMEN:

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER XXX IN FAVOR OF [BENEFICIARY] FOR THE ACCOUNT OF **LIGHTYEAR NETWORK SOLUTIONS, LLC** UP TO THE AGGREGATE AMOUNT OF \$[AMOUNT] USD (AMOUNT UNITED STATES DOLLARS) AVAILABLE BY YOUR DRAFT AT SIGHT DRAWN ON U.S BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI ACCOMPANIED BY:

A DATED AND SIGNED STATEMENT APPEARING ON ITS FACE TO BE EXECUTED BY BENEFICIARY OR DULY AUTHORIZED AGENT THEREOF CERTIFYING THAT:

The [NAME OF BENEFICIARY] (the "Beneficiary") has issued an Order against Lightyear Network Solutions, LLC ("Lightyear") stating that Lightyear has been sanctioned, and the amount requested is due and owing the Beneficiary. A copy of the Order must accompany the dated and signed statement of the Beneficiary.

THIS INSTRUMENT MUST BE PRESENTED WITH THE ABOVE REFERENCED DOCUMENTS FOR NEGOTIATION.

DRAFTS MUST BE DRAWN AND PRESENTED AT U.S. BANK NATIONAL ASSOCIATION, INTERNATIONAL DEPT., SL-MO-L2IL, 8TH AND LOCUST STREETS, ST. LOUIS, MO 63101 NOT LATER THAN _____.

EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER U.S. BANK NATIONAL ASSOCIATION, ST. LOUIS, MISSOURI LETTER OF CREDIT NO. _____ DATED _____".

WE HEREBY ENGAGE WITH THE DRAWERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

CANCELLATION OF LETTER OF CREDIT PRIOR TO EXPIRY: THIS LETTER OF CREDIT AND AMENDMENTS, IF ANY, MUST BE RETURNED TO US FOR CANCELLATION WITH BENEFICIARY'S STATEMENT THAT LETTER OF CREDIT IS BEING RETURNED FOR CANCELLATION. IN THE ABSENCE OF BENEFICIARY'S STATEMENT WE WILL CONSIDER THE LETTER OF CREDIT RETURNED FOR CANCELLATION.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

VERY TRULY YOURS,

AUTHORIZED SIGNATURE

U.S. BANK NATIONAL ASSOCIATION