

# **BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI**

In the Matter of the Application of )  
Lightyear Network Solutions, LLC for a )  
Certificate of Service Authority to Provide )  
Basic Local Telecommunications Services )  
in the State of Missouri and to Classify )  
Said Services and the Company as Competitive )

**File No. CA-2010-0078**

## **AMENDED ORDER GRANTING CERTIFICATES OF SERVICE AUTHORITY, WAIVING CERTAIN PROVISIONS OF LAW AND REQUIRING THE FILING OF A TARIFF, AND WITHDRAWING EARLIER ORDER**

Issue Date: October 15, 2009

Effective Date: October 26, 2009

The Missouri Public Service Commission is granting the application for a certificate of service authority to provide basic local telecommunications services, classification of those services and the applicant as competitive, and waiver of certain statutes and regulations. The Commission is also ordering the applicant to file a tariff. The Commission is further withdrawing an earlier order.

The applicant is Lightyear Network Solutions, Inc. ("Lightyear"), a Kentucky limited liability company authorized to do business in Missouri. On September 3, 2009 Lightyear filed the application. On September 4, 2009, the Commission issued its Notice of Applications, establishing a deadline for intervention. No applications to intervene were received. On September 22, 2009, Lightyear requested, the Commission's staff ("Staff") agreed, and the Commission ordered a waiver of historical data in the application. On October 5, 2009, Staff filed its recommendation in favor of the application. No law requires

a hearing before granting an uncontested application, so the Commission convened no hearing and bases its findings on the verified filings.<sup>1</sup> The Commission issued an order dated October 14, 2009, which contained clerical errors, so the Commission is withdrawing that order.

Lightyear seeks certification to provide service throughout the state. The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the statutory requirements, including relevant service standards,<sup>2</sup> and that the grant of authority is in the public interest.<sup>3</sup> Based on the verified application, including Lightyear's stated commitment to comply with all applicable rules, and Staff's uncontested recommendation, the Commission finds that Lightyear satisfies the requirements for certification and that granting such certificate is in the public interest.

Lightyear also requests that it and its services be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.<sup>4</sup> The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.<sup>5</sup> The Commission finds that Lightyear will compete with incumbent local exchange carriers, as well as other competitive

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<sup>1</sup> ***State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n***, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>2</sup> See §§ 392.450 and 392.451, RSMo Supp. 2008; and § 392.455. Sections are in the 2000 Revised Statutes of Missouri unless otherwise specified.

<sup>3</sup> Sections 392.430 and 392.440.

<sup>4</sup> Section 392.361.2, RSMo Supp. 2008.

<sup>5</sup> Section 392.361.3, RSMo Supp. 2008.

local exchange carriers in the exchanges in which it provides basic local telecommunications service. The Commission finds that Lightyear will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Lightyear will offer are qualified for classification as competitive services.

Lightyear requests that the application of certain statutes and regulations be waived. The Commission may waive certain statutes and administrative rules for competitively classified carriers “if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter.”<sup>6</sup> The Commission finds that the waiver of those statutes and regulations is consistent with the purposes of Chapter 392, and will waive those provisions for Lightyear.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that the Commission grant Lightyear’s application subject to certain restrictions that Staff recommends and Lightyear accepts in the application. Those conditions are necessary to protect the public interest and the Commission will adopt them.

The Commission places Lightyear on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against Lightyear. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by § 392.210. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540

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<sup>6</sup> Section 392.420, RSMo Supp. 2008.

requires telecommunications utilities to file their annual report on or before April 15 of each year.

- B) The obligation to pay an annual assessment fee established by the Commission, as required by § 386.370.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If Lightyear fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under § 386.570, RSMo Supp. 2008.
- D) The obligation to keep the Commission informed of its current address and telephone number.

Lightyear is reminded that its officers may not represent it before the Commission. Lightyear must be represented by an attorney admitted to practice law in Missouri.

In addition, § 392.410.5, RSMo Supp. 2008, provides that Lightyear's certificate of service authority becomes null and void one year from the date of this order unless Lightyear has exercised its authority under that certificate.

Before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission. Lightyear did not file a proposed tariff as part of its application. The Commission's regulations do not require an application for a certificate to include such a tariff. But until this Commission approves such tariff, Lightyear cannot provide service in Missouri.

**THE COMMISSION ORDERS THAT:**

1. The "Order Granting Certificates of Service Authority, Waiving Certain Provisions of Law and Requiring the Filing of a Tariff" issued on October 14, 2009, is withdrawn.
2. Lightyear Network Solutions, Inc. is granted a certificate of service authority to provide basic local telecommunications services, in the exchanges of all incumbent local exchange companies, subject to the conditions and recommendations contained in the Staff's Memorandum.
3. Lightyear Network Solutions, Inc. and the services it offers are classified as competitive.
4. Lightyear Network Solutions, Inc.'s originating and terminating access rates shall be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Lightyear Network Solutions, Inc. seeks authority to provide service, unless authorized by the Commission pursuant to §§ 392.220 and 392.230, RSMo, Supp. 2008.
5. The certificates and competitive service classification shall be conditioned on the continued applicability of § 392.200, and the requirement that any increase in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to §§ 392.200 and 392.230, RSMo Supp. 2008, and not §§ 392.500 and 392.510, RSMo Supp. 2008.
6. If the directly competing incumbent local exchange carrier, in whose service area Lightyear Network Solutions, Inc. is operating, decreases its originating or terminating access service rates, Lightyear Network Solutions, Inc. shall file an appropriate tariff

amendment to reduce its originating or terminating access rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

7. Application of the following statutes and Commission rules is waived for Lightyear's basic and non-basic local telecommunications services:

### **STATUTES**

392.210.2 - Uniform System of Accounts  
392.240.1 - Just and Reasonable Rates  
392.270 - Ascertain Property Values  
392.280 - Depreciation Accounts  
392.290 - Issuance of Securities  
392.300 - Acquisition of Stock  
392.310 - Issuance of Stock & Debt  
392.320 - Stock dividend payment  
392.330 - Issuance of securities, debt and notes  
392.340 - Reorganization(s)

### **COMMISSION RULES:**

4 CSR 240-3.550(4) - Telecommunications Company Records and Reports  
4 CSR 240-3.550(5)(A) - Telecommunications Company Records and Reports  
4 CSR 240-3.550(5)(C) – Exchange Boundary Maps  
4 CSR 240-10.020 - Income on Depreciation Fund Investments  
4 CSR 240-30.040 - Uniform System of Accounts  
4 CSR 240-32.060 - Engineering and Maintenance Standards  
4 CSR 240-32.070 - Quality of Service  
4 CSR 240-32.080 - Service Objectives and Surveillance Levels  
4 CSR 240-33.030 - Informing Customers of Lowest Priced Services  
4 CSR 240-33.040 (1), (2), (3), (5), (6), (7), (8), (9), and (10) - Billing and Payment Standards for Residential Customers  
4 CSR 240-33.045 - Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills  
4 CSR 240-33.080(1) - Disputes by Residential Customers  
4 CSR 240-33.130(1), (4) and (5) - Operator Service

8. The certification granted in this order shall be conditioned upon Lightyear Network Solutions, Inc.'s compliance with the regulatory obligations set out in this order.

9. Lightyear Network Solutions, Inc. is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit it to lawfully provide telecommunications services in Missouri. Specifically, Lightyear Network Solutions, Inc. cannot lawfully provide telecommunications services until it has a tariff in effect for such services. When Lightyear Network Solutions, Inc. submits such a tariff, it shall do so by filing a non-case tariff submission. The tariff submission shall not be filed in this file.

10. This order and Lightyear Network Solutions, Inc.'s certificate shall become effective on October 26, 2009.

11. This file shall close on October 27, 2009.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Daniel Jordan, Regulatory Law Judge,  
by delegation of authority pursuant  
to § 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 15<sup>th</sup> day of October, 2009.