BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF LIGHTYEAR NETWORK SOLUTIONS, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE AND COMPETITIVE INTRASTATE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF DELAWARE, AND FOR REVIEW OF A PLAN FOR PROVIDING INTRALATA TOLL DIALING PARITY IN ACCORDANCE WITH FEDERAL COMMUNICATIONS COMMISSION REQUIREMENTS (FILED DECEMBER 15, 2003)	)	PSC DOCKET NO. 03-535

ORDER NO. 6437

This 22nd day of June, A.D. 2004, the Commission determines and Orders the following:

1. Lightyear Network Solutions, LLC ("new Lightyear") is a candidate to receive a Certificate of Public Convenience and Necessity ("CPCN") to allow it to provide local exchange, interexchange, and other intrastate telecommunications services within this State.[1] Staff has reported that, on the interexchange side, new Lightyear meets all the conditions for granting such an interexchange CPCN save one: new Lightyear has been unable to submit the performance bond with surety, as required by Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services."[2] New Lightyear says it cannot find any agency operating within Delaware to execute such a surety bond for such

[1]New Lightyear represents that it does not currently seek to provide local exchange services. Thus, as to those services, the CPCN will be "conditional." New Lightyear does seek to operate as an interexchange carrier immediately.

[2]Such rules were adopted by PSC Findings, Opinion, and Order No. 5833 (Nov. 6, 2001) ("Order No. 5833"). Rule 4(f)(i) requires each applicant to post a $10,000 performance bond with Delaware surety and renew such obligation each year.

amount. It asks for a waiver of the "surety bond" requirement, proposing instead to tender an irrevocable "Letter of Credit" directed at a Missouri bank in the amount of up to $10,000 (the amount of the bond required by Rule 4(f)(i)).[3] This instrument, new Lightyear says, would offer the same security for its performance as the surety bond required by the Rule. In case of default, the Commission (as the beneficiary of the Letter) could draw on the line of credit.

2. In the unique circumstances of new Lightyear's interexchange situation, the Commission will grant that carrier its requested waiver, and accept its Letter of Credit proposal in lieu of the surety bond required under Rule 4(f)(i). But this waiver is granted only for a period of one year from this date. The Commission grants new Lightyear its CPCN in Order No. 6444 (June 22, 2004). The waiver granted here, along with the conditions surrounding it, are part of that CPCN.

3. New Lightyear is not the only carrier to report that it can find no takers to act as a surety or underwrite the required performance bond. Other carriers, both putative and certificated, have similarly told Staff that they too cannot find financial institutions willing to sign onto such bonds; they too have offered to instead post "letters of credit".[4] It may be that there is no "market" for the surety bonds called for in Rule 4(f)(i). Or it may be that there is no such market in the case of particular carriers. However, Rule 4(f)(i) calls for the security of a surety bond, and the Commission, in adopting such language,

[3] See Letter Request for Waiver from W. Wilhelm, Esq., counsel for new Lightyear, to K. Nickerson, Secretary at pp. 1-2 (filed May 27, 2004).

[4] See, e.g., Letter of AmeriVision Communications to PSC (rec'd June 14, 2004); Letter of Focal Communications Corporation to PSC (rec'd June 7, 2004).

explicitly rejected a request that such bond requirement be subject to a waiver requirement.

4. Back in 2001, a coalition of competitive carriers had urged such a waiver clause, arguing that the bond requirement would impose burdens on small carriers. The coalition's proposed alternative would have allowed for a "complete" waiver of the performance bond requirement, once a carrier was able to demonstrate financial viability and customer satisfaction for a sustained period of time. PSC Order No. 5833 at ¶ 14. The Commission turned down such a waiver clause. As the Commission saw it, the performance bonding requirement, at a minimum, not only ensures payment of regulatory fees (including those attendant to abandonment of service) but also separates those carriers who truly seek certification in order to provide services from those which file simply to be able to proclaim being "certificated" in all fifty States. PSC Order No. 5388 at ¶¶ 15-17, 21. Given that action just a few years ago, if new Lightyear's request was premised solely on its inability to obtain a bond, then the Commission might hesitate to grant such a waiver.[5]

5. Yet, new Lightyear's request rests on something more than simply its inability to find anyone willing to go as surety on a $10,000 performance bond. New Lightyear is a new entity, but it has links to

[5]Of course, the "waiver" request made by the coalition in the rule-making proceeding focused on excusing the bond requirement in its entirety for financially viable companies. Here, new Lightyear does not seek to forego <u>any</u> security for its performance, but instead offers its "Letter of Credit" to substitute for the surety bond. New Lightyear's individual waiver request is not the appropriate proceeding to determine whether, in general, a letter of credit provides security equal to, or greater than, a surety bond (particularly in case of a subsequent bankruptcy). In addition, counsel informs the Commission that if the Commission might conclude that the Letter of Credit is a sufficient substitute for a surety bond, the Commission should authorize the use of that alternative instrument by amending Rule 4(f)(i), rather than granting a "blanket" waiver of the bonding requirement to carriers who seek to post such Lletter of Credit.

another previously certificated carrier, Lightyear Communications, Inc. ("old Lightyear").[6] Old Lightyear went into bankruptcy, and is scheduled to expire as an entity on June 30, 2004. New Lightyear is the entity arising from that reorganization in bankruptcy and will assume not only Old Lightyear's assets but the former carrier's present customer base. New Lightyear represents that in Delaware that customer base is approximately 500 intrastate interexchange subscribers. Thus, if new Lightyear fails to get its CPCN (at least applicable to interexchange services) by June 30, 2004, the long distance customers of old Lightyear will find themselves out on a limb without a carrier when the old Lightyear entity evaporates.

6. The Commission does not want to put those Delaware customers into such confusion. Thus, it grants new Lightyear a waiver from the requirements of Rule 4(f)(i) for a period of one-year from the date of this Order. The waiver applies only to new Lightyear's authorization to provide intrastate interexchange services in this State.[7] In lieu of the surety bond required under the Rule, new Lightyear shall provide the irrevocable Letter of Credit as proposed in its counsel's letter received May 27, 2004.

7. The Commission delegates to Staff the authority to work out the details and mechanics of new Lightyear's Letter of Credit alternative. In particular, Staff is delegated the authority to define, in the first instance, the language to be included in the Letter of

[6] Lightyear Communications, Inc. was formerly known as Unidial Communications, Inc.

[7] As noted, new Lightyear represents that it does not currently intend to begin providing local exchange services in Delaware. Once new Lightyear makes the decision to provide local exchange services, it should notify the Commission so the Commission can then decide whether the bond requirements of Rule 4(f)(i)

Credit to trigger the Commission's ability to draw on the line of credit. If Staff and new Lightyear cannot agree on appropriate language, or any other details, then new Lightyear should petition the Commission to sit to resolve the dispute.

8. The present waiver is limited to one year. In that time, the Commission expects to explore whether the surety bond requirement is the appropriate exclusive instrument to provide security for a carrier's performance, or whether other financial instruments might provide the same, or similar, protection. Right now, the Commission does not have sufficient knowledge to make the comparison between surety bonds and letters of credit (or any other devices). Perhaps, the Commission might later conclude that other instruments do indeed provide equal, or greater, protection. If so, the Commission can then decide how it might go about allowing carriers to utilize such other instruments. As counsel suggests (see n. 5), it may require a revision of the present rules. Once other alternatives are found acceptable, then not only new Lightyear but other carriers can utilize them.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons stated in the body of this Order, the requirements of Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services" (adopted by PSC Findings, Opinion, and Order No. 5833 (Nov. 6, 2001) are hereby waived in conjunction with the application for a Certificate of Public Convenience and Necessity filed by Lightyear Network Solutions, LLC, filed on December 15, 2003. The waiver shall apply only to the extent that such Certificate authorizes

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need to be satisfied in light of those expanded operations.

Lightyear Network Solutions, LLC, to provide intrastate interexchange services. In lieu of the surety bond required by that Rule, Lightyear Network Solutions, LLC, shall submit an irrevocable Letter of Credit as outlined in its letter waiver application received May 28, 2004. This waiver shall apply for one-year from the date of this Order.

2. That Commission Staff is delegated the authority to superintend the details and mechanics of the Letter of Credit allowed by Ordering paragraph 1.

3. That the Staff shall explore with telecommunications carriers and other interested persons whether Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services" should be amended or otherwise modified to allow carriers to submit other forms of financial instruments to secure their performance. After such consultations, Staff shall submit a Report on the issue with its recommendations.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/S/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary