

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
December, 2006.

In the Matter of Joint Application of Lightyear)	
Network Solutions, LLC and First Communications,)	
Inc. for Approval of Transfer of Control and)	<u>Case No. TM-2007-0202</u>
Joint Application of First Communications, LLC and)	
First Communications, Inc. for Approval of Transfer)	
of Control)	

ORDER DISMISSING APPLICATION

Issue Date: December 19, 2006

Effective Date: December 29, 2006

Syllabus: This order dismisses the Joint Application filed by Lightyear Network Solutions, LLC (“Lightyear”), First Communications, LLC (“FCL”), and First Communications, Inc. (“FCI”) due to a lack of jurisdiction.

On November 28, 2006, Lightyear, FCL, and FCI filed a verified Joint Application with the Commission seeking approval of transactions whereby FCI would acquire ownership and control of Lightyear and FCL, both of which are certificated to resell interexchange telecommunications services in Missouri and are currently owned and controlled by various different business entities.¹ According to the Joint Application, Lightyear is a Kentucky limited liability company domiciled in Kentucky and FCL is an Ohio

¹ *Joint Application* at 5-6 and Exhibit E.

limited liability company domiciled in Ohio.² Meanwhile, FCI is a newly-formed Delaware corporation domiciled in Ohio which was created for the sole purpose of acquiring a 100% ownership interest in Lightyear, FCL, and a non-Missouri certificated Delaware corporation domiciled in Florida known as Xtension Services, Inc. (“Xtension”).³

The Joint Application further explains that in acquiring Lightyear and FCL, FCI will serve as a holding company whose shareholders would include not only the existing shareholders and founding management personnel of Lightyear, FCL, and Xtension, but also new investors to be solicited via an Initial Public Offering on the Alternative Investment Market of the London Stock Exchange in March 2007.⁴ Following the IPO, the end result of the transactions would be that Lightyear, FCL, and Xtension would be wholly owned and controlled by FCI, rather than by the present hodgepodge of other business entities.⁵ The Joint Application also indicates that the transactions would not result in the assignment or transfer of the certificates, assets, or customers of either Lightyear, FCL, or Xtension.⁶

Section 392.300.1, RSMo 2000, generally provides that no telecommunications company may “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system” or direct or indirectly merge or consolidate its “line or system, or franchises, or any part thereof” with any other corporation, person, or public utility without first obtaining permission from the Commission. However, as noted *supra*, the Joint Application clearly indicates that no transfer of the certificates, assets, or customers of Lightyear or FCL will result from the transactions. Moreover, the

² *Joint Application* at 5-6.

³ *Joint Application* at 2-3, 7, and Exhibit A. Xtension is not one of the three joint applicants in this matter, and is mentioned throughout this order only for the sake of completeness.

⁴ *Joint Application* at 2, 3-4, 8, and Exhibit E.

⁵ *Joint Application* at 8 and Exhibit E.

⁶ *Joint Application* at 2.

joint applicants describe the transactions as being “seamless and virtually transparent” to their Missouri customers inasmuch as Lightyear and FCL will continue to offer the same services they currently offer with no change in their rates, terms, or conditions of service.⁷ Rather, after the transactions, Lightyear and FCL will both retain all of their existing assets and will simply become controlled by a different holding company. Thus, Section 392.300.1 does not apply to the transactions described by the joint applicants because they will not result in a change of ownership of the whole or any part of the assets of a Missouri-regulated telecommunications company. Indeed, the “Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level[.]”⁸

Meanwhile, Section 392.300.2, RSMo 2000, generally provides that no domestic or foreign stock corporation shall “purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by the virtue of the laws of this state” without the consent of the Commission. However, as noted *supra*, Lightyear is a Kentucky limited liability company headquartered in Kentucky. Likewise, FCL is an Ohio limited liability company and its headquarters are in the state of Ohio, while Xtension is a Delaware corporation domiciled in Florida. Accordingly, Section 392.300.2 is inapplicable and does not give the Commission jurisdiction over the transactions since they do not involve the purchase, acquisition, taking, or holding of any of the capital stock issued by a telecommunications company organized or existing under or by virtue of the laws of Missouri. Indeed, the Commission has

⁷ *Joint Application* at 8, 9.

⁸ Order Closing Case, *In the Matter of the Proposed Merger of Verizon Communications, Inc. and MCI, Inc.*, Case No. TM-2005-0370 (May 3, 2005), at 1.

repeatedly dismissed, for lack of jurisdiction under section 392.300.2, similar applications seeking its approval of the purchase or acquisition of the stock of foreign corporations not organized under or existing by virtue of Missouri law.⁹

For all of these reasons, on December 14, 2006, the Staff of the Commission recommended that the Commission issue an order dismissing the Joint Application on the ground that the Commission does not have jurisdiction over the transactions outlined therein. This was the stated position of the joint applicants as well, who explained that they sought Commission approval of the transactions “out of an abundance of caution should the Commission determine otherwise.”¹⁰

Because neither Section 393.300.1 nor Section 393.300.2 gives the Commission jurisdiction, the Commission shall dismiss the application.

Finally, Commission Rule 4 CSR 240-2.060(C) requires any applicant that is a foreign corporation to include, in its application, a certificate from the Missouri Secretary of State that it is authorized to do business in Missouri. Although the Joint Application contains no such certificate as to FCI, FCI has requested that the Commission waive this requirement pursuant to 4 CSR 240-2.015(1).¹¹ As the Commission is dismissing the Joint Application on jurisdictional grounds, there is no need to address FCI’s waiver request.

⁹ See, e.g., Case No. TM-2000-524, *In the Matter of NEXTLINK Missouri, Inc., and NEXTLINK Long Distance Services, Inc.* (acquired company was organized under the laws of the state of Washington); Case No. XM-2005-0219, *In the Matter of SBC Long Distance, Inc., and SBC Telecom, Inc.* (acquired company was organized under the laws of the state of Delaware); Case No. TM-2007-0140, *In the Matter of Talk America Holdings, Inc., Talk America, Inc., LDMI Telecommunications, Inc., and Cavalier Telephone Corp.* (acquired companies were organized under the laws of the state of Delaware).

¹⁰ *Joint Application* at 1 n.1.

¹¹ This regulation provides that any rule in the 4 CSR 240-2 series “may be waived by the commission for good cause.” FCI avers it has demonstrated good cause since “FCI has no present intention of engaging in business in the State of Missouri and its role at this time is to serve as the acquiring company for control of Lightyear and [FCL].” *Joint Application* at 3 n.2.

IT IS ORDERED THAT:

1. The Joint Application filed by Lightyear Network Solutions, LLC, First Communications, LLC, and First Communications, Inc. on November 28, 2006 is dismissed for lack of jurisdiction.
2. This order shall become effective on December 29, 2006.
3. This case shall be closed on December 30, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Appling, CC., concur
Gaw and Clayton, CC., dissent

Lane, Regulatory Law Judge