

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

In the Matter of the Joint Application of )  
Lightyear Network Solutions, LLC and )  
First Communications, Inc. for Approval )  
of Transfer of Control and Joint ) Case TM-2007-0202  
Application of First Communications, )  
LLC and First Communications, Inc. for )  
Approval of Transfer of Control )

**STAFF RECOMMENDATION**

COMES NOW the Staff of the Public Service Commission, and for its recommendation in this matter, states:

1. On November 28, 2006, Lightyear Network Solutions, LLC and First Communications, LLC and First Communications, Inc. jointly filed an application (“Joint Application”) seeking approval of a transaction whereby First Communications, Inc. would acquire control of Lightyear Network Solutions, LLC and First Communications, LLC.

2. According to the Joint Application, the transaction will be achieved through the acquisition of Lightyear Network Solutions, LLC and First Communications, LLC by First Communications, Inc., with the latter company acting as a holding company whose shareholders are comprised of the shareholders of the former two companies, among others. *Joint Application* at 8 and Exhibit E. The net result of the transaction is for Lightyear Network Solutions, LLC, First Communications, LLC and a third company to have common ultimate ownership. The Joint Application also indicates that no transfer of certificates, assets or customers will result from the transaction. *Joint Application* at 2 and 8.

3. Section 392.300.1 RSMo (2000) generally provides that no telecommunications company may sell, assign, lease or transfer “the whole or any part of its franchise, facilities or

system” or merge its “line or system or franchises” with any other corporation, person or public utility without first obtaining permission from the Commission.

4. However, as noted above, the Joint Application indicates that no transfer of certificates, assets or customers will result from the transaction. *Joint Application* at 2 and 8. Thus, this statutory subsection does not apply to the transaction because the ownership of assets of a Missouri-regulated telecommunications company does not change under the terms of the transaction according to the applicants.

5. Section 392.300.2 RSMo (2000) generally provides that no stock corporation shall purchase or acquire 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.

6. However, Lightyear Network Solutions, LLC is a Kentucky entity. Likewise, First Communications, LLC is an Ohio entity. As a result, no “telecommunications company organized or existing under or by the virtue of the laws of this state” is being acquired as a result of the transaction presented in the *Joint Application*. *Id.*

7. In the past, the Commission has dismissed for lack of jurisdiction under Section 392.300.2 RSMo (2000) any applications seeking approval for the transfer of the stock of corporations not organized or existing by virtue of the laws of the state of Missouri.<sup>1</sup> “The

---

<sup>1</sup> See, e.g., Case No. TM-2000-524, *In the Matter of NEXTLINK Missouri, Inc., and NEXTLINK Long Distance Services, Inc* (the 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.* (the 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.* (the acquired companies were organized under the state of Delaware).

Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level.”<sup>2</sup>

8. Should the Commission dismiss this case, the request for waiver of Commission Rule 4 CSR 240-2.060(C) becomes moot.

WHEREFORE, the Staff recommends that the Commission issue an order that concludes that the Commission does not have jurisdiction over the transaction presented in the *Joint Application* and dismiss it.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer  
Senior Counsel  
Missouri Bar No. 46620

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8706 (Telephone)  
(573) 751-9285 (Fax)  
david.meyer@psc.mo.gov

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 14<sup>th</sup> day of December 2006.

/s/ David A. Meyer

---

<sup>2</sup> 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.