

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)	CHAPTER 11
)	
LIGHTYEAR HOLDINGS, INC., ET AL.,)	CASE NO. 02-32257
)	
DEBTORS.)	JOINTLY ADMINISTERED
)	
)	HON. DAVID T. STOSBERG
)	

ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS PURSUANT TO 11 U.S.C. § 363(B), (F) AND (M) AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. § 365

THIS MATTER is before the Court on the DEBTORS’ MOTION FOR ORDER: (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL ASSETS PURSUANT TO 11 U.S.C. § 363(B), (F) AND (M) AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. § 365, dated June 20, 2003 (the "Sale Motion")¹, filed by LIGHTYEAR COMMUNICATIONS, INC., LIGHTYEAR TELECOMMUNICATIONS LLC, AND LIGHTYEAR COMMUNICATIONS OF VIRGINIA, INC., debtors and debtors possession (collectively, the “Debtors”); the Sale Motion and the NOTICE OF SALE AND OPPORTUNITY TO BID (the "Notice"), as approved by this Court, having been served upon (i) the United States Trustee; (ii) the Debtors' postpetition secured lenders and their counsel; (iii) counsel for LY Acquisition; (iv) counsel for MCI/Worldcom; (v) counsel for the Official Committee of Unsecured Creditors of Lightyear Holdings, Inc.; (vii) the members of the Official Committees of Unsecured Creditors of Lightyear Telecommunications, LLC; (viii) all creditors in these chapter 11 cases; (ix) those parties

¹ Capitalized terms shall have the meaning ascribed to them in the Sale Motion.

requesting notice in these chapter 11 cases; and (x) all entities known to the Debtors to have expressed an interest in the Purchased Assets and their counsel, if known to the Debtors; the Court having entered an order on August 18, 2003 approving the procedures for conducting the Sale of the Purchased Assets (the "Sale Procedures Order"); the Court having considered the files and records herein and having heard statements of the parties and/or their counsel at the hearing to approve the Sale on October 28, 2003 (the "Sale Hearing"), and good cause appearing therefore,

NOW, THEREFORE, THE COURT HEREBY FINDS THAT:

1. The Court hereby adopts and incorporates herein as its findings of fact the Court's findings stated on the record at the Sale Hearing.
2. Based upon the Court's findings, and the Court being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- A. The Sale Motion is granted.
- B. The Debtors are authorized to implement and consummate all of the transactions (the "Sale") contemplated by the Asset Purchase Agreement (the "Purchase Agreement") filed with this Court on July 30, 2003 with LY Acquisition LLC (the "Purchaser") and to sell the Purchased Assets and to assume and assign and the Assumed Contracts and Leases, as described in the Purchase Agreement, to the Purchaser for the purchase price set forth in and determined in accordance with the Purchase Agreement and the procedures established in the Sale Procedure Order.
- C. Upon the Final Closing of the Sale and the payment of the amounts to the non-Debtor parties necessary to cure any monetary defaults under the Assumed Contracts and Leases, which are to be assumed and assigned pursuant to the terms of the Purchase Agreement, the Debtors are authorized to assume and assign the Assumed Contracts and Leases to the Purchaser. Such payments shall (a) effect a cure of all defaults existing

thereunder at the time of the Final Closing of the Sale, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Contracts and Leases by the Purchaser, constitute adequate assurance of future performance thereof. The Purchaser shall then have assumed the Assumed Contracts and Leases and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by Debtors of the Assumed Contracts and Leases shall not be a default thereunder. Neither the Debtors nor the Purchaser shall have any further liabilities to the non-Debtor parties to the Assumed Contracts and Leases other than the Purchaser's obligations under the Assumed Contracts and Leases from the Final Closing date and forward.

D. The Purchase Agreement is hereby approved and shall be deemed in full force and effect, binding and benefiting the Debtors and the Purchaser.

E. Upon the Final Closing of the Sale, the Purchaser shall take title to and possession of the Purchased Assets and Assumed Contracts and Leases free and clear of any and all liens, claims, interests and encumbrances (collectively, the "Liens"), other than (a) the Liens of U.S. Bank, National Association and Deutsche Bank AG New York and/or Cayman Islands Branch (collectively, the "Banks"), but only to the extent of the section 363 financing between the Purchaser and the Banks and (b) those Liens which are assumed or consented to by the Purchaser as provided by the Purchase Agreement (collectively, the "Permitted Liens"), including, without limitation: (a) any mortgages, security interests, liens or encumbrances of any kind; (b) any demands or claims of creditors of, or claimants against, the Debtors; (c) any interests of shareholders or other interests in the Debtors; and (d) any person claiming through, by or on behalf of the Debtors, whether such claim, demand, lien, or interest be direct or indirect, known or unknown, or claiming that the Purchaser is a successor, successor-in-interest or pursuant to any other theory; *provided, however*, that the Purchaser shall not be relieved of liability with respect to obligations accruing under the Assumed Contracts and Leases from and after the Final Closing of the Sale.

F. Upon the Final Closing of the Sale and the payment of the amounts by the Purchaser required hereunder, the Purchaser shall be deemed the other party to the Assumed Contracts and Leases and the Debtors shall be relieved from all liability on the Assumed Contracts and Leases arising after the assignment to the Purchaser.

G. The Purchaser shall have all protections and benefits afforded an entity that purchases assets in good faith within the meaning of section 363(m) of the Bankruptcy Code and does not constitute a successor to the Debtors.

H. The Debtors have established sound business justifications in support of the Sale. After considering the circumstances herein, the Court has determined that the Purchaser's offer as described in the Sale Motion and set forth in the Purchase Agreement presents the best opportunity for the Debtors' estates to realize the highest distribution possible to all creditors.

I. The Debtors have carried the burden of demonstrating that the Sale will aid the Debtors' liquidation or reorganization and that the Debtors have met the standards set out in In re Lionel Corp., 772 F.2d 1063, 1071 (2d. Cir. 1983).

J. The transactions contemplated in the Sale Motion, as approved and implemented herein, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including but not limited to sections 363(b), (f) and (o). The terms and conditions of the Sale of the Purchased Assets and the other transactions approved by this Order are fair and reasonable.

K. The Purchaser's offer, as approved herein, is the highest and best offer for the Purchased Assets. The purchase price offer by the Purchaser constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets.

L. The transfer of the Purchased Assets on the Final Closing to the Purchaser for the consideration set forth in the Purchase Agreement is in the best interest of the Debtors' estates, their creditors and all parties-in-interest.

M. For good and valid reasons, the Court may authorize and approve a sale of assets of the Debtors pursuant to section 363(b) of the Bankruptcy Code without the necessity of following the procedures and making the findings required for confirmation of a plan of reorganization. Such relief is within the sound discretion of the Court in light of the existing business exigencies of the Debtors' bankruptcy cases, and is both justified and appropriate in light of the legitimate and compelling reasons stated in the Sale Motion.

N. The transfer of the Purchased Assets to the Purchaser represents an arms'-length transaction and has been negotiated in good faith between the parties. The Purchaser, as transferee of the Debtors' property, is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

O. The Purchaser has proceeded in good faith in all respects in connection with this proceeding in that:

- (i) The Purchaser recognized that that Debtors were free to deal with any other party interested in acquiring the Purchased Assets;
- (ii) All payments to be made by the Purchaser in connection with the transaction have been disclosed; and
- (iii) The Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction.

P. The terms of the Purchaser's purchase of the Purchased Assets as set forth in the Purchase Agreement are fair and reasonable under the circumstances of this case.

Q. The Debtors may sell the Purchased Assets free and clear of all Liens, other than the Permitted Liens, pursuant to section 363(f) of the Bankruptcy Code.

R. The sale of the Purchased Assets to the Purchaser does not constitute a sub rosa chapter 11 Plan because the Sale does not propose to:

- (i) Impair or restructure existing debt or equity interests;

- (ii) Impair or circumvent creditors' voting rights under any future chapter 11 Plan;
- (iii) Circumvent Chapter 11 safeguards such as disclosure requirements; or
- (iv) Classify claims, cure defaults, extend debt maturities or compromise claims or controversies.

S. The Purchaser does not constitute a successor to the Debtors because:

- (i) Except as otherwise set forth in the Purchase Agreement, the Purchaser is not expressly or impliedly agreeing to assume any of the Debtors' debts;
- (ii) The transaction does not amount to a consolidation, merger or de facto merger of Debtors and the Purchaser;
- (iii) The Purchaser is not merely a continuation of the Debtors; and
- (iv) The transaction is not being entered into fraudulently or in order to escape liability from the Debtors' debts.

T. Subject to the fulfillment of the terms and conditions of the Purchase Agreement, at the Final Closing the Debtors will sell, transfer, assign and convey to the Purchaser and/or its assigns all of the Debtors' rights, title and interest in, to and under the Purchased Assets. The Debtors are authorized, empowered and hereby directed to deliver special warranty deeds, bills of sale, assignments and other such documentation that may be necessary or requested by the Purchaser in accordance with the terms of the Purchase Agreement to evidence the transfers required herein.

U. The Debtors' retention of Morris Anderson & Associates Ltd., as special financial consultants and bankruptcy advisors, and Alan J. Glazer, as Chief Restructuring Managers, is hereby terminated effective as of the Initial Closing of the Sale; provided, however, that the

Debtors shall retain the right to employ financial and/or other consultants in these chapter 11 cases for specific purposes, subject to this Court's prior review and approval.

V. The Debtors shall file, on or before November 20, 2003, their disclosure statement (the "Disclosure Statement") and liquidating plan of reorganization (the "Plan"). The Court will conduct a combined hearing to approve the Disclosure Statement and confirm the Plan on December 15, 2003 at 10:00 a.m. (EST).

W. This Court will conduct a hearing to consider the United States Trustee's oral motion to convert the Debtors' chapter 11 cases to cases under chapter 7 (the "Motion to Convert") on December 15, 2003 at 10:00 a.m. (EST). Objections, if any, to the relief sought with the Motion to Convert must be filed on or before December 1, 2003. The United States Trustee shall have until December 10, 2003 to file any replies.

X. Pursuant to Rule 6004(g) of the Federal Rules of Bankruptcy Procedure, this Order shall be effective immediately upon entry.

Y. Except as specifically provided herein, all objections to the Sale, whether filed with this Court or raised orally at the Sale Hearing, are hereby overruled.

Z. That a Certified Copy of this Order may be filed with the appropriate Clerk and/or recorded with the Recorder to act to cancel the liens and encumbrances of record.

AA. Pursuant to section 1146 of the Bankruptcy Code, the transfer of the Purchased Assets, and the execution and delivery of any instrument of transfer by the Debtors shall not be taxed under any law imposing a transfer tax, a stamp tax, or a similar tax.

BB. There were no brokers involved with the negotiation or consummation of the Purchase Agreement, and, therefore, neither the Debtors nor the Purchaser shall be liability for any brokers' commissions.

CC. This Court shall retain jurisdiction over this transaction for purposes of enforcing the provisions of this Order and the Purchase Agreement.

DD. The Liens of the Banks and the Liens of any other third parties will attach to the sales proceeds with the same validity and priority as exist under state law pursuant to section 363(e) of the Bankruptcy Code. The Purchaser shall pay the Banks directly by wire transfer of immediately available funds the balance of indebtedness outstanding as of the Final Closing Date under the Debtor in Possession Revolving Credit Agreement, dated as of April 29, 2002, by and among the Debtors, the Banks and the Administrative Agent, as amended by the First Amendment to Debtor In Possession Revolving Credit Agreement and Other Loan Documents, dated as of May 22, 2002, the Second Amendment to Debtor In Possession Revolving Credit Agreement, dated as of December 6, 2002, the Third Amendment to Debtor In Possession Revolving Credit Agreement, dated as of March 31, 2003, the Stipulated Order Authorizing Extension of Final Debtor In Possession Financing Order, dated as of June 24, 2003, and the Second Stipulated Order Authorizing Extension of Final Debtor In Possession Financing Order, dated as of September 15, 2003, and as may be further amended, modified, supplemented or otherwise modified from time to time.