

Decision 08-12-003 December 4, 2008

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Lightyear Network Solutions, LLC (U5359C) and Wherify Wireless, Inc. for Approval of the Indirect Transfer of Control of Lightyear Network Solutions, LLC to Wherify Wireless, Inc.

Application 08-08-024  
(Filed August 25, 2008)

**DECISION GRANTING APPROVAL  
OF PROPOSED TRANSFER OF CONTROL****1. Summary**

This decision grants the application of Lightyear Network Solutions, LLC (Lightyear) and Wherify Wireless, Inc. (Wherify), jointly referred to as Applicants, requesting approval of the proposed indirect transfer of control of Lightyear to Wherify. Applicants state that the proposed transaction will enable Lightyear to obtain access to additional financial resources, thereby allowing Lightyear to strengthen its competitive position in California. According to Applicants, the proposed transfer of control will be seamless and virtually transparent to the customers of Lightyear. The application is unopposed. The proceeding is closed.

**2. The Applicants****2.1. Lightyear Network Solutions, LLC**

Lightyear is a Kentucky limited liability company, with offices located at 1901 Eastpoint Parkway, Louisville, Kentucky 40223. Lightyear is a wholly-owned subsidiary of LY Holdings LLC, a Kentucky limited liability

company also located in Louisville, Kentucky, and Holdings is owned by a series of investors including LANJK, LLC, Sullivan-LY, LLC, and Rice-LY Ventures, LLC. Lightyear holds domestic and international Section 214 authorizations from the Federal Communications Commission (FCC) and is authorized to provide local exchange telecommunications services in 44 states and long distance telecommunications services in 49 states. In California, Lightyear is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to Decision (D.) 04-04-044.

## **2.2. Wherify Wireless, Inc.**

Wherify, a Delaware corporation, is a public company traded over-the-counter under the symbol "WFYW" and has principal offices located at 63 Bovet Road, Suite 521, San Mateo, CA 94402-3104. For the purpose of accomplishing this transaction, Wherify created a new, wholly-owned merger subsidiary, Merger Sub, a Delaware corporation. Wherify is a pioneering developer of patented wireless location products and services for family safety and business communications. Its portfolio of intellectual property includes proprietary integration of the US Government's Global Positioning System (GPS) and wireless communication technologies; patented back-end location service; the Wherifone™ GPS locator phone which provides real-time location information and lets families with pre-teens, seniors, or those with special medical needs, stay connected and in contact with each other. Wherify holds international § 214 authority from the FCC.

## **3. The Proposed Transaction**

Lightyear and Wherify entered into an Agreement and Plan of Merger on August 12, 2008, whereby Merger Sub will merge with Holdings, with Holdings surviving. As a result, Holdings will be a direct, wholly-owned subsidiary of

Wherify, and Lightyear will be an indirect subsidiary of Wherify. Applicants expect that following the transaction Holdings' current owners will hold on a fully diluted basis approximately 51% combined interest in Wherify. They will also have the power to appoint five members of its Board of Directors – a majority of the seven-person Board. In addition to Wherify's public shareholders, there will be some additional investors in the combined company at closing as a result of certain financing transactions, but Applicants do not anticipate that any such new investor will hold an attributable interest in more than 10% of the shares of Wherify. Applicants therefore request authority for the indirect transfer of control of Lightyear to Wherify. Applicants provided pre- and post-transaction illustrative organization charts for the combined California operating companies (Exhibit A).

Applicants state that immediately following the consummation of the proposed transaction, Lightyear will continue to offer service with no change in the name of the company, or its rates or terms and conditions of service.<sup>1</sup> According to Applicants, the transfer of indirect control of Lightyear to Wherify will be seamless and virtually transparent to consumers in the State.

#### **4. Financial Showing**

The financial information provided in the application and the financial information filed under seal shows that Applicants meet the Commission's standards applicable to parties seeking control of providers of facilities-based and resold local exchange and interexchange telecommunications services.

---

<sup>1</sup> Applicants anticipate changing the name of Wherify to Lightyear Network Solutions, Inc., as soon as possible after closing.

## **5. Public Interest Considerations**

Applicants state that the proposed transaction will enable Lightyear to obtain access to additional financial resources as a result of its new publicly-traded parent company. These additional resources will allow Lightyear to strengthen its competitive position in California to the benefit of California's consumers. Other than the insertion of Wherify as the ultimate parent of Lightyear, the proposed transaction will not have any significant impact on the Commission's regulatory oversight of Applicants. No transfer of certificates, assets or customers will occur as a consequence of the proposed stock transaction. Lightyear will continue to provide service to its existing customers in California pursuant to its existing authorization and at the same rates, terms and conditions. According to Applicants, the transaction will be virtually transparent to Lightyear's customers, and the company will continue to be run by a combination of the highly experienced, well qualified management, operational and technical personnel that operate the company today. Also, the current owners of Lightyear will be the largest owners of Wherify following the transaction and will have the power to appoint a majority of its Board of Directors.

## **6. Discussion**

Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854(a) which, in relevant part, states:

No person or corporation ... shall merge, acquire, or control ... any public utility organized and doing business in this state without first securing authorization to do so from the Commission. ... Any merger, acquisition, or control, without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).<sup>2</sup> The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.<sup>3</sup>

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, Lightyear will continue to operate as it has done in the past, using the same names and operating authorities. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of Lightyear to raise capital, maintain and expand services and operations. Third, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

#### **7. Motion for Protective Order**

Pursuant to Pub. Util. Code § 583 and General Order 66-C, Applicants request that the financial information submitted in the application be kept under seal. Applicants represent that the information is proprietary and sensitive, and the information, if revealed would place Applicants at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

All sealed information should remain sealed for a period of two years after the effective date of this order. If Applicants believe that further protection of the sealed information is needed beyond the two years, Applicants shall comply with the procedure set forth in Ordering Paragraph 3.

---

<sup>2</sup> D.95-10-045, 1995 Cal. PUC LEXIS 901, \*18-19.

<sup>3</sup> D.00-06-079, p. 23.

**8. Categorization and Need for Hearing**

In Resolution ALJ 176-3221, dated September 18, 2008, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. There is no opposition to the application. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3221.

**9. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

**10. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Lightyear is authorized by D.04-04-044 to provide facilities-based and resold local exchange and interexchange telecommunications services in California.

2. Applicants seek authorization of the transfer of indirect control of Lightyear whereby Wherify will become the ultimate parent of Lightyear.

3. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

4. Lightyear will continue offering current services and use the same name and authority after the transfer of control.

5. Lightyear is current on reporting and transmitting the user fees applicable to its California operations.

6. Upon completion of the transaction, Lightyear will not change its name or its rates, terms or conditions of service as a result of the change in ultimate control.

7. Applicants contend that the transaction will be transparent to California consumers.

8. There is no opposition to this application.

### **Conclusions of Law**

1. This is a ratesetting proceeding and no hearing is necessary.

2. This application should be approved and become effective immediately because it is not adverse to the public interest.

3. Approval of this application is not a finding of value of the rights and property being transferred.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Lightyear Network Solutions, LLC (Lightyear) and Wherify Wireless, Inc. (jointly Applicants), are authorized, pursuant to Pub. Util. Code §§ 851-854 to implement the transfer of control as described in the application.

2. The request of Applicants to have the financial information filed with this application kept under seal is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned

Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

3. If the Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. Lightyear shall notify the Director of the Commission's Communications Division in writing of the transfer of control, as authorized herein, within 30 days of completion of the transaction. The authority to transfer control granted herein is limited to a 12-month period commencing from the date of this decision.

5. Application 08-08-024 is closed.

This order is effective today.

Dated December 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners