



# PUBLIC NOTICE

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DA 13-1991  
Released: September 26, 2013

**Domestic Section 214 Application Granted for the Acquisition of Certain Assets of  
Lightyear Network Solutions, LLC and SE Acquisitions, LLC  
by Birch Communications, Inc. and Birch Telecom, Inc.**

**WC Docket No. 13-164**

Birch Communications, Inc. (BCI), Birch Telecom, Inc. (Birch Telecom) (together, Birch), Lightyear Network Solutions, LLC (Lightyear), and SE Acquisitions, LLC (SE) (collectively, Applicants) filed an application pursuant to section 214 of the Communications Act of 1934, as amended (Act),<sup>1</sup> to transfer certain assets of Lightyear and SE to Birch.<sup>2</sup> The Wireline Competition Bureau (WCB) has determined that a grant of this Application, as conditioned, serves the public interest, and accordingly the Application is granted with the condition stated herein.

Lightyear offers or is certified to offer competitive local exchange (LEC) and interexchange services nationwide, including in the District of Columbia and Puerto Rico, with the exception of Alaska. SE is a subsidiary of Lightyear and is certified to offer competitive LEC and interexchange services in Kentucky.<sup>3</sup> BCI and its wholly owned subsidiary, Birch Telecom, offer or are certificated to offer through their operating subsidiaries competitive LEC and interexchange services in the District of Columbia and 48 states.<sup>4</sup> Pursuant to the terms of the proposed transaction, Birch will purchase certain assets and customers of Lightyear and SE, including customer accounts and contracts.<sup>5</sup>

Since we removed this transaction from streamlining to undertake a further public interest review, Lightyear has entered into a Consent Decree with the Enforcement Bureau addressing its

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<sup>1</sup> 47 U.S.C. § 214.

<sup>2</sup> *Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Lightyear Network Solutions, LLC and SE Acquisitions, LLC by Birch Communications, Inc. and Birch Telecom, Inc.*, WC Docket No. 13-164 Public Notice, DA 13-1486 (rel. July 1, 2013) (Application). WCB removed the Application from streamlined processing on July 23, 2013. *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, WC Docket No. 13-164, Public Notice, DA 13-1616 (rel. July 23, 2013).

<sup>3</sup> Application at 4.

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.* at 4-5.

compliance with various Commission requirements.<sup>6</sup> The Consent Decree requires Lightyear to develop and implement a plan and file reports with the Commission to ensure future compliance with the Act and Commission rules and with the terms of the Consent Decree.<sup>7</sup> Birch has filed supplemental information in this section 214 docket stating that, for purposes of the Consent Decree, Birch will be deemed a successor, assignee, or transferee of Lightyear following consummation of the proposed transaction and that it will be “bound by Lightyear’s obligations as set forth in the Consent Decree (excluding paragraphs 17-21 of the Consent Decree) for the remaining term of the Consent Decree, after such time as the Asset Purchase Agreement has been consummated.”<sup>8</sup> Birch states that it accepts these commitments as a condition to the grant of the Application.<sup>9</sup> We accept Birch’s commitment for purposes of the Consent Decree and make it a binding and enforceable condition of our approval.<sup>10</sup> Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served.<sup>11</sup> Commission precedent requires that a licensee must operate in a manner consistent with the Act and the Commission’s rules.<sup>12</sup> We conclude that Birch’s commitment will further the public interest, and we are satisfied that Birch is qualified to hold an authorization to acquire and serve Lightyear’s customers under the terms of the proposed transaction.<sup>13</sup>

We find that the transaction is likely to result in certain public interest benefits, including allowing the existing customers of Lightyear to benefit from access to expanded services offered by Birch, an established competitive carrier operating in multiple states.<sup>14</sup> In addition, Applicants affirm that, after completion of the customer transfer, Birch will provide Lightyear’s current customers with existing services without any immediate change to the rates, terms, and conditions of service.<sup>15</sup> Accordingly, and subject to the condition stated above, we find that grant of the Application will serve the public interest, convenience, and necessity.

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<sup>6</sup> Lightyear Network Solutions, LLC, File No. EB-08-IH-1374, Order, DA 13-1953 (Enf. Bur., Sept. 23, 2013) (*Order and Consent Decree*) (adopting a Consent Decree terminating and resolving an investigation into whether Lightyear violated the Act and Commission rules addressing various regulatory fee and reporting obligations, as well as required contributions to the Universal Service Fund, the Telecommunications Relay Service Fund, and the North American Numbering Plan and Local Number Portability administration).

<sup>7</sup> *Id.* at Attach., paras. 12-14.

<sup>8</sup> Letter from Angela F. Collins, Counsel for Birch Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-164 (filed Sept. 23, 2013).

<sup>9</sup> *Id.* at 1-2.

<sup>10</sup> *See, e.g., Application of AT&T Inc. and BellSouth Corporation to Transfer Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674, para. 22 (2007).

<sup>11</sup> *See id.*

<sup>12</sup> *See Policy Regarding Character Qualifications in Broadcast Licensing Proceedings*, Gen. Docket No. 81-500, Docket No. 78-108, 102 F.C.C.2d 1179, 1189, 1209, paras. 21, 55-56 (1986).

<sup>13</sup> *See Order and Consent Decree* at para. 4 (concluding that the investigation raises no substantial or material questions of fact as to whether Lightyear possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization).

<sup>14</sup> Application at 5-6.

<sup>15</sup> *Id.*

Pursuant to sections 4(i) and 214 of the Act<sup>16</sup> and section 0.291 of the Commission's rules,<sup>17</sup> WCB, under delegated authority, approves the Application listed herein subject to the condition stated above.

For further information, please contact Jodie May, (202) 418-0913, Competition Policy Division, Wireline Competition Bureau.

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<sup>16</sup> 47 U.S.C. §§ 154(i), 214.

<sup>17</sup> 47 C.F.R. §0.291.