

**( M C B R A Y E R )**  
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January 11, 2013

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JAN 11 2013

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Blvd.  
Frankfort, KY 40602-0615

**RE: *S.E. Acquisitions, LLC d/b/a Lightyear Network Solutions of Kentucky v.  
Ymax Communications Corporation***

Dear Commission Personnel:

Delivered with this letter please find an original and twelve (12) copies of a Formal Complaint to be filed in order to initiate the above-referenced matter. Please file-stamp and return to our courier one (1) copy of the Complaint. We have enclosed the original and eleven (11) copies for filing.

Please do not hesitate to contact me at this office if you have questions or need anything further. Thank you for your assistance.

Sincerely,



DOUGLAS T. LOGSDON

DTL/sc  
Enclosures

cc: John Greive  
P:\SaraC\Logsdon, Douglas\Lightyear\Ymax\KY Public Service ltr 011113.doc

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

|                             |   |
|-----------------------------|---|
| SE ACQUISITIONS, LLC d/b/a  | ) |
| LIGHTYEAR NETWORK SOLUTIONS | ) |
| OF KENTUCKY                 | ) |
|                             | ) |
| Complainant,                | ) |
|                             | ) |
| v.                          | ) |
|                             | ) |
| YMAX COMMUNICATIONS         | ) |
| CORPORATION                 | ) |
|                             | ) |
| Defendant                   | ) |
| _____                       | ) |

Case No. \_\_\_\_\_

**FORMAL COMPLAINT**

Comes now SE Acquisitions, LLC, d/b/a Lightyear Network Solutions of Kentucky (“SE Acquisitions”), by counsel, and for its formal Complaint against YMax Communications Corporation (“YMax”), pursuant to KRS 278.030, 278.040, 278.160, 278.260, 278.280, 278.310 through 278.450, 807 KAR 5:001 and 5:006, and the Communications Act of 1934 as amended by the Telecommunications Act of 1996, hereby respectfully shows as follows:

1. The full name and address of the Complainant is SE Acquisitions, LLC, d/b/a Lightyear Network Solutions of Kentucky, 1901 Eastpoint Parkway, Louisville, Kentucky 40223. SE Acquisitions has also done business under the assumed name of SouthEast Telephone at certain times that may be pertinent to this Formal Complaint, and that assumed name may have appeared on certain documents. SE Acquisitions is a Kentucky limited liability company in good standing. On October 1, 2010, Lightyear Network Solutions, Inc. and SE Acquisitions acquired the assets of SouthEast Telephone, Inc. out of bankruptcy. The transactions at issue in this Formal Complaint arise from assets purchased in that acquisition. SE Acquisitions is a local

exchange carrier that provides local switched access services to multiple counties in eastern Kentucky. SE Acquisitions provides switched or dedicated access communications services pursuant to certain tariffs filed with the Public Service Commission as described below.

2. The full name and address of the Defendant is YMax Communications Corporation, 5700 Georgia Avenue, West Palm Beach, Florida 33405. YMax is a foreign corporation in good standing. YMax's registered agent for service of process in Kentucky is CT Corporation System, 306 W. Main Street, Suite 512, Frankfort, Kentucky 40601. YMax is certified as a competitive local exchange carrier in multiple jurisdictions in the United States, including Kentucky, but is not a traditional telephone utility. Rather, YMax transmits telephone communications through its relationship with its close affiliate, MagicJack, L.P., which markets a device that uses the internet to make and receive telephone calls. YMax is certified as a telephone carrier in Kentucky and provides telecommunications services pursuant to certain tariffs filed with the Public Service Commission.

3. This Complaint concerns YMax's unlawful failure and refusal to pay tariffed and approved charges of SE Acquisitions. Specifically, YMax has failed and refused to pay SE Acquisitions' tariffed and approved switched access charges for terminating the switched access traffic delivered to it by YMax.

4. KRS 278.040 vests the Commission with jurisdiction over the regulation of rates and service of utilities with the Commonwealth.

5. KRS 278.260 further vests the Commission with original jurisdiction over any complaint as to the rates or service of any utility and empowers the Commission to remedy such complaints.

6. Kentucky law permits SE Acquisitions to demand, collect, and receive reasonable rates for services rendered, and to establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service. KRS 278.030(1) and (2). SE Acquisitions may employ suitable and reasonable classifications of its service in the conduct of its business. KRS 278.030(3).

7. Under Kentucky law, telephone service shall be provided in accordance with a telephone utility's filed and approved tariff, and no person shall receive service for greater or less compensation than prescribed in the applicable tariff. KRS 278.160(1) and (2).

8. Pursuant to 807 KAR 5:006(15)(1)(a), (d), (e), (f), and (g), SE Acquisitions may refuse or terminate service to YMax for: (i) noncompliance with SE Acquisitions' tariffed rules or commission administrative regulations; (ii) noncompliance with state, local or other codes; (iii) nonpayment of bills; and/or (iv) illegal use or theft of service.

#### **STATEMENT OF FACTS**

9. SE Acquisitions, LLC's Kentucky Access Services Tariff No. 2 ("Tariff No. 2") was issued October 1, 2010 and effective October 1, 2010. Tariff No. 2 was replaced in its entirety by SE Acquisitions, LLC, d/b/a Lightyear Network Solutions of Kentucky, Kentucky Access Services Tariff No. 5 ("Tariff No. 5"), which was issued July 11, 2012 and effective July 26, 2012.

10. Pursuant to Tariff No. 2, and subject to all of its terms and conditions, local switching was charged at the rate of \$0.0643 per originating minute or terminating minute under Section 3.93(A).

11. Pursuant to Tariff No. 5, and subject to all of its terms and conditions, local switching was charged at a rate of \$0.0643 per originating minute and \$0.056468 per terminating minute under Section 3.93(A).

12. With the exception of the above-referenced rate difference between Tariff No. 5 and Tariff No. 2, the language of Tariff No. 5 and Tariff No. 2 is virtually identical with respect to the duties of any person or entity who was or became a Customer by using services under the terms and conditions of the tariff.

13. Pertinent common provisions of Tariff No. 5 and Tariff No. 2 (collectively, the “Tariffs”) include, but are not limited to, the following:

- a. Section 1, definition of “Constructive Order”: “Delivery of calls to or acceptance of calls from the Customer’s End Users over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase switched access services as described herein.”
- b. Section 1, definition of “Customer”: “Any person, firm, partnership, corporation or other entity which uses service under the terms and conditions of this tariff and is responsible for the payment of charges.”
- c. Section 2.9.1, “Obligations of the Customer”: “The Customer is responsible for . . . payment of charges for services provided.”
- d. Section 2.10.1, “Responsibility for Charges”: “The Customer is responsible for payment of all charges for services and equipment furnished to the Customer for transmission of calls via the Company.”
- e. Section 2.10.3, “Payment for Services”: “(A) Unless otherwise specified herein, bills are due and payable upon receipt.” . . . “(E) Amounts not paid within 21 days after the date of invoice will be considered past due. The Company will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 21 days.” . . .”(G) The Customer shall notify the Company of any disputed items on an invoice within 45 days of receipt of the invoice.”
- f. Section 2.14.1, “Refusal and Discontinuance of Service”: “Upon nonpayment of any amounts owing to the company, the Company may, by giving requisite prior written notice to the Customer discontinue or suspend service without incurring any liability.”

- g. Section 2.14.6, “Refusal and Discontinuance of Service”: “The Company may discontinue the furnishings of any and/or all service(s) to Customer, without incurring any liability: . . . (2) Upon ten (10) days’ written notice to the Customer of any sum thirty (30) days past due.”
- h. Section 2.14.7, “Refusal and Discontinuance of Service”: “In the event the Company incurs fees or expenses, including attorney’s fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.”
- i. Section 3.4.1, “Access Ordering”: “(A) Customers may order switched access through a Constructive Order, as defined herein, or through an ASR [Access Service Request].”

**COUNT I**  
**Failure to pay tariffed charges**

- 14. SE Acquisitions restates and realleges all prior paragraphs as if set forth in full.
- 15. As set forth in the Tariffs, YMax is responsible for payment of all charges for services and equipment furnished by SE Acquisitions to YMax for transmission of calls.
- 16. YMax delivered terminating calls to SE Acquisitions’ switched local exchange services, which delivery by YMax constituted a Constructive Order under the terms of the Tariffs, pursuant to which YMax ordered and used switched access services provided by SE Acquisitions. Accordingly, YMax became liable for the payment of the charges set forth in the respective Tariffs.
- 17. SE Acquisitions invoiced YMax for the charges authorized by and stated in the Tariffs. YMax failed and refused to pay the charges. SE Acquisitions made further express written demand for payment, which included written notice to YMax of certain sums that were thirty (30) days or more past due. YMax nevertheless failed and refused to pay the charges, and continues to fail and refuse to pay the charges.

18. YMax has not notified SE Acquisitions of any disputed items on any invoice within 45 days of receipt of such invoice, or at any time.

19. From October 1, 2010 through December 31, 2012, YMax failed to pay charges for which it is liable pursuant to the Tariffs in the total amount of not less than \$152,622.87. Additional charges have come due and/or will come due after December 31, 2012. YMax is responsible to pay all due and past due charges, and all additional charges as and when due.

20. YMax's failure to pay tariffed charges has caused damages to SE Acquisitions.

21. SE Acquisitions respectfully requests that the Public Service Commission enter an Order requiring that YMax promptly pay to SE Acquisitions all due and past due charges, and all additional charges as and when they come due, including but not limited to, in addition to originating and terminating charges: (a) late payment charges equal to 1.5% per month for all past due balances that exceed 21 days; (b) SE Acquisitions' reasonable attorneys' fees and expenses incurred in pursuing collection of the foregoing charges; and (c) any and all additional sums that SE Acquisitions is entitled to recover pursuant to the Tariffs.

**COUNT II**  
**Discontinuance of service**

22. SE Acquisitions restates and realleges all prior paragraphs as if set forth in full.

23. SE Acquisitions is entitled to discontinue service to YMax pursuant to, without limitation, Sections 2.14.1 and 2.14.6 of the Tariffs.

24. SE Acquisitions is entitled to discontinue service to YMax pursuant to the Tariffs, and does not waive its right to exercise this remedy without the express leave of the Public Service Commission; however, in an abundance of caution, SE Acquisitions respectfully requests that the Public Service Commission enter an Order expressly finding that the conditions set forth in the Tariffs which authorize SE Acquisitions to discontinue service to YMax have


been met, and holding that SE Acquisitions is authorized and entitled to discontinue service to YMax forthwith.

WHEREFORE, SE Acquisitions respectfully requests that the Public Service Commission enter appropriate Orders as follows:

- a. An Order requiring that YMax promptly pay to SE Acquisitions all due and past due charges, in the total amount of not less than \$152,622.87 as of December 31, 2012 and all additional charges as and when they come due, including but not limited to, in addition to all originating and/or terminating charges: (a) late payment charges equal to 1.5% per month for all past due balances that exceed 21 days; (b) SE Acquisitions' reasonable attorneys' fees and expenses incurred in pursuing collection of the foregoing charges; and (c) any and all additional sums that SE Acquisitions is entitled to recover pursuant to the Tariffs;
- b. An Order expressly finding that the conditions set forth in the Tariffs which authorize SE Acquisitions to discontinue service to YMax have been met, and holding that SE Acquisitions is authorized and entitled to discontinue service to YMax forthwith; and
- c. Additional Orders for any and all other and further relief to which SE Acquisitions may be entitled pursuant to law.



Respectfully submitted,



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