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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 27, 2001

PETITION OF

LIGHTRADE, INC. CASE NO. PUC000301

For declaratory judgment

ORDER ON PETITION FOR DECLARATORY JUDGMENT

On November 8, 2000, LighTrade, Inc. ("LighTrade" or "Petitioner"), filed a petition for declaratory judgment ("Petition") with the State Corporation Commission ("Commission") requesting that the Commission state whether LighTrade is a public utility, as defined by § 56-232 of the Code of Virginia, so as to require it to obtain a certificate from the Commission prior to commencing operations in Virginia.

LighTrade states in its Petition that it plans to deploy carrier-neutral "pooling points" which will provide immediate provisioning and Quality of Service ("QoS") monitoring services for the delivery of telecommunications capacity sold or traded among other carriers. These pooling points, as described in the Petition, will enable the instantaneous transfer of bandwidth between multiple entities. In exchange for its services, LighTrade will collect a port usage fee and a fee for the real time-provisioning function.

NOW THE COMMISSION, having considered the Petitioner's request and applicable law, finds that LighTrade, as described in its Petition, is not a "public utility" as defined in § 56-232 of the Code of Virginia. We further find more pertinently that LighTrade is not a "public utility" for purposes of the Utility Facilities Act ("Facilities Act"), as defined in § 56-265.1 of the Code of Virginia, which is the more relevant section of the Code given that the Facilities Act addresses the need for certificates of public convenience and necessity to furnish telephone services. Further, LighTrade does not require a certificate of public convenience and necessity prior to commencing operations in the Commonwealth.

We will respond to the Petitioner's questions by briefly discussing the application of § 56-232; however, as stated above, we believe the definition of "public utility" as described in § 56-265.1 is more germane to Petitioner's question as to whether it requires a certificate to deploy its services. Section 56-232 of the Code of Virginia defines a regulated "public utility" to include any corporation, company, or other entity or association that owns, manages, or controls any plant or equipment or part thereof for the "conveyance of telephone messages . . . either directly or indirectly, to or for the public." Based upon LighTrade's description of its proposed services, it will be furnishing equipment that does not appear

to be used in the conveyance of telephone messages to the public. The carrier neutral "pooling points" will provide immediate provisioning and QoS monitoring services for the delivery of telecommunications capacity sold or traded among other carriers.

Nevertheless, because the Facilities Act governs the certification process for telephone companies, it would have been more appropriate for LighTrade to request that the Commission determine whether it is a public utility, as defined by § 56-265.1 of the Act. Section 56-265.1 defines public utility as "any company which owns or operates facilities within the Commonwealth of Virginia for the . . . furnishing of telephone service. . .." Based on the information provided to the Commission in its Petition, it appears LighTrade does not plan to own or operate "facilities" for furnishing telephone services, but instead plans to provide remote equipment to be used by telecommunications carriers to monitor the delivery of telecommunications capacity sold or traded among carriers. These facilities will not be directly utilized for furnishing telephone services.

LighTrade also requests that the Commission state whether it is necessary for it to obtain a certificate from the Commission prior to commencing operations in Virginia. We find

that there is no provision of the Facilities Act that requires LighTrade to obtain a certificate to deploy its services.

However, if at some future time LighTrade changes the type or provisioning of its services so as to bring it within the definition of "public utility" as described in § 56-265.1, or another provision of the Facilities Act that requires certification, it may be subject to regulation by the Commission.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) LighTrade, Inc., as described in its Petition, is not a "public utility" as defined by § 56-232 of the Code of Virginia.

(2) LighTrade, Inc., as described in its Petition, is not a "public utility" as defined by § 56-265.1 of the Code of Virginia.

(3) To deploy the services described in its Petition, LighTrade does not require a certificate of public convenience and necessity pursuant to the Utility Facilities Act.

(4) There being nothing further to come before the Commission, this case shall be dismissed and the papers herein placed in the file for ended causes.