STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6352

Joint Petition of Digital Broadband Communications,)
Inc., and Digital Signal Communications, Inc.)
for Approval of a Merger)
Order entered: 11/8/2000

I. INTRODUCTION

This case involves a petition filed on January 17, 2000, by Digital Broadband Communications, Inc. ("DBC") and Digital Signal Communications, Inc. ("DSCI") (collectively the "Petitioners"), seeking Vermont Public Service Board ("Board") approval *nunc pro tunc*, under 30 V.S.A. §§ 107, 109, and 231 for the merger of DBC and DSCI. As a result of the transaction, the separate existence of DSCI ceased. Subsequently, in its supplemental response to the Department of Public Service Inquiry of March 13, 2000, which was filed with the Board on April 5, 2000, Petitioners requested the revocation of DSCI's Certificate of Public Good ("CPG") and issuance of a CPG to DBC.[1]

On July 19, 2000, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the merger of DSCI with and into DBC or the revocation of DSCI's CPG. The Department noted that DSCI had not filed a tariff and had not yet commenced offering service in Vermont. The transaction, therefore, has not caused inconvenience or confusion to Vermont consumers. Further, the Department also had no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107. On October 20, 2000, the Department recommended that the Board issue a CPG to DBC in addition to approving the merger and revoking DSCI's CPG, without the need for suspension, investigation, of hearings.

II. FINDINGS OF FACT

Based upon the petition and accompanying documents, the Board makes the following findings of fact.

1. DBC is a Delaware corporation with principal offices located at 200 West Street, Waltham, Massachusetts. DBC is a recently-formed competitive telecommunications and

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1. The parties' petition calls for approval of the transaction *nunc pro tunc*. That legal mechanism can only be applied to correct a record, to make an order relate back to a time when a case was ripe for decision and a decision should have been recorded, but was not. 49 C.J.S. §123 *et seq*. It is not the same as retroactivity, and cannot be used to make a decision effective before the time of the Order in this docket.

information service provider that has recently begun to offer broadband services using, among other transport modalities, high-speed Digital Subscriber Line technologies. DBC is currently certified to provide competitive local exchange and/or interexchange telecommunications services in Massachusetts, New York, and Rhode Island. DBC has certification applications pending in several states throughout the northeast and mid-Atlantic United States. Petition at 2.

2. DBC was granted its Certificate of Authority to transact business in Vermont on October 1, 1999. DBC has provided the necessary documentation regarding management structure and financial information. Registration Form at Exhibits A and B.

3. DBC has not filed for bankruptcy and has never been the subject of an investigation by a state or federal authority. Registration Form at 2-3.

4. DBC intends to serve all the counties in Vermont within twenty-four months of obtaining authorization. Registration Form at 2.

5. DSCI was a New Hampshire corporation with principal offices located at 403 Waltham Street, Lexington, Massachusetts. DSCI was a telecommunications reseller specializing in the provision of high-speed data transmission and other advanced telecommunications services. DSCI was authorized to provide such services in five states, including Vermont. In Vermont, DSCI is authorized to provide intrastate telecommunications services pursuant to a Certificate of Public Good granted by the Board in Docket No. 6099 (June 15, 1999). Petition at 2.

6. The merger was accomplished through a transaction whereby DSCI merged with and into DBC, with DBC surviving the merger. As a result of the merger, the separate existence of DSCI ceased, and the Articles of Incorporation and Bylaws of DSCI have been replaced by those of DBC. Petition at 4.

7. Although the merger changed ownership and control of DSCI, it did not involve a change in the rates or terms and conditions of service pursuant to which DSCI intended to offer service in the State of Vermont. DSCI had not yet commenced offering its services in Vermont and, therefore, had no customers in the State of Vermont. Therefore, the merger of DSCI and DBC has been transparent to Vermont consumers. Petition at 4.

8. Completion of the merger described herein serves the public interest in promoting competition among providers of local and interexchange telecommunications services.
The merger should result in a company better equipped to accelerate its growth as a competitive telecommunications service provider by combining the telecommunications expertise and resources of DSCI with those of DBC. The resulting corporate structure and improved financial condition should enhance DBC's operational flexibility and efficiency, as well as its long-term

financial viability. These enhancements will directly benefit Vermont consumers. The merger, therefore, will ensure the continued provision of advanced telecommunications services to the public and should promote competition in the Vermont telecommunications service market. Petition at 4-5.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). The statutes also condition approval of a merger upon a finding that the merger will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).[2] In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the petition of DBC and DSCI, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of DSCI into the control of DBC, and thus results in the transfer of more than ten percent of the shares of DSCI to another company. We further conclude that the merger will allow DBC to operate more efficiently in the current telecommunications marketplace. The reorganization, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 107, 109 and 311, and should be approved.

For all of the above reasons, the merger of DSCI with and into DBC, through their Merger Agreement, should be approved.

IV. ORDER

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2. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The merger of Digital Signal Communications, Inc. with and into Digital Broadband Communications, Inc. is approved.

2. A Certificate of Consent to the merger of DBC with and into DSCI shall be issued.

3. The transfer of control of DBC to DSCI will promote the public good and, therefore, is approved.

4. The ownership and operation of a telecommunications service by DSCI will promote the general good of the State, subject to the conditions in the attached Certificate of Public Good issued to DBC.

5. The Certificate of Public Good issued to DSCI on June 5, 1999, is hereby revoked.

DATED at Montpelier, Vermont, this 8th day of November, 2000.

s/Michael H. Dworkin)	
)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
)	OF VERMONT
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OFFICE OF THE CLERK

Filed: November 8, 2000

Attest: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.