

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6439

Petition of MegsINET-CLEC, Inc. and CoreComm)
Limited for Approval of Merger and Revocation)
of CPG)

Order entered: 1/3/2001

INTRODUCTION

On September 7, 2000, MegsINET-CLEC, Inc. ("MCLEC") and CoreComm Limited ("CCL") (collectively "Petitioners") jointly filed a Telecommunications Merger and/or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 231 and 311, for approval of an indirect transfer of control of MCLEC to CCL, and revocation of MCLEC's Certificate of Public Good ("CPG") to provide telecommunications services in Vermont.

On October 30, 2000, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control and revoke MCLEC's CPG because the proposed transactions would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. MCLEC is a corporation headquartered in Chicago, Illinois. MCLEC is authorized to provide intrastate interexchange telecommunications services in Vermont pursuant to a Certificate of Public Good granted by the Board on March 16, 1999 (C.P.G. No. 448). MCLEC is a wholly-owned subsidiary of Megsinet, Inc. ("Megsinet"). Petition at 1.
2. CCL is headquartered in Chicago, Illinois, and is not certificated as a

telecommunications carrier in Vermont. CoreComm Acquisition Sub., Inc. ("CAS") is a wholly-owned subsidiary of CCL and is also not certificated in Vermont. Petition at 1.

3. Pursuant to a merger agreement, CAS was merged with and into Megsinet, with Megsinet as the surviving entity. As a result of the merger, MCLEC has become an indirect subsidiary of CCL and will no longer operate as a telecommunications provider in Vermont and consequently requests revocation of its CPG. MCLEC has never provided telecommunications service in Vermont; accordingly, the merger will not cause any inconvenience for Vermont consumers. Petition at 1-2.

4. The transfer of control, presumably, had no effect on the public good since MCLEC has no customers in Vermont. However, it should be noted, another certificated subsidiary of CCL, CoreComm Vermont Inc., will become CCL's operating subsidiary in Vermont, thereby promoting the public good by offering increased customer choice and promoting competition in the Vermont telecommunications market. In sum, the proposed transaction will benefit the public interest by enhancing the ability of CCL, through its subsidiaries, to offer competitively priced services in the Vermont interexchange telecommunications marketplace. Petition at 3.

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). 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).¹ In order to approve the acquisition of such a controlling interest, the Board must

1. 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).

first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition of CCL and MCLEC, we conclude that 30 V.S.A. § 107 applies because the merger transaction will result in the transfer of controlling interest of MCLEC, into the control of CCL, and thus results in the transfer of more than ten percent of the shares of MCLEC to another company. We further conclude that the merger will not affect the services that MCLEC currently provides to customers in Vermont, because it does not currently serve customers in Vermont. 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, and should be approved.

MCLEC has also requested that the Board revoke its CPG, in that it has never provided telecommunications in Vermont, nor does it plan to do so in the future. No opposition to this request has been raised. The Board finds the reasons articulated by MCLEC in support of its request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads us to conclude that MCLEC's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant MCLEC's request without a hearing.

CONCLUSIONS

The indirect transfer of control of MCLEC to CCL through the merger of CAS with and into Megsinet and request for revocation of MCLEC's CPG, should be approved because it will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. §§ 107(b), 311.

ORDER

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

1. The transfer of control of MegsINET-CLEC, Inc. to CoreComm Limited will promote the public good and, therefore, is approved.
2. The Certificate of Public Good (C.P.G. No. 448) issued to MCLEC on March 16, 1999, is hereby revoked.

DATED at Montpelier, Vermont, this 3rd day of January, 2001.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: January 3, 2001

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.