

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6457

Petition of VarTec Telecom, Inc., for Approval)
of a Transfer of Control)

Order entered: 5/7/2001

I. INTRODUCTION

This case involves a petition filed on October 31, 2000, by VarTec Telecom, Inc., ("Vartec" or the "Petitioner"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of a transfer of control resulting from a series of transactions whereby Vartec intends to purchase a series of subordinated convertible promissory notes from Lightyear Holdings, Inc. ("Lightyear Holdings") on behalf of itself and Lightyear Communications, Inc. ("LCI") and Lightyear Telecommunications, LLC ("LTC") (collectively, the "Lightyear Companies").

On April 13, 2001, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control of the Lightyear Companies. The Department noted that the transaction would be transparent to Vermont consumers and would not involve a change in the management or services of Vartec or the Lightyear Companies. 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.

II. FINDINGS OF FACT

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

1. Vartec is a Texas corporation authorized by the Board to provide telecommunications service in Vermont. A Certificate of Public Good (CPG No. 191) was issued to Vartec on October 10, 1995. Petition at 1-2.
2. Lightyear Holdings, a Delaware corporation, is an investment company not certificated to provide telecommunications services in Vermont. Petition at 2.

3. LCI, a wholly-owned subsidiary of Lightyear Holdings, is a Kentucky corporation authorized to provide telecommunications services in Vermont. A Certificate of Public Good (CPG No. 149) was issued to LCI on July 11, 1994. Petition at 2.

4. LTC, a wholly-owned subsidiary of Lightyear Holdings, is a Delaware limited liability company authorized to provide telecommunications services in Vermont. A Certificate of Public Good (CPG No. 363) was issued to LTC on April 29, 1998. Petition at 2.

5. Vartec and the Lightyear Companies intend to enter into a Note Purchase Agreement ("Agreement") whereby Vartec would purchase up to \$60 million in subordinated convertible notes to be issued by Lightyear Holdings. The transactions contemplated pursuant to the Agreement could potentially result in the transfer of approximately 37% of common stock of Lightyear Holdings to Vartec on a fully-diluted basis. Following the transaction, LCI and LTC will continue to operate in all respects as it currently operates, pursuant to present operating authority. Neither the name of, nor the terms and conditions of service offered by, LCI and LTC will be affected by the transaction. Accordingly, the transaction should not inconvenience customers within the State of Vermont. Petition at 4.

6. Completion of the proposed transaction will serve the public interest in that it will promote competition among telecommunications providers by providing Vartec and the Lightyear Companies with the opportunity to strengthen their respective competitive positions and to pursue marketing and business plans more effectively. Petition at 4.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility.¹ Under Section 107, a "controlling interest" is defined as 10% or more of the outstanding voting securities of a company. Section 107 requires a finding that the transfer of control will promote the public good. This standard is met in this case. The proposed transaction will promote the public good, because

1. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holder of the Certificates of Public Good, Vartec, LCI, and LTC, will continue to be the entities providing telecommunications service in Vermont.

the transfer of control of LCI and LTC to Vartec will allow the Petitioner to operate in a more flexible manner. In the competitive arena of telecommunications, the overall effect of this transfer may promote more customer choice in terms of services, with stronger competitors in the Vermont telecommunications market. It should also be noted that the transfer of control will not have an adverse impact on Vermont consumers as both LCI and LTC will continue to operate according to their present authority.

For all of the above reasons, the proposed transfer of control of LCI and LTC to Vartec should be approved.

IV. 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 Lightyear Communications, Inc., and Lightyear Telecommunications, Inc., to VarTec Telecom, Inc., is approved.
2. Petitioner shall notify the Board, within one week, upon completion of the transfer of control.

DATED at Montpelier, Vermont, this 7th day of May, 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: May 7, 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.