

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6468

Petition of Universal Access, Inc.)
for Approval of Merger and Transfer)
of Control)

Order entered: 2/7/2001

INTRODUCTION

On November 22, 2000, Universal Access, Inc. ("UAI" or "Petitioner") filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109 and 311, for approval of an internal reorganization of commonly controlled corporations that will establish UAI as a wholly-owned subsidiary of a newly created holding company: UAXS Global Holdings, Inc. ("Holdco"). Subsequent to the creation of the Holdco, UAI will merge with and into another newly created subsidiary, tentatively named Tempco, with UAI as the surviving entity.

By letter dated February 2, 2001, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed transactions without the need for hearings or investigation.

The Department also commented that since the transactions will permit UAI to continue operating in Vermont under its current name and service offerings, the transaction will be transparent and in terms of service would not cause inconvenience or confusion to its customers.

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. UAI is authorized to provide intrastate telecommunications services in Vermont pursuant to a Certificate of Public Good granted by the Board on March 15, 2000 (C.P.G. No. 548-CR).
Petition at 1.
2. Holdco and Tempco are newly created and wholly owned subsidiaries of UAI. Neither

entity currently holds telecommunications licenses from this regulatory commission. Petition at 1.

3. UAI Holdco and Tempco are currently affiliated through common ownership and control. Specifically, the same group of shareholders that collectively hold 100 percent interest in UAI will also hold a 100 percent interest in both Holdco and Tempco. Petition at 1-2.

4. The proposed reorganization will be accomplished through a transaction whereby UAI will create two wholly owned subsidiaries: Holdco and Tempco. UAI will merge with and into Tempco, with UAI as the surviving entity. By virtue of the merger each share of Holdco stock owned by UAI will be cancelled and each share of Tempco stock will be converted into UAI stock. Accordingly, following the reorganization UAI will be 100 percent owned by Holdco and the shareholders of UAI immediately before the reorganization shall be the shareholders of Holdco following the reorganization. Following the reorganization, UAI will continue serving current customers under existing service arrangements pursuant to its certification. Accordingly, the reorganization will be virtually transparent to customers of UAI. Petition at 1-2.

9. Completion of the reorganization will serve the public interest in promoting competition among providers of interexchange telecommunications services by enabling UAI to flexibly and efficiently obtain additional, lower cost financing that would allow it to grow more quickly and compete against larger telecommunications companies more effectively. Thus, Petitioner anticipates that the *pro forma* reorganization will result in a company better equipped as a competitive telecommunications service provider. These enhancements will inure directly to the benefit of Vermont customers. The reorganization, therefore, should ensure the continued provision of telecommunications services to UAI's existing customers and should promote competition in the Vermont telecommunications service market. In sum, the proposed *pro forma* reorganization will benefit the public interest by enhancing the ability of UAI to offer competitively priced services in the Vermont telecommunications marketplace. Petition at 4.

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).¹ 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 UAI, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of UAI, which will become a wholly-owned subsidiary of Holdco, into the control of Holdco, and thus results in the transfer of more than ten percent of the shares of UAI to another company. We further conclude that the merger will allow UAI to operate more efficiently in the current telecommunications marketplace and that the reorganization will not affect the services that UAI provides to 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, 109 and 311, and should be approved.

CONCLUSIONS

The corporate reorganization of UAI should be approved because it will promote the public good of the State of Vermont and will not result in obstructing or preventing competition in the provision of the services they are currently offering. 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 merger of Universal Access, Inc. and Tempco is approved.
2. A Certificate of Consent to the merger of Universal Access, Inc. with and into Tempco shall be issued.
3. The transfer of control of Universal Access, Inc. to UAXS Global Holdings, Inc. will promote the public good and, therefore, is approved.

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).

4. Petitioners should file a letter notifying the Board of the completion of the reorganization, within ten days of such completion.

DATED at Montpelier, Vermont, this 7th day of February, 2001.

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

OFFICE OF THE CLERK

Filed: February 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.

