

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6519

Joint Petition of Claricom Networks, Inc.,)
Claricom Holdings, Inc., Staples, Inc., Stacom)
Holdings, LLC, and Platinum Equity, LLC for)
Approval of a Transfer of Control and Related)
Transactions)

Order entered: 8/1/2001

I. INTRODUCTION

This case involves a joint petition filed on May 29, 2001, by Claricom Networks, Inc. ("Claricom"), Claricom Holdings, Inc., ("CHI"), Staples, Inc., ("Staples"), Stacom Holdings, LLC, ("Stacom"), and Platinum Equity, LLC, ("Platinum"), (together the "Petitioners"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. §§ 107 and 231, for approval of a transfer of control of Claricom to Stacom and the conversion of Claricom to a limited liability company.

On July 2, 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 or conversion of Claricom to a limited liability company. The Department noted that the transaction would be transparent to Vermont consumers and would not involve a change in the management or services of Claricom. Accordingly, the Department recommended the Board approve the transactions with the following conditions: (1) Claricom should file a letter notifying the Board of the transfer of control; (2) along with this letter, Claricom should file a revised proposed tariff reflecting the change in classification of Claricom from a corporation to a limited liability company with an appropriate effective date; and (3) Claricom should notify customers of the conversion to an LLC and file with the Board its Certificate of Organization provided by the Vermont Secretary of State. Further, the Department also had no objection to the issuance of an order, with the above conditions, 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. Claricom, a wholly-owned subsidiary of CHI, is a Delaware corporation, headquartered in Shelton, Connecticut. Claricom received a Certificate of Public Good (CPG No. 534-C) to provide telecommunications services in Vermont on February 2, 2000. Petition at 1-2.

2. CHI is a Delaware corporation and holder of 100% of the outstanding shares of capital stock of Claricom. CHI is a wholly-owned subsidiary of Staples, also a Delaware corporation. petition at 2.

3. Stacom is a limited liability company organized under the laws of Delaware, which was created for the purpose of holding the ownership interests of Claricom. Platinum, also a Delaware limited liability company, was organized as a vehicle for the acquisition of companies and is the ultimate parent of Stacom. Petition at 2.

4. On March 27, 2001, CHI, Staples, Stacom and Platinum entered into a Purchase and Sale Agreement ("Agreement"). Pursuant to the Agreement, Claricom will be converted to a limited liability company and all of the outstanding membership interests in Claricom will be transferred from CHI to Stacom. As a result of this transfer, Claricom will become a wholly-owned subsidiary of Stacom, whose ultimate parent company is Platinum. Following the transaction, Claricom will continue to operate in all respects as it currently operates, pursuant to present operating authority. The terms and conditions of service offered by Claricom will not be affected by the transaction. Petition at 3.

5. Completion of the proposed transaction will serve the public interest in that it will promote competition among telecommunications providers by providing Claricom with the additional funding to strengthen its competitive positions and to pursue marketing and business plans more effectively. Petition at 3-4.

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. 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 the transfer of control of Claricom will allow Claricom access to additional financial resources, thus allowing the company 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 Claricom will continue to operate according to its present authority.

Petitioners also request approval of the conversion of Claricom from a corporation to a limited liability company. The conversion will result in a change in company name from Claricom Networks, Inc. to Claricom Networks, LLC. 30 V.S.A. § 231(a) provides that the Board may amend or revoke any CPG for good cause, after an opportunity for hearing. Since there is no controversy surrounding Claricom's name change, it follows that good cause exists to amend its CPG to reflect the new name of the holder of the certificate. As for whether a hearing is necessary, we conclude that it is not. First, there is no genuine issue of material fact as to whether the CPG should be amended and, consequently, under V.R.C.P. 56, a hearing is unnecessary. Second, Claricom has asked that its CPG be amended, and the DPS has recommended that the petition be approved without hearing. Finally, 30 V.S.A. § 231(a) requires only the opportunity for a hearing, thus acknowledging that a hearing is not always necessary prior to amendment.

For all of the above reasons, the transfer of control of Claricom to Stacom should be approved, and Claricom's CPG should be amended to reflect the name change to Claricom Networks, LLC, upon notice to the Board of the completion of the transaction.

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 Claricom Networks, Inc. to Stacom Holdings, LLC through their Purchase and Sale Agreement, is approved.

2. Petitioners shall notify the Board, within one week, upon completion of the transfer of control.

3. The Certificate of Public Good that was issued to Claricom Networks, Inc., on February 2, 2000, shall be amended to reflect the new name of the holder of the certificate: Claricom Networks, LLC, upon notification to the Board of the completion of the transfer and receipt of the Certificate of Organization from the Vermont Secretary of State that reflects the name change.

DATED at Montpelier, Vermont, this 1st day of August, 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: August 1, 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.