

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6557

Joint Petition of Covista Communications, Inc.,)
and Capsule Communications, Inc. for Approval)
of a Merger and Transfer of Control)

Order entered: 10/31/2001

I. INTRODUCTION

On August 30, 2001, Covista Communications, Inc. ("Covista"), and Capsule Communications, Inc. ("Capsule") (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, 109 and 311, for approval of a merger and transfer of control.

On October 5, 2001, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the merger and transfer of control because the proposed transactions would not cause inconvenience or confusion to Vermont consumers. 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.

II. FINDINGS OF FACT

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

1. Capsule is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good granted by the Board on April 12, 2000, in Docket No. 6353. Petition at 1.
2. Covista does not hold currently hold a Certificate of Public Good in Vermont. Petition at 1.
3. The proposed transaction will be effectuated by means of the following steps: (1)

Covista will create a wholly-owned subsidiary, CCI Acquisitions Corp., created specifically for the purpose of conducting this transaction; (2) and CCI Acquisitions Corp. will be merged with and into Capsule, with Capsule as the surviving entity. Following the transaction, Capsule will continue to operate in all respects as it currently operates, pursuant to existing operating authority. Neither the name of nor the terms and conditions of service offered by Capsule will be affected by the transaction. Accordingly, the merger will not cause any inconvenience for Vermont consumers. Petition at 2.

4. The proposed transactions should allow the Petitioners to combine management skills, thus enhancing the ability of the Petitioners to offer competitively priced services in the Vermont telecommunications marketplace and promoting the public good . Petition at Exhibit 4.

III. 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.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not . . . merge nor consolidate . . ." without approval of the Board. 30 V.S.A. § 311 states that "[a] consolidation or merger . . . shall not become effective without the approval of the [Board] . . ." 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).

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).

After reviewing the petition, we conclude that 30 V.S.A §§109 and 311 apply to the mergers of the Petitioners, which involves a certificated telecommunications carrier in Vermont. We also conclude that 30 V.S.A. § 107 applies because the merger of Capsule with CCI Acquisitions Corp., will result in the transfer of controlling interest of Capsule, into the direct control of Covista, and thus results in the transfer of more than ten percent of the shares of Capsule to another company. We further conclude that the mergers will not affect the services that Capsule currently provides to customers in Vermont. Capsule will continue to operate under its current name and tariff. The mergers and resulting transfer of control, 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.

IV. CONCLUSIONS

The merger of CCI Acquisitions Corp. with and into Capsule resulting in the transfer of control of Capsule to Covista, should be approved because the transactions 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), 109, 311.

V. ORDER

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

1. The merger of CCI Acquisitions Corp. with and into Capsule Communications, Inc., will promote the public good and, therefore, is approved.
2. The transfer of control of Capsule Communications, Inc. to Covista Communications, Inc., will promote the public good and, therefore, is approved.
3. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.

4. A Certificate of consent to the merger of CCI Acquisitions Corp. with and into Capsule Communications, Inc., shall be issued.

Dated at Montpelier, Vermont, this 31st day of October, 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: October 31, 2001

Attest: s/Judith C. Whitney

Deputy 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.