

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6595

Petition of Working Assets Funding Service, Inc.,        )  
for Approval of a Merger and Transfer of Control    )

Order entered: 12/19/2001

**I. INTRODUCTION**

On November 7, 2001, Working Assets Funding Service, Inc. ("WAFS" or "Petitioner") 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 December 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. WAFS is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good (CPG No. 88) granted by the Board on February 28, 1992. Petition at 1.
2. Working Assets, Inc. ("WA") is a newly formed Delaware corporation and does not currently hold a Certificate of Public Good in Vermont. Petition at Exhibit A.
3. The proposed transaction will be effectuated by means of the following steps: (1) WA will create a wholly-owned subsidiary, "Working Assets Merger Sub", created specifically for the purpose of conducting this transaction; (2) and Working Assets Merger Sub will be merged with and into WAFS, with WAFS as the surviving entity. Following the transaction, WAFS 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 WAFS will be affected by the transaction. Accordingly, the merger will not cause any inconvenience for Vermont consumers. Petition at 2.

5. The proposed transactions and resulting corporate restructuring should produce a more efficient corporate structure, thus enhancing the ability of the Petitioner to offer competitively priced services in the Vermont telecommunications marketplace and promoting the public good . Petition at Exhibit A.

### **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).<sup>1</sup> 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, we conclude that 30 V.S.A §§109 and 311 apply to the merger, which involves a certificated telecommunications carrier in Vermont. We also conclude that 30 V.S.A. § 107 applies because the merger of WAFS with Working Assets Merger Sub, will result in the transfer of controlling interest of WAFS, into the direct control of WA, and thus results in the transfer of more than ten percent of the shares of WAFS to another company. We further conclude that the transactions will not affect the services that WAFS currently provides to customers in Vermont. WAFS will continue to operate under its current name and tariff. The merger 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

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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).

approved.

**IV. CONCLUSIONS**

The merger of Working Assets Merger Sub with and into WAFS resulting in the transfer of control of WAFS to WA, 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 Working Assets Merger Sub with and into Working Assets Funding Service, Inc., will promote the public good and, therefore, is approved.
2. The transfer of control of Working Assets Funding Service, Inc. to Working Assets, 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 Working Assets Merger Sub with and into Working Assets Funding Service, Inc., shall be issued.

DATED at Montpelier, Vermont, this 19<sup>th</sup> day of December, 2001.

s/Michael H. Dworkin )

) PUBLIC SERVICE

s/David C. Coen )

) BOARD

s/John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

Filed: December 19, 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 apparent 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.*