

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6577

Joint Petition of OneStar Long Distance, Inc., d/b/a)
OneStar Long Distance, and CRG International, Inc.,)
d/b/a Network One, and OneStar Communications, LLC)
for Approval of a Transfer of Control and Related Transactions)

Order entered: 1/24/2002

I. INTRODUCTION

On July 16, 2001, OneStar Long Distance, Inc., d/b/a OneStar Long Distance, ("OneStar Long Distance") CRG International, Inc., d/b/a Network One, ("Network") and OneStar Communications, LLC ("OneStar") (collectively "Petitioners") jointly filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Petition") with the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of a transfer of control from OneStar Long Distance and Network to OneStar. Petitioners are also requesting the issuance of a certificate of public good ("CPG") to provide telecommunications services in Vermont to OneStar and the revocation of OneStar Long Distance's and Network's existing CPGs, pursuant to 30 V.S.A. § 231.

On November 30, 2001, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control, issue a CPG to OneStar, and revoke the CPGs of OneStar Long Distance and Network One, because the proposed transactions would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. 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. OneStar is a privately-owned limited liability company headquartered in Evansville,

Indiana. OneStar has all the necessary authority to transact business in Vermont. OneStar was granted its Certificate of Organization to transact business in Vermont on April 20, 2001.

Telecommunications Provider Registration Form at 1 and attachment.

2. OneStar proposes to provide all forms of telecommunications services throughout Vermont. Telecommunications Provider Registration Form at 4.

3. OneStar currently provides telecommunications services in twenty-four states and the District of Columbia. *Id.*

4. OneStar has provided the necessary documentation regarding management structure and financial information. *Id.* at 3.

5. OneStar has not filed for bankruptcy and has never been the subject of an investigation by a state or federal authority. *Id.* at 4.

6. OneStar intends to serve all the counties in Vermont within twenty-four months of obtaining authorization. *Id.*

7. OneStar Long Distance is a privately-owned telecommunications provider authorized to provide telecommunications services in Vermont. OneStar Long Distance was granted a CPG on August 13, 1996 (PSB Docket No. 5893). On October 18, 2000, OneStar Long Distance received an amended CPG to offer local exchange telecommunications services (Docket No. 6389). Petition at 1; Department's letter dated November 30, 2001.

8. Network is a privately-owned telecommunications provider authorized to provide telecommunications services in Vermont. Network was granted CPG No. 379 on January 6, 1998. Petition at 1.

9. Network and OneStar Long Distance have entered into an Operating Agreement and a Contribution Agreement (collectively the "Agreements"). As a result of these Agreements, OneStar Long Distance and Network will transfer their customer bases, and operational control to OneStar. After the transfer, the entire stock of OneStar will consist of the contributions of OneStar Long Distance and Network. OneStar will then provide all of the services of OneStar Long Distance and Network. Petition at 1 and attachments.

10. As a result of the transfer, both OneStar Long Distance and Network will no longer operate as telecommunications providers in Vermont and consequently request revocation of their respective CPGs. The customers of both OneStar Long Distance and Network will be served by

OneStar. OneStar has notified customers of the transaction and does not plan to change existing rates or services. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at attachments.

11. The proposed transactions should result in a more efficient corporate structure and a reduction of administrative burdens associated with duplicative operations, thus enhancing the ability of the Petitioners to offer competitively priced services in the Vermont interexchange telecommunications marketplace and promoting the public. Petition at 3 and attachments.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A § 107. The statute conditions 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 standard is 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, we conclude that 30 V.S.A. § 107 applies because the proposed transaction will result in the transfer of controlling interest of OneStar Long Distance and Network into the direct control of OneStar, and thus results in the transfer of more than ten percent of the shares of OneStar Long Distance and Network to another company. We further conclude that the transfer will not detrimentally affect the services provided to former customers of OneStar Long Distance and Network which will be served by OneStar. OneStar has provided customer notice of the transfer and does not contemplate any change to rates or services. The 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 and should be

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.

Petitioners have also requested that the Board revoke the CPGs held by OneStar Long Distance and Network, in that these companies will no longer operate in Vermont. No opposition to this request has been raised. The Board finds the reasons articulated by the Petitioners in support of the request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads us to conclude that the Petitioners' CPGs should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant the Petitioners' request without a hearing.

OneStar has requested authorization to provide telecommunications service in Vermont. Sections 102 and 231 of Title 30, V.S.A., also require that a CPG be issued before a company can offer telephone service to the public in Vermont. Such entry regulation statutes were traditionally designed for two purposes. The first is to protect consumers against incompetent or dishonest businesses. The second was to protect existing providers by limiting or eliminating their competitors. See, e.g., Docket No. 5012, *Petition of Burlington Telephone Company*, Order of 5/27/86.

The first rationale for entry regulation -- "consumer protection" -- remains one of the Board's policy objectives. Having reviewed the petition of OneStar and all related materials, the Board concludes that the evidence does not demonstrate that the technical, managerial and financial resources are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with minimal transaction cost, we conclude that concerns for consumer protection have been sufficiently addressed. Concerns for consumer protection are, therefore, not cause for rejection of OneStar's petition nor do they warrant an investigation at this time.

The second -- or "franchise protection" -- rationale was rejected by the Board, after careful consideration in Docket No. 4946. In that Docket's Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of competition outweighed any flaws, and that competition should be permitted in Vermont's

markets for message telephone service and other communications services.

Vermont policy, established by the Board and enunciated through the State Telecommunications Plan ("Plan") (adopted by the Department), has firmly supported opening the local exchange market to competition. This policy has been reaffirmed by the Board in Docket 5713, the Board's investigation into competition in the telecommunications arena and Docket 5909, in which the Board authorized Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide local exchange competition.²

The Board's support for competitive entry is consistent with the state's telecommunications policies as set out in the State Telecommunications Plan. That Plan clearly states that competition is the preferred strategy to achieve Vermont's goals of reasonable price, availability and high quality of service provided that there is adequate assurance that the needs of all consumers will be met. The Plan also encourages the Board to create a "framework to facilitate competition, while assuring affordable basic service rates, high quality of service, consumer protection, and universal service via interconnection agreements and Docket No. 5713 investigation and decisions."³ The Board has moved to establish such a framework in various rulings over the last several years.

Federal law also applies to the broader questions of competitive entry. Under Section 253(a) of the Telecommunications Act of 1996 ("Act") which amended the Communications Act of 1934, states may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." States retain authority, however, to:

impose, on a competitively neutral basis and consistent with Section 254 [47 U.S.C.A. § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.⁴

Thus, federal law makes clear that states cannot bar competitive entry. State commissions may still require new service providers to obtain franchises (or, in Vermont, CPGs), although they may

2. Docket 5713, Order of 5/29/96 at 13 (later stages of that proceeding will further define the framework for telecommunications competition within the state); Docket 5909, Order of 1/14/97.

3. Vermont Telecommunications Plan (dated December 1996) at iii.

4. 47 U.S.C.A. § 253(b).

not use that authority to prohibit all competitive entry.⁵ Vermont also may continue to impose competitively neutral conditions to achieve the purposes enunciated in Section 253(b).

At the present time, however, the Board has not fully investigated the conditions that should apply to entry into local exchange competition. In Docket 5909, the Board concluded that, in general, conditions related to competitive entry could be deferred to Docket 5713 (and its successor dockets). In Docket 5909, the Board included a specific condition in Hyperion's CPG making clear that Hyperion must comply with any conditions related to competitive entry imposed in subsequent Board proceedings. The Board sees no reason to deviate from that policy here and recommends inclusion of a similar provision in OneStar's CPG.

OneStar should also be aware of the Board's policy regarding the provision of operator services, should OneStar in the future choose to offer these services. As a substantive matter, the Board has previously found that, for carriers such as OneStar that do not possess market power, there is little need for cost-of-service or rate-of-return regulation in order to meet the statutory criterion of just and reasonable rates. There is an exception regarding regulation of rates, however, with respect to rates for operator services. In our Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Operator Service Providers in Vermont, we noted that "customers who are not expert in the rapidly changing field of telecommunications . . . stand to be taken advantage of in an imperfect market, where rates are unregulated, may be extraordinarily high and may be incurred by the end user without the equivalent of his knowledgeable consent." Docket No. 5566, Order of 1/6/95 at 101. Consequently, we mandated rate caps for operator services, set at the rates charged by New England Telephone and Telegraph Company, now known as Verizon New England Inc. d/b/a Verizon Vermont ("Verizon"). No reseller may authorize or bill surcharges not set out in Verizon's tariff. We limited this requirement, however, as follows: "(1) the rate cap shall apply to calls (except dial-around calls) made from aggregator and other transient locations; (2) the rate cap shall not apply to calls from those locations where the subscriber selecting the presubscribed OSP carrier is also the person or entity who will be paying the bill; and (3) the rate cap will not apply to dial-around calls, which involve services selected by the caller and outside the control of

5. *In the Matter of Classic Telephone, Inc.*, Memorandum Opinion and Order, FCC CCBPol 96-10 at paragraph 28 (October 1, 1996).

the presubscribed AOS provider." *Id.*

Additionally, OneStar should be aware of the Board's policy in connection with the provision of prepaid calling card service. The Board has imposed such a requirement on new entrants into the Vermont market that provide debit prepaid calling card services. See C.P.G. No. 145, Order of 7/13/94, and C.P.G. No. 146, Order of 8/17/94. As we noted in our Orders in C.P.G. Nos. 145 and 146, the public utilities commissions of several states have expressed concern about the potential risks to consumers associated with payment in advance of receipt of service, and we have the same concern.⁶ Consequently, we ordered World Telecom Group and Quest Telecommunications Inc. to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues for the first 12 months of operation. We also stated that we would examine the issue of whether this requirement should be instituted on an industry-wide basis in our informal rulemaking proceeding.

We make a distinction, however, between new entrants into the Vermont market that provide only debit card service, and long-term participants that offer a multitude of services and that simply seek to add debit card service to their choice of service offerings. For this latter group, we do not impose a bond requirement, on the theory that the provider is already established in Vermont, offers several services that are provided on an on-going basis, and would be unlikely to "take the money and run."

Since we do not know how much of its business will be devoted to prepaid calling card services, we conclude that the most sensible approach is to inform OneStar that should it decide to include the provision of debit cards among its service offerings, it will be required to post a bond, payable to the Board, in an amount equal to its projected Vermont intrastate revenues from its prepaid calling card services, for the first 12 months of operation. This approach will be fair to OneStar, fair to the public, and consistent with the theory that underlies the Board's treatment of other telecommunications providers offering debit card services.

IV. CONCLUSIONS

The transfer of control of OneStar Long Distance and Network to OneStar should be

6. In this regard, we note that the DPS has asked several other prospective providers of debit cards to comply with more than 30 separate suggested requirements designed to protect consumers. See, e.g., C.P.G. #156, Petition of IDB WorldCom Services, Inc., Letter from DPS to IDB WorldCom Services, Inc. dated May 26, 1994. In its letter to IDB WorldCom, the DPS states that its suggested requirements are "merely a guideline to certain consumer protection concerns" and are not required by the Public Service Board. *Id.* at 3. We confirm that we have not endorsed the requirements suggested by the DPS. However, we will review the DPS' proposed requirements and, if appropriate, may consider including some of them in our draft rules.

approved because the transaction 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).

V. 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 OneStar Long Distance, Inc., d/b/a OneStar Long Distance, and CRG International, Inc., d/b/a Network One, to OneStar Communications, LLC, will promote the public good and, therefore, is approved.

2. Effective with the completion of the transfer of control and the approval of OneStar's tariff, the Certificates of Public Good issued to OneStar Long Distance, Inc. and CRG International, Inc., are revoked.

3. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.

4. Based on the above findings, discussion and conclusion, the provision of telecommunications services by OneStar Communications, LLC will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good shall be issued to that effect, subject to the conditions contained in the CPG.

5. OneStar shall file a tariff for intrastate telecommunications service as required by 30 V.S.A. Section 225 within 30 days of completion of the above transactions. OneStar's tariff shall include terms and conditions making available unbundled service elements necessary for the provision of enhanced 911 service, as required by 30 V.S.A. § 7055(e). Such tariff shall become effective forty-five days from the date of filing, absent further order by the Board or appropriate motions by the Department of Public Service or affected parties.

6. If OneStar at any time in the future proposes to offer operator services, it shall be required to comply with the Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Alternative Operator Services in Vermont, and any future orders in that docket.

7. If OneStar at any time in the future proposes to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.

8. If OneStar intends to do business in the State of Vermont under any name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name

with the Clerk of the Board and the Vermont Department of Public Service at least fifteen days before commencing business under the new trade name.⁷

DATED at Montpelier, Vermont, this 24th day of January, 2002.

<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: January 24, 2002

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 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.

7. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.