

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6693

Application of Norcom, Inc. and NUI Telecom,)
Inc. for Approval of an Asset Purchase)
Agreement and Plan of Reorganization)

Order entered: 6/24/2002

I. INTRODUCTION

On April 3, 2002, Norcom, Inc. ("Norcom") and NUI Telecom, Inc. ("NUI") (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 231, for approval of an Asset Purchase Agreement and Plan of Reorganization ("Agreement"). Petitioners seek approval of the ultimate acquisition of Norcom's assets by NUI. In addition, the Petitioners request that the CPG to provide telecommunications services in Vermont held by Norcom be revoked effective upon the date of the transaction's closing.

On May 28, 2002, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transactions because they should be transparent to existing customers of Norcom and 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. Norcom is a Florida corporation authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good (CPG No. 331) granted by the Board on January 6, 1998. Petition at 1 and Exh. A.

2. NUI is a New Jersey corporation authorized to provide telecommunications services in

Vermont pursuant to a Certificate of Public Good (CPG No. 681) granted by the Board on January 16, 2002. Petition at 1 and Exh. A.

3. Norcom Acquisition, LLC is a New Jersey limited liability company, which is not certified to provide telecommunications in Vermont. Petition at Exh. A.

4. Pursuant to the Agreement, the assets of Norcom will be purchased by Norcom Acquisition. Immediately following the closing of this transaction, Norcom Acquisition will merge with and into NUI, with NUI as the surviving entity. Petition at 1.

5. As a result of the transactions, Norcom will no longer operate as a telecommunications provider in Vermont and consequently Petitioners request revocation of Norcom's CPG. The customers of Norcom will be served by NUI with the same rates and service offerings. Accordingly, the transactions will not cause any inconvenience for Vermont consumers. Petition at 1-2.

6. The transactions should result in a more efficient corporate structure, thus enhancing the ability of NUI to offer competitively priced services in the Vermont telecommunications marketplace and, thus, promoting the public interest. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 109 and 311. The statutes condition approval of a merger upon a finding that the merger or sale of assets 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] . . ." In order to approve such an asset sale or merger, the Board must first find that it will "promote the general good of the state." 30 V.S.A. § 109.

After reviewing the Petition, we conclude that 30 V.S.A §§ 109 and 311 apply to the sale of assets of Norcom, which is a certificated telecommunications carriers in Vermont. We further conclude that the asset sale merger will not affect the services that Norcom currently provides to customers in Vermont because NUI will offer the same services and rates to these customers. The customers of Norcom will be served by NUI under the same rates and service offerings. The

sale of assets and eventual merger will also result in a more efficient corporate structure for NUI. The sale of assets and merger, 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. §§ 109 and 311 and should be approved.

Petitioners have also requested that the Board revoke the CPG held by Norcom, in that this company will, as a result of the asset sale, 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 Norcom's CPG 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.

V. ORDER

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

1. The sale of assets of Norcom, Inc., will promote the public good and, therefore, is approved.
2. The merger of Norcom Acquisition, LLC with and into NUI Telecom, Inc., will promote the public good and, therefore, is approved.
3. Effective with the completion of the sale of assets of Norcom, Inc. to Norcom Acquisition, LLC, the Certificate of Public Good issued to Norcom, Inc., on January 6, 1998, is revoked.
4. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.
5. A Certificate of consent to the sale of assets of Norcom, Inc. and the merger of NUI Telecom, Inc. and Norcom Acquisition, LLC, shall be issued.

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

_____)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: June 24, 2002

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.