

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6707

Joint Petition of Conversent Holdings, Inc.     )  
and REON Broadband Corporation for            )  
Approval of an Indirect Transfer of Control    )

Order entered: 7/1/2002

**I. INTRODUCTION**

On May 17, 2002, Conversent Holdings, Inc. ("Conversent Holdings"), REON Broadband Corporation ("REON"), and other potential investors (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 for approval of an indirect transfer of control of Conversent Holdings' Vermont operating subsidiaries: Conversent Communications of Vermont, LLC ("Conversent Vermont"), and Payphone, LLC ("Payphone").<sup>1</sup>

On June 14, 2002, 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 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. Conversent Vermont is a limited liability company organized under the laws of the

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1. Petitioners also request approval of a merger of REON Broadband Corporation into Conversent Holdings, Inc. However, neither of these entities is certificated as a telecommunications carrier in Vermont and, thus, are not subject to Board jurisdiction. Therefore, Board approval of this merger is not necessary.

State of Vermont. In Docket 6160, NEVD of Vermont, LLC ("NEVD") was issued a Certificate of Public Good ("CPG") to provide intrastate telecommunications services on February 16, 1999. On May 11, 2000, in Docket No. 6380, the Board amended NEVD's CPG to reflect a name change from NEVD of Vermont, LLC to Conversent Vermont. Currently, Conversent Vermont's sole customer is PayPhone. Petition at 1-2.

2. PayPhone is a Colorado limited liability company that provides payphone services in Vermont pursuant to CPG No. 443 issued on October 27, 1998. Petition at 1-2.

3. Conversent Vermont is a wholly-owned subsidiary of Conversent Communications, LLC ("Conversent CLLC"), which is a limited liability company organized under the laws of Rhode Island. Conversent CLLC and PayPhone are both wholly-owned subsidiaries of Conversent Holdings, a Delaware corporation. Petition at 2.

4. As part of the proposed transaction, REON, a Delaware corporation that provides broadband service to customers in several other states, will be merged into Conversent Holdings or a subsidiary thereof in exchange for a specified number of Conversent Holdings shares. In addition, Conversent Holdings will issue shares to other potential new investors in amounts over 10%. Control over the operations of Conversent Holdings and its operating subsidiaries will remain with Conversent Holdings' current owners. Petition at 2-3.

5. The proposed transaction will not affect the technical or financial qualifications of Conversent or PayPhone. Conversent and PayPhone will continue to operate under their respective current names and tariffs. Accordingly, the merger will not cause any inconvenience for Vermont consumers. Petition at 4-5.

6. The proposed transactions will promote the public interest in that it will allow Conversent Holdings to obtain needed equity funding to support its operations overall, thereby enabling its operating subsidiaries to continue providing telecommunications service in Vermont. Petition at 5.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A § 107. This 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). This 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).<sup>2</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. § 107 applies because the merger of Conversent Holdings, the parent corporation of Conversent and PayPhone, with REON, in addition to the issuance of more than 10% of the voting equity of Conversent Holdings, will result in the transfer of controlling interest of Conversent Holdings and, thus, the indirect transfer of control of Conversent Vermont and PayPhone. We further conclude that the transfer of control will not affect the services that Conversent Vermont and PayPhone currently provide to customers in Vermont. Both PayPhone and Conversent Vermont will continue to operate under their respective current names and tariffs. The proposed transaction will also allow Conversent Holdings access to equity funding. The 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 and should be approved.

#### **IV. CONCLUSIONS**

The indirect transfer of control of PayPhone and Conversent Vermont resulting from the proposed merger and issuance of shares, 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).

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2. 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).

**V. ORDER**

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

1. The indirect transfer of control of Conversent Communications of Vermont, LLC and PayPhone, LLC, will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.

DATED at Montpelier, Vermont, this 1<sup>st</sup> day of July, 2002.

s/Michael H. Dworkin	)	PUBLIC SERVICE  BOARD  OF VERMONT
	)	
s/David C. Coen	)	
	)	
s/John D. Burke	)	

OFFICE OF THE CLERK

Filed: July 1, 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.*