

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6706

Joint Petition of WorldCom Network Services, Inc.,)
MCI Telecommunications Corporation, and MCI)
WorldCom Communications, Inc. for Approval of)
Merger and Related Transactions, and a Name Change)

Order entered: 2/5/2003

I. INTRODUCTION

On May 14, 2002, WorldCom Network Services, Inc. ("WNS"), MCI Telecommunications Corporation ("MCIT"), and MCI WorldCom Communications, Inc. ("MCIWC") (collectively the "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, 231 and 311, for: (1) *post hoc* approval of a 1999 merger of WNS with and into MCIT; (2) consent to change MCIT's corporate name to MCI WorldCom Network Services, Inc. ("MCIWNS"); and (3) the revocation of WNS's Certificate of Public Good ("CPG").¹

On June 20, 2002, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the merger and related transactions, 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.

On January 24, 2003, the Petitioners filed additional information to complete the Petition with the Board.²

The Board has reviewed the Petition and the accompanying documents and agrees that

1. The Petitioners also sought adoption and approval for renaming of certain tariffs. However, it is the Board's understanding, based on correspondence from the Department of Public Service, that the Petitioners no longer seek such approvals.

2. It should be noted that subsequent to the filing of the Petition, WorldCom, Inc., and substantially all of its active U.S. subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code. However, since the Petition seeks Board approval for transactions which took place three years prior to the Chapter 11 filing, it has no impact upon those previous transactions.

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. WNS is authorized to provide telecommunications services in Vermont pursuant to a CPG granted by the Board on July 19, 1995, and amended on November 25, 1996 (Docket No. 5807). Petition at 1.
2. MCIT is authorized to provide telecommunications services in Vermont pursuant to a CPG granted by the Board on December 4, 1987, in Docket No. 5264. Petition at 1.
3. MCIWC is authorized to provide telecommunications services in Vermont pursuant to a CPG granted by the Board on December 29, 2000, in Docket No. 6451. Petition at 2.
4. WNS is currently a direct, wholly-owned subsidiary of WorldCom, Inc. MCIWC is a direct wholly-owned subsidiary of MCIT, and both are indirect subsidiaries of WorldCom, Inc. Petition at Exhibit A.
5. As part of a corporate restructuring which took place in 1999: (1) WNS was merged with and into MCIT, with MCIT as the surviving entity; (2) MCIT's retail operations were transferred to MCIWC; and (3) MCIT changed its corporate name to MCI WorldCom Network Services, Inc. Petition at 3.
6. As a result of the merger, WNS ceased to operate as a telecommunications provider in Vermont and consequently Petitioners request revocation of WNS's CPG. The customers of WNS are being served by MCIT and involved no change in the rates, terms and conditions under which the customers of WNS and MCIT customers received service. Accordingly, the merger did not cause any inconvenience for Vermont consumers. Petition at 4.
7. 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 5.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 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).³ 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 of WNS and MCIT, which are certificated telecommunications carriers in Vermont. We also conclude that 30 V.S.A. § 107 applies because the control of the retail operations of MCIT was transferred to MCIWC which constituted the means to direct the management of MCIT to MCIWC. We further conclude that the merger and transfer of control did not affect the services that MCIT and MCIWC currently provide to customers in Vermont. These entities have continued to operate under their current name and tariff. The customers of WNS have been served by MCIT under the same rates, terms and conditions under which the customers formerly received service. The merger and 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.

Petitioners have also requested that the Board revoke the CPG held by WNS, in that the company will, as a result of the merger into MCIT, no longer operate in Vermont. No opposition to this request has been raised. The Board finds the reasons articulated by the Petitioners in

3. 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).

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 WNS'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.

30 V.S.A. § 231(a) provides that the Board may amend or revoke any CPG for good cause, after an opportunity for hearing. Since there is no controversy surrounding the Petitioners' request for approval of a name change, it follows that good cause exists to amend MCIT's CPG to reflect the new name of the holder of the certificate. As for whether a hearing is necessary, we conclude that it is not. First, there is no genuine issue of material fact as to whether MCIT's CPG should be amended and, consequently, under V.R.C.P. 56, a hearing is unnecessary. Second, the Petitioners have asked that the CPG be amended, and the DPS has recommended that the Petition be approved without hearing. Finally, 30 V.S.A. § 231(a) requires only the opportunity for a hearing, thus acknowledging that a hearing is not always necessary prior to amendment.

IV. CONCLUSIONS

The merger of WNS with and into MCIT, the change in MCIT's corporate name to MCIWNS, the transfer of control of MCIT to MCIWC, and the revocation of WNS's CPG, 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, and 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 WorldCom Network Services, Inc. with and into MCI Telecommunications Corporation, will promote the public good and, therefore, is approved.
2. The change in MCI Telecommunications Corporation's corporate name to MCI WorldCom Network Services, Inc., will promote the public good and, therefore, is approved. The CPG held by MCI Telecommunications Corporation shall be amended to reflect the new name of the certificate-holder: MCI WorldCom Network Services, Inc.

3. The transfer of control of MCI Telecommunications Corporation to MCI WorldCom Communications, Inc., will promote the public good and, therefore, is approved.

4. The Certificate of Public Good issued to WorldCom Network Services, Inc. on November 25, 1996, is revoked.

5. A Certificate of consent to the merger of WorldCom Network Services, Inc. with and into MCI Telecommunications Corporation, shall be issued.

6. Petitioners shall file an amended tariff with the Board that reflects MCI Telecommunications Corporation's new name, within 30 days of issuance of its amended CPG.

DATED at Montpelier, Vermont, this 5th day of February, 2003.

<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: February 5, 2003

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.