

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6846

Joint Petition of KMC Data, LLC, KMC Telecom)
V, Inc., and KMC Telecom Holdings,)
Inc., for Approval of a Transfer of Control)

Order entered: 7/2/2003

I. INTRODUCTION

On April 2, 2003, KMC Data, LLC ("KMC Data"), KMC Telecom V, Inc. ("KMC V"), and KMC Telecom Holdings, Inc. ("KMC Holdings") (jointly the "Petitioners"), 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 a pro forma corporate restructuring that will result in a transfer of control.

On June 19, 2003, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control because the proposed transaction would not directly impact 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. KMC Data was issued a Certificate of Public Good (CPG No. 676) to provide intrastate telecommunications services on December 19, 2001. Petition at 1.
2. KMC V was issued a Certificate of Public Good (CPG No. 624) to provide intrastate telecommunications services on February 14, 2001. Petition at 1.
3. KMC V and KMC Data are both wholly-owned subsidiaries of KMC Holdings. KMC Holdings is not certificated as a telecommunications carrier in Vermont. Petition at Exhibit E.
4. Pursuant to a corporate restructuring, three new holding companies, KMC Data Holdco Sub Holdings I, LLC, KMC Data Sub Holdings IV, and KMC Data Holdco Sub, LLC,

will be inserted into the corporate ownership structure. The new holding companies will become the new direct and indirect parents of KMC Data and KMC V. Petition at Exhibits A and E.

5. KMC Data and KMC V will continue to operate under their respective current names and tariffs. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at Exhibit E.

6. The proposed transaction will promote the public interest in that it will provide the Petitioners with the flexibility to arrange ownership in the most appropriate manner, thereby enhancing Petitioners' ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at Exhibit E.

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).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 corporate reorganization contemplated will result in the indirect transfer of 100% of both KMC Data and KMC V to new holding companies, resulting in the transfer of controlling interest of KMC Data and KMC V. We further conclude that the transfer of control will not affect the services that KMC Data and KMC V currently provide to customers in Vermont. KMC Data and KMC V will continue to operate under their respective current names and tariffs. The proposed transaction will also allow the Petitioners the flexibility to arrange their ownership structure in

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).

the most appropriate manner, which will, in turn, result in enhanced competition among providers of telecommunications services in Vermont. 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 transfer of control of KMC Data and KMC V should be 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 KMC Data, LLC and KMC Telecom V, Inc., will promote the public good and, therefore, is approved.
2. Petitioner shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 2nd day of July, 2003.

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

OFFICE OF THE CLERK

Filed: July 2, 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.