

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6872

Petition of Business Telecom, Inc., )  
for Approval of a Transfer of Control )

Order entered: 8/19/2003

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**I. INTRODUCTION**

On July 11, 2003, Business Telecom, Inc. ("BTI" or the "Petitioner"), 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 transfer of control of BTI pursuant to a stock transaction.

On August 5, 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 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. BTI was issued a Certificate of Public Good (CPG No. 115) to provide intrastate telecommunications services on November 24, 1992. BTI is a wholly-owned subsidiary of Business Telecom Corp. ("BTC"). BTC is not certificated as a telecommunications carrier in Vermont. Petition at 1 and Exhibits.

2. Pursuant to corporate reorganization, BTC will become a subsidiary of ITC^DeltaCom, Inc, resulting in an indirect transfer of control of BTI. However, the ultimate parent company of both companies will remain unchanged. Petition at Exhibit A.

3. BTI will continue to operate under its current name and tariff. Accordingly, the

transfer will not cause any inconvenience for Vermont consumers. Petition at 3.

4. The proposed transaction will promote the public interest in that it will BTI to improve the operational and cost efficiencies of BTI's business, thereby enhancing BTI's ability to compete in the telecommunications market and ensuring the continued existence telecommunications competition in Vermont. Petition at Exhibit A.

### **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>1</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 transaction contemplated will result in BTC becoming a wholly-owned subsidiary of ITC^DeltaCom, Inc., resulting in the indirect transfer of controlling interest of BTI. We further conclude that the transfer of control will not affect the services that BTI currently provides to customers in Vermont. BTI will continue to operate under its current name and tariff. The proposed transaction will also allow BTI to operate more efficiently in Vermont, which will, in turn, result in 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.

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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).

**IV. CONCLUSIONS**

The transfer of control of BTI 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 Business Telecom, 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 19<sup>th</sup> day of August, 2003.

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

OFFICE OF THE CLERK

Filed: August 19, 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.*