

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6887

Petition of Motion Telecom, Inc.)
for Approval of an Acquisition of Assets)

Order entered: 10/29/2003

I. INTRODUCTION

On August 11, 2003, Motion Telecom, Inc. ("Motion") filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 109 and 311, for the acquisition of certain assets of Univance Telecommunications, Inc. ("Univance") which is in bankruptcy.

On October 9, 2003, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transaction because it would not cause inconvenience or confusion to the customers of Univance. 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. Motion is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good (CPG No. 752) granted by the Board on September 25, 2003. *See* CPG No. 752.

2. Univance is authorized to provide telecommunications services in Vermont pursuant to a CPG granted by the Board on December 15, 1999, in Docket No. 6312.

3. On January 23, 2003, Univance filed a voluntary Chapter 11 petition in the U.S. Bankruptcy Court for the District of Colorado ("Bankruptcy Court"). On April 4, 2003, the Bankruptcy Court approved the sale of all of Univance's assets, including its Vermont customer base consisting of 15 accounts. Motion has provided affected customers with advance notice of the transaction. Petition at 1-2 and Exhibit B.

4. As a result of the transactions, Motion will be the entity providing telecommunications services to the current Univance customers. No changes to the rates and services are contemplated. Accordingly, the transactions will not cause any inconvenience for Vermont consumers. Petition at 2.

5. The proposed transaction should avoid any interruption of service for current Univance customers and allow them to receive service under the same rates, terms and conditions they received from Univance, thus promoting the public interest. Petition at 2.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. §§ 109 and 311. The statutes condition approval of a sale of assets upon a finding that the sale 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 make a sale . . . in any one calendar year constituting ten percent or more of the company's property located within this state . . . nor 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 the sale of assets, 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 Univance, which is a certificated telecommunications carrier in Vermont. We further conclude that the asset sale to Motion will not cause undue inconvenience for Vermont customers. The sale of assets, 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.

IV. CONCLUSIONS

The sale of assets of Univance 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. §§ 109, 311.

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 Univance Telecommunications, Inc., will promote the public good and, therefore, is approved.
2. Motion Telecom, Inc., shall file any revision to its tariff necessary to reflect the incorporation of the rates and services currently offered to the respective customers of Univance Telecommunications, Inc., within 10 days of this Order.
3. A Certificate of consent to the sale of assets of Univance Telecommunications, Inc., shall be issued, pursuant to 30 V.S.A. § 109.

Dated at Montpelier, Vermont, this 29th day of October, 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: October 29, 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.