

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6889

Petition of DSLnet Communications, LLC,)
for Approval of a Transfer of Control)

Order entered: 10/29/2003

I. INTRODUCTION

On August 20, 2003, DSLnet Communications, LLC ("DSLnet" 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 DSLnet pursuant to a stock transaction.

On October 3, 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. DSLnet was issued a Certificate of Public Good to provide intrastate telecommunications services in Docket No. 6234 on September 1, 1999. Petition at 1.
2. Pursuant to a series of financing transactions, Deutsche Bank AG London may acquire an indirect minority interest of approximately 37% of DSLnet, resulting in an indirect transfer of control of DSLnet. Petition at Attachment Section III.
3. DSLnet will continue to operate under its current name and tariff. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at Attachment Sections III-IV.

4. The proposed transaction will promote the public interest by allowing DSLnet greater access to capital, thereby enhancing DSLnet's ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at Attachment Section IV.

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 transaction contemplated may result in Deutsche Bank AG London acquiring up to 37% of DSLnet, resulting in the indirect transfer of controlling interest of DSLnet. We further conclude that the transfer of control will not affect the services that DSLnet currently provides to customers in Vermont. DSLnet will continue to operate under its current name and tariff. The proposed transaction will also allow DSLnet greater access to capital, which may, 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.

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 DSLnet 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 DSLnet Communications, LLC, 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 29th day of October, 2003.

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

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.