

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6891

Petition of WorldCom, Inc., for Approval of)
Corporate Reorganization and Related Transactions)

Order entered: 10/30/2003

I. INTRODUCTION

On September 19, 2003, WorldCom, Inc. ("WorldCom" or the "Petitioner") filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Approval Form") and petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109, 231 and 311, for approval of a series of transactions affecting its Vermont operating subsidiaries related to a corporate restructuring in order to facilitate WorldCom's Plan of Reorganization under Chapter 11 of the Federal Bankruptcy Code.

On October 15, 2003, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transactions, because the proposed transactions would not obstruct or prevent competition in the sale of telecommunications services and would promote the public good. The Department's letter also notes that while the Petitioner has asked for the requisite approvals, the Petition seems to question Board jurisdiction over those transactions involved. While the Department recommends the Board approve the transactions and does not believe it is necessary to resolve the question of Board jurisdiction over these transactions, the Department reserves the right to advance its position on this issue in the future. The Department further recommended the Board approve the Petition, subject to the reservation of rights described above, 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. Intermedia Communications, Inc. ("ICI") is authorized to provide telecommunications services in Vermont pursuant to a CPG (CPG No. 293) granted by the Board on May 19, 1997. ICI is a wholly-owned subsidiary of WorldCom. Petition at 7 and Exhibit 1.

2. MCI WorldCom Communications, Inc. ("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. MCIWC is a wholly-owned subsidiary of WorldCom. Petition at 7-8 and Exhibit 1.

3. MCImetro Access Transmission Services, LLC ("MCImetro") is authorized to provide telecommunications services in Vermont pursuant to a CPG No. 697 granted by the Board on June 13, 2002. MCImetro is a wholly-owned subsidiary of WorldCom. Petition at 8 and Exhibit 1.

4. As part of a corporate restructuring, related to WorldCom's planned emergence from bankruptcy proceedings: (1) WorldCom will change its name to MCI, Inc.; (2) ICI will be merged into a newly-formed, wholly-owned subsidiary of MCI, Inc. at the time of emergence from bankruptcy; and (3) MCIWC will be merged with and into MCImetro. Petition at 7-8.

5. Following the mergers, the respective customers of ICI, MCIWC and MCImetro will continue to receive service under the same rates, terms and conditions they currently receive. Accordingly, the mergers will not cause any inconvenience for Vermont consumers. Petition at 8.

6. The proposed transactions should result in a more financially sound corporation, thus enhancing the ability of the Petitioner and its operating subsidiaries to offer competitively priced services in the Vermont interexchange telecommunications marketplace and, thereby, promoting the public interest. In addition, the corporate reorganization will neither obstruct nor impair competition in the Vermont telecommunications market. Petition at 10-11.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 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).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 §§ 109 and 311 apply to the mergers of ICI and MCIWC, which are certificated telecommunications carriers in Vermont. We also conclude that 30 V.S.A. § 107 applies because the control of ICI will be transferred to a newly formed entity and the control of MCIWC will be transferred to MCImetro. We further conclude that the merger and transfer of control will not affect the services that MCIWC, ICI or MCImetro currently provide to customers in Vermont. These entities will continue to operate under their current names and tariffs. The customers of these companies will continue to be served 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 transactions meet the standards set forth in 30 V.S.A. §§ 107, 109, and 311 and should be approved.

IV. CONCLUSIONS

The mergers of ICI with and into a newly formed MCI, Inc. subsidiary, and MCIWC with and into MCImetro and the transfer of control of ICI and MCIWC, 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, 311.

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).

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 Intermedia Communications, Inc., to an as yet un-formed subsidiary of MCI, Inc., will promote the public good and, therefore, is approved.
2. The transfer of control of MCI WorldCom Communications, Inc., to MCImetro Access Transmission Services, LLC, will promote the public good and, therefore, is approved.
3. The merger of Intermedia Communications, Inc., with and into an as yet un-formed subsidiary of MCI, Inc., will promote the public good and, therefore, is approved.
4. The merger of MCI WorldCom Communications, Inc., with and into MCImetro Access Transmission Services, LLC, will promote the public good and, therefore, is approved.
5. A Certificate of consent to the respective mergers of Intermedia Communications, Inc., MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, LLC, shall be issued.
6. Petitioner shall file a letter notifying the Board of the completion of the transactions within one week of such completion.

DATED at Montpelier, Vermont, this 30th day of October, 2003.

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

OFFICE OF THE CLERK

Filed: October 30, 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.