

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6903

Joint Petition of FreedomStarr Communications, )  
Inc., and AmericanFone, LLC for Approval )  
of a Transfer of Control )

Order entered: 12/4/2003

---

**I. INTRODUCTION**

On September 15, 2003, FreedomStarr Communications, Inc., ("FCI") and AmericanFone, LLC ("AmericanFone") ( 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 *nunc pro tunc* approval of a transfer of control of FCI to AmericanFone.<sup>1</sup>

On November 18, 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. FCI was issued a Certificate of Public Good (CPG No. 549-R) to provide intrastate telecommunications services on July 12, 2000. Petition at 1.
2. AmericanFone is a limited liability company which is not currently certificated as a telecommunications carrier in Vermont. Petition at 1.
3. In January of 2002, AmericanFone entered into an agreement to acquire all of the

---

1. The parties' petition calls for approval of the transaction *nunc pro tunc*. That legal mechanism can only be applied to correct a record, to make an order relate back to a time when a case was ripe for decision and a decision should have been recorded, but was not. 49 C.J.S. §123 *et seq.* It is not the same as retroactivity, and cannot be used to make a decision effective before the time of the Order in this docket.

issued and outstanding capital stock of FCI. Following completion of the transaction FCI became a wholly-owned subsidiary of AmericanFone. Petition at 1-2.

4. FCI has continued to operate under its current name and tariff. Accordingly, the transfer has not caused any inconvenience for Vermont consumers. Petition at 1-3.

5. The transaction has promoted the public interest by providing additional operating funds for FCI, ensuring its financial stability and, thereby, enhancing FCI's ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at 3.

### **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>2</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 has resulted in FCI becoming a wholly-owned subsidiary of AmericanFone and the transfer of controlling interest of FCI. We further conclude that the transfer of control has not affected the services that FCI currently provides to customers in Vermont. FCI will continue to operate under its current name and tariff. The proposed transaction will also allow FCI 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 transaction meets the

---

2. 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).

standards set forth in 30 V.S.A. § 107 and should be approved.

**IV. CONCLUSIONS**

The transfer of control of FCI 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 FreedomStar Communications, Inc., will promote the public good and, therefore, is approved.

DATED at Montpelier, Vermont, this 4<sup>th</sup> day of December, 2003.

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

OFFICE OF THE CLERK

Filed: December 4, 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.*