

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6992

Joint Petition of NEON Connect,)
Inc., and Globix Corporation for)
Approval of a Transfer of Control)

Order entered: 9/8/2004

I. INTRODUCTION

On August 6, 2004, NEON Connect, Inc. ("NEON") and Globix Corporation ("Globix")(collectively "Petitioners") jointly 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, 109 and 311, for approval of a merger between Globix and NEON.

On August 27, 2004, the Department filed a letter with the Board recommending the Board approve the Petition without further hearing or investigation. The Department also found that the proposed merger will result in no inconvenience or confusion to customers as the transaction will be transparent in terms of service they receive.

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. NEON was issued CPG No. 740 on May 21, 2003, to provide telecommunications services in Vermont. NEON is a wholly-owned subsidiary of NEON Communications, Inc. ("NEON Communications"). Petition at 1.
2. Globix is not currently certificated to provide telecommunications services in Vermont. Petition at 1.
3. The proposed transaction will take place as a merger of a new wholly-owned subsidiary of Globix with and into NEON Communications, with NEON Communications as the surviving entity. As a result, NEON Communications will become a wholly-owned subsidiary of

Globix and NEON will become an indirect subsidiary of Globix. Petition at 2 and attachment.

4. Following the merger, NEON will continue serving its current customers under existing service arrangements pursuant to the terms and conditions its tariff. Accordingly, the merger will be virtually transparent to customers of NEON. Petition at attachment.

5. Petitioners anticipate that the merger and resulting corporate restructuring will result in a company better equipped as a competitive telecommunications service provider. The merger is expected to enhance significantly Petitioners' operational flexibility and efficiency, as well as its long-term financial viability. Completion of the transaction will, therefore, serve the public interest in promoting competition among providers of interexchange telecommunications services. Petition at attachment.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109, 231 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.

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 do not apply because the merger described herein is between two non-certificated entities. However, we

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).

further conclude that 30 V.S.A. § 107 applies because the merger involves the indirect transfer of controlling interest of NEON into the control of Globix. We further conclude that the merger will allow the restructured entity to operate more efficiently in the current telecommunications marketplace and that the merger will not affect the services that NEON currently provides to its customers in Vermont. The transaction, 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.

IV. CONCLUSIONS

The indirect transfer of control of NEON to Globix should be approved because it will promote the public good of the State of Vermont and will not result in obstructing or preventing competition in the provision of the services they are currently offering. 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 ultimate control of NEON Connect, Inc., will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transaction within ten days of such completion.

DATED at Montpelier, Vermont, this 8th day of September, 2004.

<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: September 8, 2004

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.