

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7008

Joint Petition of Network US, Inc., d/b/a )  
CA Affinity, and Motion Telecom, Inc., )  
for Approval of a Sale of Assets )

Order entered: 10/18/2004

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**I. INTRODUCTION**

On August 24, 2004, Network US, Inc., d/b/a CA Affinity ("Network"), and Motion Telecom, Inc. ("Motion") (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. §§ 109 and 311, for the acquisition of Motion's assets by Network.

On October 5, 2004, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transaction because it 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. Network is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good (CPG No. 644) granted by the Board on July 11, 2001. Petition at 1.
2. 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. Petition at 1.
3. Pursuant to an Asset Purchase Agreement, Network will acquire substantially all of the assets of Motion, including Motion's customer accounts. Petition at 1 and Exh. A.

4. The customers of Motion have been notified of the transaction and will have the option of subscribing with Network or another carrier. As a result of the transactions, Network will be the entity providing telecommunications services to the former Motion customers that elect to subscribe with Network. No changes to the rates and services offered to former Motion customers are contemplated. Accordingly, the transactions will not cause any inconvenience for Vermont consumers. Petition at 1-3.

5. The proposed transaction should enhance the overall capacity of Network, thus enhancing the ability of Network to offer competitively priced services for a greater number of consumers in the Vermont telecommunications marketplace and, thereby, promoting the public interest. Petition at 3.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A. §§ 109 and 311. The statutes condition approval of a merger upon a finding that the merger or sale of assets 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 Motion, which is a certificated telecommunications carrier in Vermont. We further conclude that the asset sale to Network will not cause undue inconvenience for Vermont customers and allow Network to realize greater market efficiencies. 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 Motion 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 Motion Telecom, Inc., to Network US, 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 one week of such completion.
3. Network US, Inc., shall file any revision to its tariff necessary to reflect the incorporation of the rates and services currently offered to the customers of Motion Telecom, Inc., within thirty days of completion of the transaction.
4. A Certificate of consent to the sale of assets of Motion Telecom, Inc., shall be issued.

Dated at Montpelier, Vermont, this 18<sup>th</sup> day of October, 2004.

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

OFFICE OF THE CLERK

Filed: October 18, 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.*