

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7033

Petition of Southwestern Bell Communications,)
Inc., for Approval of a Transfer of Control and)
Related Transactions)

Order entered: 4/20/2005

I. INTRODUCTION

On November 18, 2004, Southwestern Bell Communications Services, Inc. ("SBC" or the "Company"), filed a Petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107 and 231, for approval of a transfer of control of SBC resulting from an internal corporate reorganization and a name change. On November 29, 2004, the Petition was amended to request approval of a name change. The Petition was further supplemented with a Telecommunications Merger and/or Acquisition Request for Approval Form ("Application") on December 16, 2004. On February 15, 2005, the Petition was further amended to reflect a modification in the request for approval of the name change.

On January 12, 2005, and again on April 12, 2005, the Vermont Department of Public Service ("Department") filed letters with the Board recommending the Board approve the transfer of control because the proposed transaction and the amended 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, the various amendments, and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Application, Petition and accompanying documents, we hereby make the following findings of fact.

1. SBC was issued a Certificate of Public Good (CPG No. 325) to provide telecommunications services in Vermont on July 1, 1997. The CPG was later amended, on January 14, 2004, to reflect provision of service to the local exchange. Application at 1.

2. Pursuant to a proposed corporate reorganization, SBC will become a wholly-owned subsidiary of its affiliate, SBC Telecom, Inc. Application at 1 and Exh. 2.

3. Following the transaction, SBC will operate under the name of SBC Long Distance, LLC d/b/a SBC Long Distance. However, the rates and services of the Company will remain unchanged. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Application at 3.

4. The proposed transaction will promote the public interest by allowing a more efficient organizational structure for SBC and its parent companies, thereby enhancing the ability of SBC to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Application at 4.

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 holding company level transaction contemplated will result in the transfer of controlling interest of SBC. We further conclude that the transfer of control will not affect the services that SBC currently provides to customers in Vermont. SBC will continue to offer service at the same rates, terms and conditions. The proposed transaction will also allow SBC to operate in a more efficient organizational structure, which may, in turn, result in enhanced competition among

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).

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.

30 V.S.A. § 231(a) provides that the Board may amend or revoke any CPG for good cause, after an opportunity for hearing. Since there is no controversy surrounding the Company's name change, it follows that good cause exists to amend the Company's CPG to reflect the new name of the holder of the certificate. As for whether a hearing is necessary, we conclude that it is not. First, there is no genuine issue of material fact as to whether the Company's CPG should be amended and, consequently, under V.R.C.P. 56, a hearing is unnecessary. Second, the petitioner has asked that the CPG be amended, and the DPS has recommended that the petition be approved without hearing. Finally, 30 V.S.A. § 231(a) requires only the opportunity for a hearing, thus acknowledging that a hearing is not always necessary prior to amendment.

IV. CONCLUSIONS

The transfer of control of SBC 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). The CPG held by SBC should be amended to reflect the new name of the certificate-holder: SBC Long Distance, LLC d/b/a SBC Long Distance. 30 V.S.A. § 231.

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 Southwestern Bell Communications Services, Inc., will promote the public good and, therefore, is approved.
2. The Company shall file a letter notifying the Board of the completion of the transaction within one week of such completion.
3. The Company shall file within thirty days from the date of this Order its State of Vermont Limited Liability Certificate.
4. The Company shall file a tariff revision reflecting the new name and incorporating any additional service offerings within sixty days from the date of this Order.
5. The Certificate of Public Good that was issued to Southwestern Bell Communications

Services, Inc., on July 1, 1997 and later amended on January 14, 2004, shall be further amended to reflect the new name of the holder of the certificate: SBC Long Distance, LLC d/b/a SBC Long Distance.

DATED at Montpelier, Vermont, this 20th day of April, 2005.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: April 20, 2005

Attest: s/Judith C. Whitney
Acting 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.