

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7097

Joint Petition of Acceris Management)
Acquisition, LLC and Acceris Communications,)
Corp., for Approval of a Sale of Assets)

Order entered: 11/30/2005

I. INTRODUCTION

On July 5, 2005, Acceris Management Acquisition, LLC ("AMA"), and Acceris Communications, Corp. ("ACC") (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, for the acquisition of certain of ACC's assets by AMA. The transaction also requires Board approval of a name change of WorldxChange, Corp. to ACC.

On September 27, 2005, 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 and the name change 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. AMA is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good (CPG No. 805) granted by the Board on August 30, 2005. Petition at 1; CPG No. 805.

2. CPG No. 574 was originally issued to PT-1 Counsel, Inc., on September 6, 2000. On June 13, 2002, the Board approved an amendment to the CPG reflecting a name change to

WorldxChange, Corp. The CPG requires further amendment to reflect a name change from WorldxChange, Corp., to ACC. Petition at 1.

3. Pursuant to an asset purchase agreement, AMA will purchase all telecommunications assets of ACC. Petition at 1.

4. No changes to the rates and services offered to ACC's customers are contemplated. Accordingly, the transactions will not cause any inconvenience for Vermont consumers. Petition at 2-3.

5. The proposed transaction will allow AMA and ACC to realize significant economic and marketing efficiencies which should allow the companies the opportunity to strengthen their position in the Vermont telecommunications marketplace, thereby, strengthening competition for telecommunications services and promoting the public interest. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 109. The statutes condition approval of a sale of assets upon a finding that the sale will promote the public good (30 V.S.A. § 109). This standard is 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. 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 applies to the sale of assets of ACC, which is a certificated telecommunications carrier in Vermont. We further conclude that the asset sale to AMA will not cause undue inconvenience for Vermont customers and allow ACC's customers to continue uninterrupted service. 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.

In addition, 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 ACC's name change from WorldxChange, Corp., it follows that good cause exists to amend the 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 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 sale of assets of ACC 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. The CPG held by WorldxChange, Corp. should be amended to reflect the new name of the certificate-holder: Acceris Communications, Corp. 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 sale of assets of Acceris Communications, Corp. to Acceris Management Acquisition, LLC, 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. The Certificate of Public Good that was issued to PT-1 Counsel, Inc., on September 6, 2000, and subsequently amended to reflect a name change to WorldxCange, Corp., on June 13, 2002, shall be further amended to reflect the new name of the holder of the certificate: Acceris Communications, Corp.
4. A Certificate of Consent to the sale of assets of Acceris Communications, Corp. to Acceris Management Acquisition, LLC, shall be issued.

Dated at Montpelier, Vermont, this 30th day of November, 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: November 30, 2005

Attest: s/Judith C. Whitney
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.