

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7182

Joint Petition of Level 3 Communications, Inc.)
and TelCove, Inc., for Approval of a Transfer of)
Control and Related Transactions)

Order entered: 7/13/2006

I. INTRODUCTION

On May 18, 2006, Level 3 Communications, Inc. ("Level 3") and TelCove, Inc. ("Telcove") (together the "Petitioners"), filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107 and 108, for approval of the indirect transfer of control of TelCove of Vermont, Inc. ("Telcove-VT") and a related financing arrangement, resulting from the acquisition of Telcove by Level 3.

On June 16, 2006, 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. In addition, the Department noted that Telcove-VT and Level 3 have a limited presence in Vermont, have no outstanding debt, and are not the subject of any outstanding consumer complaints. 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 Application and accompanying documents, we hereby make the following findings of fact.

1. Telcove-VT is authorized to provide local and interexchange telecommunications services in Vermont. The original CPG was issued to Hyperion Communications of Vermont,

Inc. on March 16, 1994, in Docket 5608. The CPG was amended on January 14, 1997, in Docket 5909 to include the provision of local exchange service. It was amended further on March 30, 2000, in Docket 6354 to reflect a name change to Adelpia Business Solutions of Vermont, Inc., and amended again on July 1, 2004, to reflect the name change to TelCove-Vt. Petition at 2.

2. Telcove-VT is a wholly-owned Vermont operating subsidiary of Telcove, a Delaware corporation. Petition at 2.

3. Level 3 is a Delaware corporation headquartered in Broomfield , Colorado. Petition at 3.

4. Pursuant to an Agreement and Plan of Merger, Level 3 will, through subsidiary transactions, acquire Telcove, with Telcove-VT becoming an indirect subsidiary of Level 3. Petition at 5.

5. Following the transaction, Telcove-VT will continue to operate under its current name and tariff. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at 6.

6. Upon closing, Telcove-VT and its new direct parent company will pledge assets as security and enter into a guaranty for existing indebtedness of Level 3 Financing, Inc. The financing arrangement will promote the general good of the state by ensuring that Telcove-VT can maintain access to credit on favorable terms. Petition at 7.

7. The proposed transaction will promote the public interest by providing Telcove-VT access to the substantial managerial and financial resources of Level 3, thereby, ensuring the continued existence of telecommunications competition in Vermont. Application at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107 and 108. These statutes condition approval of a proposed transfer of control and issuance of debt upon findings that the transactions will promote the public good (30 V.S.A §§ 107 and 108). 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).

In addition, pursuant to 30 V.S.A. § 108(a), "[a] domestic corporation . . . shall not . . . issue any . . . evidences of indebtedness without the consent of the public service board . . . and a finding . . . that the proposed action will be consistent with the general good of the state."

After reviewing the Application, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in Telcove-VT becoming an indirect wholly-owned subsidiary of Level 3. We also conclude that 30 V.S.A. § 108 applies because Telcove-VT, a domestic corporation, will issue evidences of indebtedness following the closing of the transaction.

The transfer of control will not affect the services that Telcove-VT currently provides to customers in Vermont. The company will continue to offer service at the same rates, terms and conditions. The proposed transaction will also allow Telcove-VT access to the substantial financial and managerial resources of Level 3, 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. Similarly, the issuance of debt by Telcove-VT will ensure that the company has access to credit on favorable terms. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 107 and 108, and should be approved.

IV. CONCLUSIONS

The transfer of control of Telcove-VT 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.

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).

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 Telcove of Vermont, Inc., will promote the public good and, therefore, is approved.
2. The issuance of debt by Telcove of Vermont, Inc., will promote the public good and, therefore, is approved.
3. Petitioner shall file a letter notifying the Board of the completion of the transaction within ten days of such completion.

DATED at Montpelier, Vermont, this 13th day of July, 2006.

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

OFFICE OF THE CLERK

Filed: July 13, 2006

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.