

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6136

Joint Petition of 360° Long Distance, Inc.,)
360° Communications Company, and)
ALLTEL Corporation for Approval of)
Agreement and Plan of Merger)

Order entered: 3/4/99

INTRODUCTION

On July 13, 1998, 360° Long Distance, Inc. ("360 LD"), 360° Communications Company ("360 CC"), and ALLTEL Corporation ("Alltel") (collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109 and 311, for approval of an Agreement and Plan of Merger.

By letter dated September 25, 1998, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed merger without the need for hearings or investigation.

The Department also commented that since the merger will permit 360 LD to continue operating in Vermont under its current name and service offerings, the transaction will be transparent in terms of service and would not cause inconvenience or confusion to the joint petitioners' customers.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

FINDINGS OF FACT

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

1. 360 CC is a publicly-held corporation that serves as a parent corporation of 360 LD and provides telecommunications services to the public in other jurisdictions. Petition at 2.

2. Alltel is a publicly-held corporation engaged in the business of providing

diversified telecommunications and information services to the public. Alltel's subsidiaries offer a full array of communications services and solutions, including commercial mobile radio services, local wireline services, long distance resale services, internet access services, and cable television services. Petition at 2.

3. Alltel and 360 CC have entered into a merger agreement which provides that Alltel will acquire the stock of 360 CC through the merger of a newly-formed merger subsidiary corporation, Pinnacle Merger Sub., Inc. ("Pinnacle"), with and into 360 CC, with 360 CC being the surviving entity. Petition at 3 and Exhibit C.

4. Following completion of the Merger Agreement, Alltel will become the ultimate corporate parent of 360 LD, a 360 CC subsidiary and a company subject to the regulation of the Board as a telecommunications carrier. Petition at 3-4.

5. 360 LD will continue to operate under its existing name, now as an indirect subsidiary of Alltel. 360 LD will continue to provide services pursuant to its existing rates, terms and conditions. As a result, the transactions will be transparent to the customers of 360 LD. Petition at 3-4.

6. Completion of the proposed transaction will serve the public interest in that there will be significant operational, financial and marketing advantages to 360 LD as a result. The transactions will make available operating efficiencies, enhanced development and market resources, shared management information and other support systems and greater financial resources to 360 LD as provider of telecommunications services in Vermont. Petition at 4.

DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109 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 joint petition of Alltel, 360 CC and 360 LD, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of 360 LD, which will become an indirect subsidiary of Alltel, into the indirect control of Alltel, and thus results in the transfer of more than ten percent of the shares of 360 LD to another company. We further conclude that the merger will allow both companies to operate more efficiently in the current telecommunications marketplace and that the reorganization will not affect the services that the Petitioners provide to customers in Vermont. The merger, 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, 109 and 311, and should be approved.

CONCLUSIONS

The merger of 360 CC and its subsidiary 360 LD with Alltel 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), 311.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Agreement and Plan of Merger of ALLTEL Corporation, 360° Long

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).

Distance, Inc. and 360° Communications Company is approved.

2. A Certificate of Consent to the merger shall be issued.

3. The transfer of control of 360 LD to Alltel will promote the public good and, therefore, is approved.

4. Petitioners shall file a letter notifying the Board of the completion of the transfer, within one week of such completion.

DATED at Montpelier, Vermont, this 4th day of March, 1999.

_____)	
)	PUBLIC SERVICE
)	
<u>s/ Suzanne D. Rude</u>)	BOARD
)	
)	OF VERMONT
<u>s/ David C. Coen</u>)	

OFFICE OF THE CLERK

Filed: March 4, 1999

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 of any technical errors, in order that any necessary corrections may be made.

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.