

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6177

Joint Petition of Cfl, L. L. C., Calls For )  
Less, Inc., and ILD Telecommunications Inc. )  
for Approval of a Transfer of Control )

Order entered: 3/30/99

I. INTRODUCTION

This case involves a petition filed on November 16, 1998, by Cfl, L. L. C., ("CFLCC"), Calls For Less, Inc., ("CFL"), and ILD Telecommunications, Inc. ("ILD") (collectively the "Petitioners"), seeking Vermont Public Service Board ("Board") approval *nunc pro tunc*, under 30 V.S.A. § 107, of a transaction whereby ILD has acquired all of the common stock and controlling interest in CFL, formerly a wholly-owned subsidiary of CFLCC . As a result of the transaction, CFL will become a wholly-owned subsidiary of ILD.<sup>1</sup>

On February 19, 1999, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control of CFL to ILD. The Department noted that the transaction has not affected the services received by customers of CFL or caused inconvenience or confusion to the customers of CFL, in that the rates and management structure of CFL has not changed. The Department also noted that ILD has provided information regarding its marketing and billing practices to the Department which meet with its satisfaction. Further, the Department also had no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107.

II. FINDINGS OF FACT

Based upon the petition and accompanying documents, the Board makes the following findings of fact.

1. ILD is a Delaware corporation headquartered at 14651 Dallas Parkway, Suite 905, Dallas, Texas 75240. Petition at 2.
2. CFLLC is a South Dakota limited liability company with principal offices at 725 N. Derby Lane, P.O. Box 1550, North Sioux City, South Dakota. CFLLC's wholly-owned subsidiary,

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1. The parties' petition calls for approval of the transaction *nunc pro tunc*. That legal mechanism can only be applied to correct a record, to make an order relate back to a time when a case was ripe for decision and a decision should have been recorded, but was not. 49 C.J.S. §123 *et seq.* It is not the same as retroactivity, and cannot be used to make a decision effective before the time of the Order in this docket.

CFL, is authorized to provide interexchange telecommunications services in 48 states and has been a certified telecommunications reseller in Vermont since October 31, 1997 (CPG No. 328). Petition at 2.

3. ILD, CFLLC and CFL have determined that they will realize significant economic and marketing efficiencies by establishing CFL as a wholly-owned subsidiary of ILD. Accordingly, CFLLC and ILD executed a Stock Purchase Agreement ("Agreement"), on August 11, 1998, whereby ILD acquired control of CFL. Pursuant to the Agreement, ILD acquired all issued and outstanding shares of the common stock of CFL. Petition at 3.

4. Following completion of the transaction, CFL became a wholly-owned subsidiary of ILD. CFL will continue to operate in all respects as it currently operates, pursuant to its present operating authority and tariff rate structure, and will continue to provide service to its current customers in Vermont as a wholly-owned subsidiary of ILD. Accordingly, neither the name of, nor the terms and conditions of service offered by CFL, have been affected by the transaction. The proposed transaction simply changed the ultimate corporate parent of CFL. As such, the transaction has not caused inconvenience or confusion to CFL's customers and in fact has been virtually transparent to such customers in terms of the services that they receive. Accordingly, the transaction should not have inconvenienced customers within the State of Vermont. Petition at 4.

5. Upon completion of the transaction, CFL will continue to rely on its existing management and operations staff to provide service. CFL will be able to draw upon the financial, marketing and technical expertise of its new parent company, ILD. Petition at Section 5.

6. ILD's acquisition of CFL will allow it to pursue its marketing and business plans more effectively. Petition at 5.

7. Completion of the proposed transaction will serve the public interest in that it will promote competition among long distance carriers by providing ILD with the opportunity to strengthen its competitive position and to pursue its marketing and business plans more effectively. Petition at 5.

### III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility.<sup>2</sup> Section 107 requires a finding that the transfer of control will promote the public good. This standard is met in this

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2. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holder of the Certificate of Public Good, CFL, will continue to be the entity providing telecommunications service in Vermont.

case. The proposed transaction will promote the public good, because CFL will have access to a larger pool of managerial, technical and financial resources due to the relatively larger resources of its new owner, ILD. In the competitive arena of telecommunications, the overall effect of this merger may promote more customer choice in terms of services, with stronger competitors in the Vermont telecommunications market. It should also be noted that the transfer of control will not result in any rate increase to existing customers of CFL.

For all of the above reasons, the proposed transfer of control of CFL to ILD, through their Stock Purchase Agreement, should be approved.

ORDER

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

1. The acquisition of control of Calls For Less, Inc. by ILD Telecommunications, Inc., is approved.

DATED at Montpelier, Vermont, this 30th day of March, 1999.

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

OFFICE OF THE CLERK

Filed: March 30, 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.*