

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6178

Joint Petition of Telecom Resources, Inc.)
and Advanced Communications Group, Inc. for)
Approval of Agreement and Plan of Merger)

Order entered: 3/3/99

INTRODUCTION

On November 10, 1998, Telecom Resources, Inc. ("TRI") and Advanced Communications Group, Inc. ("ACG") (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 January 13, 1999, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed agreement and merger plan without the need for hearings or investigation.

The Department also commented that since the merger will permit TRI to continue operating in Vermont under its current name and service offerings, the transaction will be transparent and in terms of service 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. ACG is a Delaware corporation with corporate offices in St. Louis, Missouri. ACG provides telecommunications services in various states throughout the country. Petition at 1-2.

2. TRI is a privately-held Texas corporation with corporate offices in Dallas,

Texas. TRI is a provider of resold telecommunications services and is a certificated carrier in the State of Vermont (C.P.G. No. 403). Petition at 1.

3. ACG and TRI have entered into a Merger Agreement which provides that ACG will acquire the stock of TRI through the merger of a newly-formed and wholly owned ACG subsidiary corporation, ACG Acquisition Corporation ("ACG Acquisition"), with and into TRI, with TRI being the surviving entity. The current TRI shareholders will receive stock in ACG as provided for in the Merger Agreement. Petition at 4.

4. Following consummation of the Merger Agreement, TRI will continue to operate under its existing name, now as a wholly-controlled subsidiary of ACG. TRI 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 TRI. Petition at 4.

5. Completion of the proposed transaction will serve the public interest in that there will be significant operational, financial and marketing advantages to TRI 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 TRI as provider of telecommunications services in Vermont. Petition at 4-5.

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 ACG and TRI, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of TRI, which will become a wholly-owned subsidiary of ACG, into the control of ACG, and thus results in the transfer of more than 10 percent of the shares of TRI 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 ACG and TRI 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 Advanced Communications Group, Inc. and Telecom Resources, Inc. is approved.
2. A Certificate of Consent to the merger shall be issued.
3. The transfer of control of Telecom Resources, Inc. to Advanced Communications Group, Inc. will promote the public good and, therefore, is approved.
4. Petitioners should file a letter notifying the Board of the completion of the transfer, within one week of such completion.

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).

DATED at Montpelier, Vermont, this 3rd 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 3, 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.