

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6192

Joint Petition of Intercontinental Communications )  
Group, Inc. d/b/a ICLD and Fusion Telecommunications )  
International, Inc. for Approval of Transfer of Control )

Order entered: 7/27/99

INTRODUCTION

On December 23, 1998, Intercontinental Communications Group, Inc. d/b/a ICLD ("ICLD") and Fusion Telecommunications International, Inc. ("Fusion") (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 a transfer of control that will establish ICLD as a wholly-owned subsidiary of Fusion.

By letter dated July 9, 1999, 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 ICLD 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 its customers. Further, ICLD has agreed to adhere to the Department's standard consumer complaint procedures.

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. ICLD is a privately-held Florida corporation. ICLD is a nationwide provider of telecommunications services and is authorized to provide resold interexchange services in over forty (40) states by virtue of certification, registration or tariff requirements, or on a deregulated basis. In Vermont, ICLD is authorized to provide intrastate interexchange telecommunications services pursuant to a Certificate of Public Good granted by the Board on January 6, 1998 (C.P.G. No. 314). Petition at 2.

2. Fusion is a Delaware corporation headquartered in Jersey City, New Jersey. Fusion does not provide domestic telecommunications services and will not be offering service in Vermont. Petition at 2.

3. Information regarding the technical, managerial and financial qualifications of ICLD to provide service in Vermont was submitted with its petition for a Certificate of Public Good and are, therefore a matter of record at the Board. Petition at 2.

4. The proposed transfer of control will be accomplished through the use of a reverse triangular merger whereby a newly formed subsidiary of Fusion, Fusion Acquisition Corp., will merge with and into ICLD with ICLD as the surviving entity. Following the reorganization, ICLD will continue serving current customers of ICLD under existing service arrangements pursuant to its certification. Accordingly, the reorganization will be virtually transparent to customers of ICLD. Petition at 3.

5. Fusion and ICLD have determined that they can realize significant economic and marketing efficiencies and, ultimately, strengthen the respective businesses of the two companies by establishing ICLD as a direct, wholly-owned subsidiary of Fusion. Petition at 4.

6. Establishing ICLD as a direct subsidiary of Fusion, moreover, will not result in a change in the manner in which ICLD currently provides service to its Vermont customers. ICLD will continue to provide service to existing customers of ICLD pursuant to certification granted to ICLD, with no change in the rates, terms and conditions of service previously enjoyed by such customers. Petition at 3.

9. Completion of the reorganization will serve the public interest in promoting competition among providers of interexchange telecommunications services by combining the financial resources and complementary managerial skills and experience of ICLD and Fusion in providing telecommunications services to the public. Petitioners anticipate that the transfer of control will result in a company better equipped as a competitive telecommunications service provider. The reorganization will allow ICLD access to Fusion's financial resources and is expected to enhance ICLD's operational flexibility and efficiency, as well as its long-term financial viability. The reorganization, therefore, should ensure the continued provision of telecommunications services to ICLD's existing customers and should promote competition in the Vermont telecommunications service market. In sum, the proposed transfer of control will benefit the public interest by enhancing the ability of ICLD to offer competitively priced services in the

Vermont interexchange telecommunications marketplace. 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).<sup>1</sup> 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 ICLD and Fusion, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of ICLD, which will become a wholly-owned subsidiary of Fusion, into the control of Fusion, and thus results in the transfer of more than ten percent of the shares of ICLD 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 ICLD provides to customers in Vermont. The reorganization, 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 transfer of control of ICLD to Fusion 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

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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).

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 transfer of control of ICLD to Fusion will promote the public good and, therefore, is approved.
2. A Certificate of Consent to the merger of Fusion Acquisition Corp. with and into ICLD shall be issued.
3. Petitioners should file a letter notifying the Board of the completion of the transfer of control, within ten days of such completion.

DATED at Montpelier, Vermont, this 27<sup>th</sup> day of July, 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: July 27, 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.*