

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6220

Joint petition of RSL COM U.S.A., Inc.)
to Acquire the Assets of One Step Billing, Inc.)

Order entered: 5/28/99

BOARD FINDINGS AND ORDER

INTRODUCTION

On March 12, 1999, RSL COM U.S.A. ("RSL") and One Step Billing, Inc. ("OSB") (collectively the "Petitioners") filed a joint petition ("Petition") seeking approval from the Vermont Public Service Board ("Board") pursuant to 30 V.S.A. §§ 109, 231 and 311 requesting approval of an asset purchase, and revocation of OSB's Certificate of Public Good ("CPG").¹

By letter filed with the Board on May 4, 1999, the Department of Public Service ("DPS" or "Department") recommended that the Board approve the Petition without the need for hearing or investigation.

The Department also commented that OSB had ceased operations effective as of the date of the executed asset sale agreement on December 9, 1998. Existing customers were notified at that time of the transaction. The Department believes that, given this lack of timely notice, customers who switched services due to this transaction should not be burdened with the costs associated with switching their primary interexchange carrier or PIC change fee. Therefore, the Department recommends that the Board condition the approval of the transaction on RSL granting full refunds of these charges to any customers

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.

incurring PIC fees as a result of the transaction.

Furthermore, the Department noted, that aside from the possible PIC change charges, the transaction appears to have been transparent and in terms of service does not seem to have caused inconvenience or confusion to the petitioners' customers.

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

FINDINGS

1. RSL is a corporation organized under the laws of the State of Delaware. The Board granted RSL authority to provide resale telecommunications services in Vermont on October 30, 1997, C.P.G. No. 343. Petition at 1 and 2.

2. OSB is a corporation organized under the laws of the State of Florida. The Board granted OSB authority to provide resale telecommunications services in Vermont on October 31, 1997, C.P.G. No. 344. Petition at 3.

3. The petitioners seek approval of an asset purchase agreement executed December 9, 1998. Specifically, RSL has purchased (a) the right to provision all of OSB's telecommunications customers (the "Customers") with telecommunications and ancillary services; (b) the right to receive payments from the Customers; (c) the exclusive right, title and interest in and to the names "One Step Billing" and "OSBI"; and (d) all of OSB's accounts receivable. Petition at 4.

4. Upon completion of the transaction, OSB ceased operations on December 9, 1998, and has requested revocation of its CPG. Through the asset purchase agreement RSL will continue to furnish service to these subscribers directly. Petition at 4.

5. The transfer of assets should have been transparent to consumers in Vermont and should not have adversely affected the provision of telecommunications services in Vermont. After the transfer, most current OSB retail interexchange customers will be served by RSL, at the rates, terms, and conditions specified in its tariff, which are comparable to the rates of OSB. Prior to the transaction, OSB and RSL were parties to a resale services agreement pursuant to which OSB resold to its customers the

telecommunications services of RSL. The Petitioners have represented that, as a result of OSB's decision to cease operations, the acquisition of OSB's customer base by RSL will enable these subscribers to continue to receive the same services without interruption. Petition at 4.

6. The transaction is in the public interest because it provides access to an active carrier of competitive services. The proposed transaction will, therefore, ensure the continued provision of telecommunications services to OSB's former customers and should promote competition in the Vermont telecommunications service market. The proposed acquisition will benefit the public interest by enhancing the ability of RSL to offer competitively priced services in the Vermont telecommunications marketplace. Although former OSB customers will be served by the billing system of RSL after the transaction, the transfer to the new system should have been seamless and affected customers should have experienced no disruptions in service. Petition at 5-6.

DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 109, 231 and 311. The statutes condition approval of a sale of assets upon a finding that the sale will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). The revocation of OSB's CPG is conditioned upon a finding that the cessation of the business is consistent with the public interest (30 V.S.A. § 231). These standards are met in this case.

The proposed transaction will promote the public good because it will enable RSL to realize significant economies of scale. Further, the market for telecommunications services in Vermont is competitive. RSL is a nondominant firm in the market for intrastate toll telecommunications services in Vermont, and there is no evidence to suggest that the company will become dominant as a result of the proposed transaction.

In addition, in order to ensure that the transaction is in the public interest and to compensate any customers that may have suffered any inconvenience, due to the lack of timely notice prior to this transaction and the subsequent decision of OSB to

simultaneously cease operations, approval of this petition shall be conditioned upon those customers, if any, that have chosen to change carriers as a result of the acquisition, receiving full refunds of their PIC change charges. RSL shall also be responsible for the resolution of any consumer complaints that may have arisen in relation to the transaction, and any outstanding consumer complaints by former OSB customers. Thus, the acquisition of OSB's customer base by RSL should not have any detrimental impact upon consumers or competition in the Vermont market for telecommunications services.

For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 109, 231 and 311, and should be approved.

ORDER

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

1. The transfer of assets of One Step Billing, Inc. to RSL COM U.S.A., Inc. will promote the public good and, therefore, is approved.
2. A Certificate of Consent to the transfer of assets shall be issued.
3. The Certificate of Public Good granted to OSB shall be considered revoked upon issuance of this Order.
4. RSL shall refund the costs incurred by any former customer of OSB resulting from switching their primary interexchange carrier from RSL to another carrier between December 9, 1998, and the date of issuance of this Order, within thirty days of the date of this Order.
5. RSL shall assume responsibility for resolving any outstanding consumer complaints brought against OSB by former OSB customers.

DATED at Montpelier, Vermont, this 28th day of May, 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: May 28, 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.