

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6221

Joint Petition of Primus Telecommunications,)
Inc. and TresCom U.S.A., Inc. for)
Approval of Corporate Reorganization)

Order entered: 10/15/99

INTRODUCTION

On March 18, 1999, Primus Telecommunications, Inc. ("Primus") and TresCom U.S.A., Inc. ("TresCom") (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 internal corporate reorganization ("Reorganization") including the merger of TresCom, an affiliate of Primus, with and into Primus, with Primus as the surviving entity.

By letter dated September 28, 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 the transaction would not cause inconvenience or confusion to its customers. Further, Board approval should be conditioned on written notification to the Board within one week of the closing, and within 30 days of closing Primus should file a tariff incorporating TresCom's service offerings, if different than that currently offered by Primus.

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. Primus is a Delaware corporation with its principal business office located at 1700 Meadow Road, Third Floor, McLean, Virginia 22102. Primus is wholly owned by Primus Telecommunications Group, Incorporated ("PTGI"), a Delaware holding company. Primus is qualified to do business in the State of Vermont and is authorized to provide resold intrastate interexchange telecommunications services pursuant to certification granted by this Board in C.P.G. No. 285 on October 29, 1997. Primus is also authorized to provide resold intrastate long distance

telecommunications services in every state except Alaska and Hawaii, pursuant to certification, registration, or on an unregulated basis. Primus is also authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services as a nondominant common carrier. Petition at 2-3.

2. TresCom is a Florida corporation with principal offices in Fort Lauderdale, Florida. TresCom is wholly owned by TresCom International, Inc., which is wholly owned by PTGI. TresCom provides resold intrastate interexchange services pursuant to certification granted by the Board on February 14, 1997, in C.P.G. No. 261. TresCom is also currently authorized to provide resold intrastate interexchange and other competitive services in 47 other states pursuant to certification, registration or tariff requirements, or it provides service on an unregulated basis. In addition, TresCom is authorized by the FCC to provide domestic interstate and international services as a nondominant carrier throughout the United States. Petition at 3.

3. For internal corporate reasons, Primus and TresCom have determined that the proposed Reorganization will improve the operational efficiency of the Primus companies. Petitioners submit that the consolidation of their technical and managerial resources will enable Primus to attract additional financing, reduce operating expenses, and realize operational and management efficiencies and other corporate benefits that ultimately will inure to the benefit of both Primus's and TresCom's customers in Vermont. Petition at 4.

4. Through the proposed Reorganization, TresCom will merge with and into Primus. Following the merger, TresCom will cease to exist and Primus will assume TresCom's operations and will provide continuous telecommunications services to TresCom's customers. Petition at 4.

5. The proposed Reorganization will not result in a change in the services, operations or service quality provided to TresCom's customers. In addition, upon consummation of the Reorganization, Primus will maintain a tariff that duplicates the service offerings, rates, terms and conditions as filed in the current TresCom tariff. Thus, the former customers of TresCom will continue to receive the same services that they presently receive at the same tariffed rates. Petition at 4.

6. Primus and TresCom's proposed internal reorganization is consistent with the public interest in promoting competition among providers of interexchange telecommunications services in the State of Vermont. Petitioners anticipate that the contemplated business combination will result in a company with a broader market base that is better equipped to accelerate its growth as a competitive telecommunications service provider. The Reorganization should allow the company to manage its

telecommunications operations more efficiently, thereby enhancing the overall operational flexibility, efficiency and financial viability of the Primus companies. These enhancements should accrue to the benefit of Petitioners' customers, who may also benefit from the expanded array of services and more cost-efficient provision of services. The proposed transaction should therefore ensure the continued provision of telecommunications services to the Petitioners' existing customers and should promote competition in the Vermont telecommunications service market. Petition at 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 Primus and TresCom, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of TresCom, which will cease to exist following the merger, into the control of Primus, and thus results in the transfer of more than ten percent of the shares of TresCom to another company. We further conclude that the merger will allow Primus to operate more efficiently in the current telecommunications marketplace. The reorganization, therefore, will promote the public good. For all of these reasons, we conclude that the

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).

proposed transaction meets the standards set forth in 30 V.S.A. §§ 107, 109 and 311, and should be approved.

CONCLUSIONS

The merger of TresCom and Primus 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 internal corporate reorganization of Primus Telecommunications Group, Inc., including the merger of Primus and TresCom, is approved.
2. A Certificate of Consent to the merger of TresCom with and into Primus shall be issued.
3. The transfer of control of TresCom to Primus will promote the public good and, therefore, is approved.
4. Petitioners shall file a letter notifying the Board of the completion of the reorganization, within one week of such completion.
5. Petitioners shall file a tariff incorporating TresCom's service offerings, if different than that currently offered by Primus, within 30 days of the transaction completion date.

DATED at Montpelier, Vermont, this 15th day of October, 1999.

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

OFFICE OF THE CLERK

Filed: October 15, 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.