

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6227

Joint Petition of Big Planet, Inc.)
and Nu Skin Enterprises, Inc. for)
Approval of Corporate Reorganization)

Order entered: 5/28/99

INTRODUCTION

On March 24, 1999, Big Planet, Inc. ("Big Planet") and Nu Skin Enterprises, Inc. ("NSE") (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 reorganization of commonly controlled corporations that will establish Big Planet as a wholly-owned subsidiary of NSE.

By letter dated May 20, 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 Big Planet 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, Big Planet has agreed to notify the Board within ten days of the finalization of the corporate reorganization.

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. Big Planet is a privately-held Utah corporation headquartered in Provo, Utah. Big Planet is a nationwide provider of innovative 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, Big Planet is authorized to provide intrastate interexchange telecommunications services pursuant to a Certificate of Public Good granted by the Board on November 18, 1998 (C.P.G. No. 427). Big Planet provides interstate and international

telecommunications services as a nondominant common carrier pursuant to authority of the Federal Communications Commission. Big Planet is also a nationwide provider of Internet service. Petition at 2 and 3.

2. NSE is a Delaware corporation publicly traded on the New York Stock Exchange under the stock symbol "NUS." Headquartered in Provo, Utah, NSE is one of the largest direct selling companies in the world, with products sold throughout North America, South America, Europe, and Asia. NSE currently holds no telecommunications licenses from this or any other regulatory commission. Petition at 3.

3. Big Planet and NSE are currently affiliated through common ownership and control. Specifically, the same group of shareholders that collectively hold the majority controlling interest in NSE also collectively indirectly hold the majority controlling interest in Big Planet ("Controlling Shareholders Group"). The Controlling Shareholders Group holds a 100 percent interest in Nu Skin USA, Inc., a privately-held company which, in turn, holds a 93.8 percent interest in Big Planet. Following the reorganization, the Controlling Shareholders Group will continue to hold the majority controlling interest in NSE (directly) and Big Planet (indirectly). Petition at 2-3.

4. As indicated on NSE's financial statements submitted in its most recent Form 10-Q, as filed with the Securities and Exchange Commission, NSE is a financially sound company. Following the reorganization, Big Planet will have better access to financing through the substantial financial resources of NSE. Petitioners expect that the improved access to financing will enhance Big Planet's operational flexibility and long-term financial viability. Petition at 3-4.

5. The proposed reorganization will be accomplished through a transaction whereby Big Planet will merge with and into a newly formed subsidiary of NSE, Big Planet Holdings, Inc., a Delaware corporation. Following the reorganization, Big Planet will continue serving current customers of Big Planet under existing service arrangements pursuant to Big Planet's certification. Accordingly, the reorganization will be virtually transparent to customers of Big Planet. Petition at 1-2.

6. NSE, Big Planet, and the Controlling Shareholders Group have determined that they can realize significant economic and marketing efficiencies and, ultimately, strengthen the respective businesses of the two companies by establishing Big Planet as a direct, wholly-owned subsidiary of NSE. Establishing Big Planet as a subsidiary of NSE is part of a larger corporate restructuring plan formulated by the Controlling Shareholders Group to unify the companies controlled by the Controlling Shareholders Group under one public company, NSE. Accordingly, NSE, Big Planet and the

Controlling Shareholders Group have executed a letter of intent expressing their agreement to accomplish this reorganization. The reorganization will be accomplished through a series of transactions whereby Big Planet will merge with and into a newly formed NSE subsidiary, Big Planet Holdings, Inc., which will then change its name to Big Planet, Inc. Upon completion of the proposed reorganization, Big Planet will be a direct, wholly-owned subsidiary of NSE. Petition at 4-5.

7. Although the proposed reorganization will result in a change in the direct corporate parent of Big Planet, it will not result in a change in the ultimate ownership and control of Big Planet. The Controlling Shareholders Group currently holds a 78.6 percent interest in NSE and indirectly holds a 93.8 percent interest in Big Planet. Following the reorganization, the Controlling Shareholders Group will continue to hold a 78.6 percent interest in NSE and will indirectly hold a 78.6 percent interest in Big Planet. The reorganization, therefore, is a paper transaction that will not affect the ultimate ownership and control of Big Planet. Petition at 5.

8. Establishing Big Planet as a direct subsidiary of NSE, moreover, will not result in a change in the manner in which Big Planet currently provides service to its Vermont customers. Big Planet will continue to provide service to existing customers of Big Planet pursuant to certification granted to Big Planet, with no change in the rates, terms and conditions of service previously enjoyed by such customers. Additionally, Big Planet will continue to be led by a team of well-qualified telecommunications managers comprised largely of existing Big Planet personnel. As such, the *pro forma* reorganization establishing Big Planet as a subsidiary of NSE will be virtually transparent to Vermont customers of Big Planet in terms of the services that they receive. Petition at 5-6.

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 NSE and Big Planet in providing telecommunications services to the public. Petitioners anticipate that the *pro forma* reorganization will result in a company better equipped as a competitive telecommunications service provider. The reorganization will allow Big Planet access to NSE's significant financial resources and is expected to enhance significantly Big Planet's operational flexibility and efficiency, as well as its long-term financial viability. These enhancements will inure directly to the benefit of Vermont customers, who will also benefit from the innovative array of services offered by Big Planet. The reorganization, therefore, should ensure the continued provision of telecommunications services to Big Planet's existing customers and should promote competition in the Vermont telecommunications service market. In

sum, the proposed *pro forma* reorganization will benefit the public interest by enhancing the ability of Big Planet to offer competitively priced services in the Vermont interexchange telecommunications marketplace. Petition at 6.

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 Big Planet and NSE, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of Big Planet, which will become a wholly-owned subsidiary of NSE, into the control of NSE, and thus results in the transfer of more than ten percent of the shares of Big Planet 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 Big Planet 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 corporate reorganization of Big Planet and NSE should be approved because it will

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).

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 corporate reorganization of Big Planet and NSE is approved.
2. A Certificate of Consent to the merger of Big Planet with and into Big Planet Holdings, Inc. shall be issued.
3. The transfer of control of Big Planet to NSE will promote the public good and, therefore, is approved.
4. Petitioners should file a letter notifying the Board of the completion of the reorganization, within ten days of such completion.

DATED at Montpelier, Vermont, this 28th day of May, 1999.

s/ Michael H. Dworkin)
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s/ Suzanne D. Rude)
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s/ David C. Coen)

PUBLIC SERVICE
 BOARD
 OF VERMONT

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.