

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6232

Joint Petition of Teligent, Inc. and)
Teligent Services, Inc. for Revocation)
of Certificate of Public Good and)
Issuance of Certificate of Public Good)

Order entered: 12/16/99

**ORDER REVOKING CERTIFICATE OF PUBLIC GOOD
AND ISSUANCE OF NEW CERTIFICATE OF PUBLIC GOOD**

I. INTRODUCTION

On June 18, 1999, Teligent, Inc. ("Teligent") and Teligent Services, Inc. ("TSI") (jointly the "Petitioners") filed a petition, pursuant to 30 V.S.A. § 231, for revocation of Teligent's Certificate of Public Good ("CPG") and issuance of a new CPG to TSI, a wholly-owned subsidiary of Teligent, to provide telecommunications services in Vermont. As part of a corporate reorganization, TSI will act as Teligent's operating company and provide telecommunications services to its customers.

On November 12, 1999, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending that the Board approve the Company's request. The Department noted that the reorganization and creation of TSI as a wholly-owned subsidiary does not appear to reflect a change in either the corporate or management structure, nor does it result in rate changes. Further, the Department recommended that the Board approve the petition without the need for hearings or investigation. Additionally, the Department recommended that TSI should notify the Board within ten days of completion of the reorganization and file the appropriately revised tariffs reflecting the changes made.

The Board, having reviewed the petition and the other materials filed, agrees that Teligent's CPG should be revoked and a CPG should be issued to TSI. As a result, newspaper publication is not required prior to issuance of the amended CPG. 30 V.S.A. §§ 102(a), 231(a).

Based upon the petition and accompanying documents, the Board makes the following findings.

II. FINDINGS

1. Teligent, a Delaware corporation, was issued a CPG to provide telecommunications

services in Vermont on February 2, 1999 (CPG No. 449). Petition at 1.

2. TSI, a Delaware corporation formed April 28, 1999, is a wholly owned subsidiary of of Teligent. TSI has filed a Certificate of Authority to operate as a foreign corporation in Vermont. Petition at 2-3.

3. TSI plans to become the operating company for Teligent, which will cease to operate as a provider of telecommunications. TSI will issue a tariff that duplicates the service offerings, rates, terms, and conditions of service as filed in Teligent's current tariff. Petition at 2.

4. The proposed corporate reorganization does not involve any change in ownership or business practices, as TSI will be operated by the same officers and directors as Teligent, nor will it have any impact upon the services provided to the Teligent's customers. Petition at 2.

5. TSI should possess the requisite financial, technical, and managerial ability to provide telecommunications services in Vermont. TSI is in all respects, the same substantive entity as Teligent. Petition at 3.

III. DISCUSSION

A. Entry

Sections 102 and 231 of Title 30, V.S.A., require that a CPG be issued before a company can offer telephone service to the public in Vermont. These entry regulation statutes were designed for two purposes: (1) to protect consumers against incompetent or dishonest businesses; and (2) to protect existing providers by limiting or eliminating their competitors. See, *e.g.*, *Petition of MCI Telecommunications Company*, Docket No. 5264, Order of 12/13/88; *Petition of Burlington Telephone Company*, Docket No. 5012, Order of 5/27/86.

The second—or "franchise protection"—rationale was carefully considered by the Board in Docket No. 4946. In its Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of competition outweighed its flaws, and that competition should be permitted in Vermont's market for message telecommunications service and other communications services.

The first rationale for entry regulation—"consumer protection"—remains one of the Board's policy objectives. Having reviewed the petition, and all related materials, we conclude

that the evidence does not demonstrate that the technical, managerial or financial resources of TSI are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with minimal or no transaction costs, we conclude that concerns for consumer protection are addressed. Concerns for consumer protection are, therefore, not cause for rejection of TSI's petition nor do they warrant an investigation at this time.

B. Rates

TSI will operate according to the tariff of Teligent that has been reviewed and accepted by the Department and Board. TSI should file an identical tariff (with an appropriately updated effective date) to become effective after it receives a CPG and formal tariff filing requirements have been satisfied. This procedure is consistent with 30 V.S.A. § 225 and Board precedents. See, e.g., *Petition of Coast International, Inc.*, Order of 11/21/91; *Petition of Richmond Cable Corp.*, Docket No. 5038, Order of 11/6/85; *Petition of Burlington Telephone Company, supra*. TSI shall file its formal tariff within thirty days of the issuance of a CPG.

As a substantive matter, the Board has previously found that, for carriers such as TSI that will not possess market power, there is little need for cost-of-service or rate-of-return regulation in order to meet the statutory criterion of just and reasonable rates. TSI will offer its services to customers who are all free, at minimal transaction costs, to transfer their business to any other certified intrastate toll carrier. Thus, consumers can freely change carriers if they feel that TSI's rates are not just and reasonable.¹

1. The only exception regarding regulation of rates is with respect to rates for operator services. In our Order of 1/6/95 in Docket No. 5566, *Generic Investigation into the Regulation of Public Telephone and Operator Service Providers in Vermont*, we noted that "customers who are not expert in the rapidly changing field of telecommunications . . . stand to be taken advantage of in an imperfect market, where rates are unregulated, may be extraordinarily high and may be incurred by the end user without the equivalent of his knowledgeable consent." Docket No. 5566, Order of 1/6/95 at 101. Consequently, we mandated rate caps for operator services (with certain exceptions), set at the rates charged by New England Telephone and Telegraph Company. Should the Company, at any time in the future, propose to offer operator services, it will be bound by the Board's Orders in Docket No. 5566.

C. Terms and Conditions of Service

The terms and conditions of service set out in Teligent's filing and which will be duplicated by TSI, were accepted by the Department, and are consistent with statutory and regulatory requirements. The fact that the Company has little market power suggests that lesser regulatory review will often be appropriate.

D. Revocation

30 V.S.A. § 231(a) provides that the Board may amend or revoke any CPG for good cause, after hearing. Since there is no controversy surrounding Teligent's request for revocation it follows that good cause exists to revoke Teligent's CPG to reflect the cessation of service provision by Teligent. As for whether a hearing is necessary, we conclude that it is not. First, there is no genuine issue of material fact as to whether Teligent's CPG should be revoked and, consequently, under V.R.C.P. 56, a hearing is unnecessary. Second, the Petitioners have asked that the CPG be revoked, and the DPS has recommended that the petition be approved without hearing. Finally, 30 V.S.A. § 231(a) requires only the opportunity for a hearing, thus acknowledging that a hearing is not always necessary prior to amendment.

IV. CONCLUSIONS

1. TSI should be granted a CPG because its offering of proposed services will promote the general good of the State of Vermont. 30 V.S.A. §§ 102, 231.
2. TSI should file its formal tariff, which will duplicate the rates, terms, and service offerings contained in Teligent's existing tariff on file with the Board and should be followed by an opportunity for comment by the Department and affected parties, within 30 days of issuance of a CPG.
3. The terms and conditions of service proposed by TSI are appropriate provided they duplicate those of Teligent. 30 V.S.A. § 203.
4. TSI should comply with the procedures established by the Department regarding consumer complaint resolution and telemarketing practices.
5. The CPG held by Teligent, Inc. should be revoked to reflect the cessation of service provision by the holder. 30 V.S.A. § 231.

V. ORDER

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

1. Based upon the above findings, conclusions, and discussion, the provision of intrastate telecommunications service by Teligent Services, Inc. will promote the general good of the State of Vermont pursuant to the provisions of 30 V.S.A. §§ 102 and 231. A certificate of public good shall be issued to that effect, subject to the applicable terms and conditions.

2. TSI shall file a tariff, which duplicates the tariff of Teligent currently on file with the Board, for intrastate service within thirty days. TSI shall publish, in two newspapers of general circulation, tariff summaries approved by the Department of Public Service, within fifteen days of filing such a tariff, in compliance with 30 V.S.A. § 225(a). Such tariff shall become effective thirty days from the date of filing, absent appropriate motions by the Department or affected parties.

3. If TSI at any time in the future proposes to offer operator services, it shall be required to comply with the Board's Order of 1/6/95 in Docket No. 5566, *Generic Investigation into the Regulation of Public Telephone and Alternative Operator Services in Vermont*, and any future orders in that docket.

4. If TSI intends to do business in the State of Vermont under a name that differs from the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name with the Clerk of the Board and the Department of Public Service at least fifteen (15) days before commencing business under the new trade name.²

5. TSI shall be subject to all rules and orders lawfully adopted or to be adopted by the Board, and its certificate of public good shall incorporate those rules and orders by reference. TSI's CPG shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms.

6. The Certificate of Public Good that was issued to Teligent, Inc. on February 2, 1999, is

2. For a Corporate name change, see 11 V.S.A. § 401 and 30 V.S.A. § 231. Petitioners may wish to contact the Clerk of the Board for assistance.

hereby revoked.

DATED at Montpelier, Vermont, this 16th day of December, 1999.

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/Suzanne D. Rude)

) BOARD

s/David C. Coen)

) OF VERMONT

OFFICE OF THE CLERK

FILED: DECEMBER 16, 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.