

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6233

Petition of Vermont National Corporation for)
Approval of the indirect Acquisition of Controlling)
Interest in Vermont Telephone Company, Inc.)

Order entered: 6/9/99

I. INTRODUCTION

This case involves a petition filed on April 6, 1999, by Vermont National Corporation ("VNC") on behalf of J. Michel Guite ("Guite") and J. Michel Guite Children's Trust ("Children's Trust"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of a transaction whereby Guite and the Children's Trust will each acquire ten percent of the voting securities of VNC and, thus, an indirect controlling interest in Vermont Telephone Company, Inc. ("VTel"), a wholly-owned subsidiary of VNC.

On May 3, 1999, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the indirect transfer of control of VTel to Guite and the Children's Trust. Further, the Department also had no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107.

II. FINDINGS OF FACT

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

1. VNC is a Delaware corporation which holds all of the issued and outstanding voting securities ("Securities") of VTel, a Delaware Corporation. Petition at 1.
2. VTel is authorized to provide telecommunications services in Vermont. Petition at 1.
3. Guite currently holds 9.75 percent of VNC's Securities, while the Children's Trust, established by Guite for the benefit of his children, currently owns 8 percent. Petition at 2.
4. Under the terms of the proposed transaction, Guite will acquire an additional 2.25 percent of the Securities and, simultaneously, grant 2 percent of these Securities to the Children's Trust. The proposed transaction would result in Guite and the Children's Trust each owning 10 percent of VNC's Securities and, indirectly, a controlling interest in VTel. Petition at 3.

5. VTel will continue to operate in all respects as it currently operates, pursuant to its present operating authority and tariff rate structure, and will continue to provide service to its current customers in Vermont as a wholly-owned subsidiary of VNC. Accordingly, neither the name of, nor the terms and conditions of service offered by VTel, have been affected by the transaction. The proposed transaction simply changed the relative ownership of the corporate parent of VTel. As such, the transaction should not cause inconvenience or confusion to VTel's customers. Petition at 4.

6. Completion of the proposed transaction will serve the public interest in that it will diversify the ownership of VNC and hence control of VTel. Petition at 3.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility.¹ (Section 107 creates a presumption that a "controlling interest" is ten percent or more of the outstanding voting securities of a company.) Section 107 requires a finding that the transfer of control will promote the public good. 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). 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).

This standard is met in this case. The proposed transaction will promote the public good, because it will diversify the ownership of VNC and hence control of VTel. It should be noted that the transfer of control will not result in any rate increase to existing customers of VTel.

For all of the above reasons, the proposed indirect transfer of control of VTel to Guite and the Children's Trust, respectively, through their Securities purchase agreement, should be approved.

1. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holder of the Certificate of Public Good, VTel, will continue to be the entity providing telecommunications service in Vermont.

ORDER

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

- 1. The indirect acquisition of control of Vermont Telephone Company, Inc. by J. Michel Guite is approved.
- 2. The indirect acquisition of control of Vermont Telephone Company, Inc. by the J. Michel Guite Children's Trust is approved.

DATED at Montpelier, Vermont, this 9th day of June, 1999.

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

OFFICE OF THE CLERK

Filed: June 9, 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.