

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6254

Petition of AT&T Corp. and British Telecom plc)
for approval of an acquisition of an indirect)
minority interest in Japan Telecom America, Inc.)
and Airnex Communications, Inc.)

Order Entered: 7/30/99

I. INTRODUCTION

On July 2, 1999, AT&T Corp. ("AT&T"), British Telecommunications plc ("BT") and Airnex Communications, Inc. ("Airnex") requested approval of a transfer of ownership required under 30 V.S.A. § 107.¹ Specifically, the petitioners request approval of the acquisition of an indirect minority interest in Japan Telecom America, Inc. ("JTA") and Airnex, through a minority equity stake in Japan Telecom Co. Ltd. ("Japan Telecom"), the parent of JTA and Airnex, by AT&T and BT. In its correspondence, the petitioners noted that the proposed transaction is expected to be completed on or before the close of business on July 31, 1999, and requested that the Board give this transaction its immediate attention.

By letter dated July 27, 1999, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed transaction without the need for hearings or investigation.

Based on the information presented in the petition and the recommendation of the Department, I conclude that the transaction is in the public interest and that the transaction should be authorized by the Board.

II. FINDINGS OF FACT

1. The transaction is governed by an Investment Agreement, dated April 25, 1999 ("Agreement"), under the terms of which AT&T and BT each will acquire indirectly a 15 percent equity interest in Japan Telecom, as well as certain minority stockholder rights. The Agreement executed by Japan Telecom, AT&T, BT, and BT (Netherlands) Holdings B.V. ("BT Netherlands"), a

¹ Letter petition from Aurigema, Loeb and Morrone to Hudson, dated June 30, 1999.

wholly-owned subsidiary of BT, provides that two specially-formed subsidiaries of AT&T and BT each will subscribe for and purchase a number of shares comprising 15 percent of Japan Telecom's fully-diluted capital stock. AT&T, or a wholly-owned subsidiary of AT&T, and BT, thus each will acquire 15 percent legal interest in Japan Telecom. Those interests will be contributed in trust to a newly created Netherlands company ("Holdings"). Petition at 4.

2. AT&T, or a wholly-owned subsidiary of AT&T, will be entitled to vote on and have an equitable interest in 10 percent of the Japan Telecom stock held in trust, and BT, or a wholly-owned subsidiary of BT, will be entitled to vote on and have an equitable interest in 20 percent of the Japan Telecom stock held in trust. Petition at 5.

3. As part of the same transaction, Japan Telecom will acquire the AT&T Jens Corporation and the BT Japan Companies by purchasing all of the outstanding shares of each. The transaction will not affect Japan Telecom's 100 percent ownership interest in JTA, and JTA will continue to own 51 percent of Airnex. Petition at 5.

4. AT&T is a New York corporation with headquarters at 32 Avenue of the Americas, New York, New York 10013-2412. Petition at 2.

5. AT&T is the largest provider of domestic and international long distance telephone service in the United States and operates in more than 250 countries and territories around the world. AT&T provides these long distance communications services to residential, business, and governmental customers. Petition at 2.

6. A subsidiary of AT&T, AT&T Communications of New England, Inc., ("AT&T New England") provides competitive local exchange and interexchange telecommunications services within the State of Vermont, pursuant to certification granted by this Board. Petition at 3.

7. BT is a company organized under the laws of England and Wales that provides local, long distance, and international voice and data telecommunications services, primarily in the United Kingdom as well as global communications services to customers world wide through its various subsidiaries and joint venture partners. BT has limited operations in the United States through its wholly-owned United States subsidiary, BT North America Inc. ("BTNA"). BTNA is authorized by the FCC pursuant to Section 214 of the Communications Act of 1934, as amended, to provide international services on a facilities basis between the United States and numerous international points. BTNA is not certified by the State of Vermont to provide telecommunications services and provides no such services in the state. Petition at 3.

8. JTA is a Delaware corporation with its principal place of business at 10 Rockefeller Plaza, Suite 1420, New York, New York 10020. JTA is a wholly-owned subsidiary of Japan Telecom. JTA is not certified by the State of Vermont to provide telecommunications services and provides no such services in the state. Petition at 3-4.

9. Airnex is a California corporation with its headquarters at 3000 Executive Parkways, Suite 111, San Ramon, California 94583. Airnex is certified by the Board to resell all forms of interexchange telecommunications services in Vermont. At the present time, Airnex offers outbound 1+ and 101 XXXX dialing, inbound 800/888 toll free, and travel cards which are accessed by dialing an 11-digit toll free number. Petition at 4.

10. Japan Telecom is a corporation organized under the laws of Japan. Japan Telecom primarily provides international and domestic services in Japan. The address for Japan Telecom is: 7-1, Hacho-bori 4-Chome, Chuo-ku, Tokyo 104-8508, Japan. Petition at 4.

11. Airnex conducts business in the highly competitive segments of the market. The proposed acquisitions will not have an adverse affection on competition. Petition at 6.

12. The proposed transaction will not have any adverse affect upon ratepayers in the state nor otherwise have any affect on the operation of JTA or Airnex. Petition at 6.

13. The Department does not object to the proposed transaction. The Department recommends that the Board approve the transaction with no conditions. Letter dated July 27, 1999.

14. For the foregoing reasons, the above proposed acquisition is in the public interest.

III. Discussion

Under 30 V.S.A. §107(a), no company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the Public Service Board, as in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the Public Service Board. 30 V.S.A. §107(e)(1) defines "controlling interest" as "ten percent or more of the outstanding voting securities of a company"

Under 30 V.S.A. §311, the Board's approval of a consolidation or merger shall not become effective without a finding that such consolidation or merger "will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity, in the sale, purchase or manufacture of which such corporations are engaged." The proposed transaction does not pose a threat to the competition described in 30 V.S.A. §311.

IV. CONCLUSION

For the foregoing reasons, I conclude that the proposed transaction is in the public interest and should be approved by the Board pursuant to 30 V.S.A. § 107.

The parties have waived their right to service of the proposal for decision in accordance with 3 V.S.A. § 811.

I hereby report the above findings and conclusion to the Board in accordance with 30 V.S.A. § 8.

DATED at Montpelier, Vermont this 30th day of July, 1999.

s/ J. Riley Allen
J. Riley Allen
Hearing Officer

V. ORDER

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

1. The findings and conclusion of the Hearing Officer are adopted.
2. The proposed acquisition of an indirect minority interest in Japan Telecom America, Inc. and Airnex Communications Inc., by AT&T Corp. and British Telecom plc, is approved.
3. A Certificate of Consent to the acquisition shall be issued.
4. Petitioners shall file a letter notifying the Board of the completion of the transaction within ten days of such completion.

DATED at Montpelier, Vermont, this 30th day of July, 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: July 30, 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.