

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6261

Joint Petition for Authority for Comm)
South Companies, Inc. to Acquire)
Control of Topp Telecom, Inc.)

Order entered: 9/22/99

I. INTRODUCTION

This case involves a joint petition filed on July 8, 1999, by Comm South Companies, Inc. ("Comm South") and Topp Telecom, Inc. ("Topp") (collectively "Petitioners"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of a transaction whereby Topp will acquire control of Comm South.

On August 27, 1999, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control of Comm South to Topp. The Department in its letter notes that the proposed transfer will not cause inconvenience or confusion to the customers of Comm South, and the transaction will be transparent in terms of services they receive. The Department further recommends that approval be conditioned on provision of written notification to the Board within one week of the closing of the transaction.

II. FINDINGS OF FACT

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

1. Comm South is a Texas corporation whose principal offices are located at 6830 Walling Lane, Dallas, Texas 75231. Comm South is a non-dominant carrier that is

authorized to provide intrastate telecommunications services, as well as service to the local exchange, in the State of Vermont pursuant to certification granted by this Board in Docket No. 6097. Petition at 1.

2. Topp is a Florida corporation whose principal offices are located at 8390 NW 25th Street, Miami, FLorida 33122. Petition at 1.

3. Comm South and Topp have determined that they will realize significant economic and marketing efficiencies by establishing Comm South as a wholly-owned subsidiary of Topp. Petition at 3.

4. Pursuant to the proposed transaction, Topp will acquire 100% of Comm South's issued and outstanding stock. Petition at 3.

5. Following completion of the proposed transaction, Comm South will continue to provide service to its customers under existing service arrangements and pursuant to its authorizations. The proposed transaction simply will result in a change in the ultimate corporate parent of Comm South, and will not involve a change in the manner in which Comm South provides service to its Vermont customers. As such, the transaction will not cause inconvenience or confusion to Comm South's customers or otherwise have a negative impact on the operations of Comm South. The transaction, therefore, will be virtually transparent to Comm South's customers in terms of the services that they receive. Petition at 3.

6. Completion of the proposed transaction will serve the public interest in promoting competition among interexchange telecommunications carriers by providing Petitioners the opportunity to strengthen their respective positions in the competitive telecommunications marketplace. The proposed transaction should increase competition by enabling Petitioners to pursue their respective marketing and business plans more effectively by combining their financial and technical resources. Moreover, the transaction will combine the complementary managerial skills, background, and experience of Petitioners in providing telecommunications services to the public. In sum, the proposed acquisition will benefit the public interest by enhancing the ability of Petitioners to offer

competitively priced services in the Vermont telecommunications marketplace. 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 requires a finding that the transfer of control will promote the public good. This standard is met in this case. The proposed transaction will promote the public good, because Comm South will have access to a larger pool of managerial, technical and financial resources due to the relatively larger resources of its new owner, Topp. In the competitive arena of telecommunications, the overall effect of this merger may promote more customer choice in terms of services, with stronger competitors in the Vermont telecommunications market. It should also be noted that the transfer of control will not result in any rate increase to existing customers of Comm South.

For all of the above reasons, the proposed transfer of control of Comm South to Topp should be approved.

ORDER

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

1. The acquisition of control of Comm South Companies, Inc. by Topp Telecom, Inc. is approved.

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

DATED at Montpelier, Vermont, this 22nd day of September, 1999.

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

OFFICE OF THE CLERK

Filed: September 22, 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.