

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6269

Joint Petition for Approval of Transfer of)
Control of Eclipse Telecommunications, Inc.)
and IXC Communications Services, Inc.)
to Cincinnati Bell, Inc.)

Order entered: 10/15/99

INTRODUCTION

On August 3, 1999, Cincinnati Bell, Inc. ("CBI"), Eclipse Telecommunications, Inc. ("Eclipse"), and IXC Communications Services, Inc. ("IXCSI") (collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107 for approval of the transfer of control of Eclipse and IXCSI to CBI that will establish IXCSI and Eclipse as indirect wholly-owned subsidiaries of CBI.

By letter dated September 30, 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 Eclipse and IXCSI to continue operating in Vermont under their respective current names and service offerings, the transaction will be transparent and in terms of service would not cause inconvenience or confusion to it's customers. Further, Petitioners should be required to notify the Board within one week of the closing of the transaction as a condition of approval.

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. CBI, an Ohio corporation, is a telecommunications holding company. Cincinnati Bell Long Distance, Inc., a subsidiary, is authorized to provide intrastate interexchange telecommunications services pursuant to a Certificate of Public Good granted by the Board on August 15, 1997 (C.P.G. No. 322). Petition at 2.
2. Eclipse is a Delaware corporation headquartered in Austin Texas. Eclipse is a wholly-

owned subsidiary of IXC Communications Services, Inc. ("IXC"). Eclipse operates as a reseller of intrastate interexchange services in forty eight states and received authorization from the Board to provide telecommunications services in Vermont on November 14, 1994 (C.P.G. No. 158). Petition at 2-3.

3. IXCSI, a Delaware corporation, is headquartered in Austin, Texas. IXCSI is also a wholly-owned subsidiary of IXC. IXCSI was authorized to provide service in Vermont on October 10, 1995 (C.P.G. No. 186). Petition at 3.

4. The proposed reorganization will be accomplished through a transaction whereby IXC, the parent corporation of both Eclipse and IXCSI, will merge with and into a newly formed subsidiary of CBI, Ivory Merger, Inc. ("Merger"), with IXC as the surviving entity. Following the merger, both IXCSI and Eclipse will continue serving current respective customers under existing service arrangements pursuant to certification. Accordingly, the transfer of control would be virtually transparent to customers of IXCSI and Eclipse. Petition at 5.

5. Petitioners have determined that they can realize significant economic and marketing efficiencies and, ultimately, strengthen the respective businesses of the two companies by combining the resources of IXC and CBI. The transaction should also enhance the competitive abilities of IXCSI and Eclipse which will have access to a financially stronger parent corporation. Petition at 6.

6. Establishing IXCSI and Eclipse as indirect subsidiaries of CBI, moreover, will not result in a change in the manner in which Eclipse and IXCSI currently provide service to their respective Vermont customers. IXCSI and Eclipse will continue to provide service to existing customers pursuant to certification granted, with no change in the rates, terms and conditions of service previously enjoyed by such customers. IXCSI and Eclipse will continue to be wholly-owned subsidiaries of IXC and the day to day operations of the companies will not be affected adversely by the merger. Petition at 5.

7. 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 CBI and IXC in providing telecommunications services to the public. Petitioners anticipate that the merger will result in a company better equipped as a competitive telecommunications service provider. The merger, therefore, should ensure the continued provision of telecommunications services to IXCSI's and Eclipse's existing customers and should promote competition in the Vermont telecommunications service market. In sum, the proposed

merger will benefit the public interest by enhancing the ability of IXCSI and Eclipse 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 standard is 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 CBI, IXCSI and Eclipse, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of IXCSI and Eclipse, which will become indirect subsidiaries of CBI, into the control of CBI, and thus results in the transfer of more than ten percent of the shares of IXCSI and Eclipse to another company. We further conclude that the merger will allow the companies to operate more efficiently in the current telecommunications marketplace and that the reorganization will not affect the services that IXCSI and Eclipse provide to their respective 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, and should be approved.

CONCLUSIONS

The transfer of control of IXCSI and Eclipse to CBI should be approved because it will 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).

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).

ORDER

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

1. The transfer of control of IXC Communications Services, Inc. and Eclipse Telecommunications, Inc. to Cincinnati Bell, Inc. will promote the public good and, therefore, is approved.
2. Petitioners should file a letter notifying the Board of the completion of the reorganization, within one week of such completion.

DATED at Montpelier, Vermont, this 15th day of October, 1999.

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

PUBLIC SERVICE
 BOARD
 OF VERMONT

OFFICE OF THE CLERK

Filed: October 15, 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.