

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6276

Petition of RSL COM U.S.A., Inc. for *Nunc Pro Tunc* )  
Approval of an Assets Transfer from CBS Corporation )  
d/b/a Westinghouse Communications to RSL COM )  
U.S.A., Inc. and for Revocation of CBS Corporation d/b/a )  
Westinghouse Communications' Certificate of Public Good )

Order entered: 10/27/99

I. INTRODUCTION

This case involves a petition filed on August 2, 1999, by RSL COM U.S.A., Inc. ("RSL"), seeking Vermont Public Service Board ("Board") approval *nunc pro tunc*, under 30 V.S.A. § 102, 109, 231 of a 1998 sale of assets of CBS Corporation d/b/a Westinghouse Communications ("Westinghouse") to RSL, and the revocation of Westinghouse's Certificate of Public Good ("CPG").<sup>1</sup>

On October 8, 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 assets of Westinghouse to RSL. The Department noted that the transaction has not affected the services received by customers of Westinghouse or caused inconvenience or confusion to the customers of Westinghouse. 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. § 109.

II. FINDINGS OF FACT

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

1. RSL is a Delaware corporation headquartered in New York, New York, and has been a certificated telecommunications provider in Vermont since October 30, 1997 (CPG No. 343).  
Petition at 1-2.
2. Westinghouse is a Pennsylvania corporation and has been a certificated telecommunications reseller in Vermont since February 14, 1997 (CPG No. 217). Petition at 4.

---

1. The parties' petition calls for approval of the transaction *nunc pro tunc*. That legal mechanism can only be applied to correct a record, to make an order relate back to a time when a case was ripe for decision and a decision should have been recorded, but was not. 49 C.J.S. §123 *et seq.* It is not the same as retroactivity, and cannot be used to make a decision effective before the time of the Order in this docket.

3. On April 23, 1998, RSL and Westinghouse executed an Asset Purchase Agreement ("Agreement"), whereby RSL acquired substantially all of the assets of Westinghouse. Petition at 3.

4. Following completion of the transaction, RSL continued to provide service to former Westinghouse customers pursuant to the terms and conditions of Westinghouse's tariff through October 31, 1998. Former Westinghouse customers who remained with RSL after that date received service under the terms and conditions of RSL's tariff. As a result, Westinghouse no longer provides telecommunications service in Vermont. Petition at 6.

5. Completion of the sale of assets served the public interest in that it promoted competition among long distance carriers by providing RSL with the opportunity to strengthen its competitive position and to pursue its marketing and business plans more effectively. Petition at 7.

### III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 109, which applies to a sale of assets of a Vermont utility. Section 109 requires a finding that the sale of assets will promote the public good. This standard is met in this case. The proposed transaction will promote the public good, because it allowed RSL to be able to operate more efficiently in the current telecommunications marketplace. In the competitive arena of telecommunications, the overall effect of this asset transfer 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 assets did not result in any rate increase to former customers of Westinghouse.

For all of the above reasons, the transfer of assets of Westinghouse to RSL, through their Asset Purchase Agreement, should be approved.

As to the matter of revoking Westinghouse's CPG, the Board finds the reasons articulated by RSL in support of its request, namely that Westinghouse is no longer operating as a telecommunications provider in Vermont, to be convincing. This finding, together with the fact that no opposition to the Company's filing has been registered with the Board, leads us to conclude that Westinghouse's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant RSL's request without a hearing.

ORDER

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

1. The sale of assets of CBS Corporation d/b/a Westinghouse Communications to RSL COM U.S.A., Inc. is approved.
2. A Certificate of Consent to the sale of assets of CBS Corporation d/b/a Westinghouse Communications to RSL COM U.S.A., Inc. shall be issued.
3. The Certificate of Public Good, CPG No. 217, granted to CBS Corporation d/b/a Westinghouse Communications on February 14, 1997, is revoked.

DATED at Montpelier, Vermont, this 27<sup>th</sup> day of October, 1999.

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

OFFICE OF THE CLERK

Filed: October 27, 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.*