

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6277

Petition of OneStar Long Distance, Inc. for)
Approval of Asset Purchase Agreement)
with NeTel, Inc.)

Order entered: 12/1/99

I. INTRODUCTION

On August 3, 1999, OneStar Long Distance, Inc. ("OneStar") ("Petitioner") filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 109 and 311, for approval of an Asset Purchase Agreement with NeTel, Inc. ("NeTel"), whereby OneStar will purchase the long distance customer base of NeTel.

By letter dated November 15, 1999, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed sale of certain assets without the need for hearings or investigation.

The Department also commented that the sale of certain assets will permit OneStar and NeTel to continue operating in Vermont (NeTel will continue to offer debit card services after the transaction) under their current names and service offerings, the transaction will be transparent and in terms of service would not cause inconvenience or confusion to its customers. In addition, the Department recommends that NeTel be required to file a revised tariff within 30 days of the Board's Order.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. OneStar is a privately-held Indiana corporation headquartered in Evansville, Indiana. OneStar is a nationwide provider of innovative telecommunications services and is authorized to provide resold interexchange services in over forty-five (45) states by virtue of certification, registration or tariff requirements, or on a deregulated basis. In Vermont, OneStar is authorized

to provide intrastate interexchange telecommunications services pursuant to a Certificate of Public Good granted by the Board on November 2, 1993 (C.P.G. No. 135). OneStar provides interstate and international telecommunications services as a nondominant common carrier pursuant to authority of the Federal Communications Commission. Petition at 1 and 2.

2. NeTel is a Delaware corporation headquartered in Florida. In Vermont, NeTel is authorized to provide intrastate interexchange telecommunications services pursuant to a Certificate of Public Good granted by the Board on April 1, 1996 (C.P.G. No. 189). NeTel has recently declared bankruptcy (Chapter 11, Bankruptcy No. 98-28929-BKC-PGH). Petition at 2.

3. NeTel, pursuant to Chapter 11 of Bankruptcy Code, has chosen to transfer its customer base to OneStar. Accordingly, OneStar and NeTel have executed an Asset Purchase Agreement and obtained a Bankruptcy Court Order.¹ Petition at 3.

4. Following the purchase of assets, OneStar will continue serving current customers of NeTel under existing service arrangements pursuant to NeTel's certification. The transfer will result in no changes in the rates, terms, or conditions or service currently enjoyed by customers of NeTel. Accordingly, the reorganization will be virtually transparent to customers of NeTel. Petition at 3.

5. The sale of assets 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 OneStar with the customer base of NeTel in providing telecommunications services to the public. OneStar anticipates that the transfer should result in a company better equipped as a competitive telecommunications service provider. The transfer will allow the customer base access to expanded services and a financially viable carrier. Petition at 3.

6. Customers have been notified of the transfer via letter from NeTel and OneStar, and will be sent additional notification at the time of the transfer. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 109 and 311.

1. Fortunately, this Board's general policy of requiring a surety bond in connection with the provision with debit card services will ensure that debit card customers are protected despite the bankruptcy proceedings.

These statutes condition approval of a sale of assets upon a finding that the sale will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Under 30 V.S.A. § 109, no company "shall make a sale or lease or series of sales or leases in any one calendar year constituting ten percent or more of the company's property located within this state . . ." without the approval of the Board. In order to approve the sale of such assets, the Board must first find that it will "promote the public good." 30 V.S.A. § 109.

After reviewing the Petition of OneStar, we conclude that 30 V.S.A. § 109 applies because the transaction involves the sale of the customer base of NeTel to OneStar, and thus results in the transfer of more than ten percent of the assets of NeTel to another company. We further conclude that the transfer will allow OneStar to operate more efficiently in the current telecommunications marketplace and that the reorganization will not affect the services to current NeTel customers in Vermont. The sale of assets, 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. §§ 109 and 311, and should be approved.

IV. CONCLUSIONS

The Asset Purchase Agreement of OneStar and NeTel 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. §§ 109, 311.

V. ORDER

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

1. The sale of certain assets of NeTel to OneStar is approved.
2. A Certificate of Consent to the sale of certain assets of NeTel to OneStar shall be issued.
3. Petitioners shall file a revised tariff with the Board within 30 days of the date of the Order.
4. Petitioners shall notify the Board within one week of the date the asset sale is

completed.

DATED at Montpelier, Vermont, this 1st day of December, 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: December 1, 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.