

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6295

Joint Petition of Econophone Services, Inc. and)
Viatel, Inc. for Approval of Agreement and Plan)
of Merger, and for Amendment of Certificate of)
Public Good to Reflect a Name Change)

Order entered: 12/1/99

I. INTRODUCTION

On September 28, 1999, Econophone Services, Inc. ("Econophone") and Viatel, Inc. ("Viatel") (collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107 and 311, for approval of an Agreement and Plan of Merger that will establish Econophone as an indirect wholly-owned subsidiary of Viatel. Additionally, the Petitioners request an amendment of Econophone's Certificate of Public Good ("CPG") to reflect its new corporate name of Destia Communications Services, Inc. ("DCSI"), pursuant to 30 V.S.A. § 231.

By letter dated November 15, 1999, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed merger subject to the following conditions: (1) Petitioners should be required to provide written notification to the Board within one week of the closing of the transaction; and (2) Petitioners should be required to file a revised tariff reflecting the name change and notify customers of the name change. Further, the Department recommended that the Board approve the Petition without the need for hearings or further investigation.

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. Econophone is a wholly-owned operating subsidiary of Destia Communications, Inc. ("DCI"), whose headquarters are located on 95 Route 17 South, Paramus, New Jersey, 07652. Econophone is authorized to provide resold interexchange services throughout Vermont (Docket

No. 6126, December 21, 1998). Petition at 2.

2. DCI is a Delaware corporation publicly traded on the Nasdaq National Market under the stock symbol "DEST". DCI is a facilities-based provider of domestic and international telecommunications services in North America and Europe. DCI currently offers telecommunications services primarily to retail customers, including international and domestic long distance, calling card and prepaid card services and Internet access. Petition at 3.

3. Viatel is a Delaware corporation, publicly traded on the Nasdaq National Market under the stock symbol "VYTL". Viatel's headquarters are located at 685 Third Avenue, 24th Floor, New York, NY, 10017. Petition at 3-4.

4. On August 27, 1999, Viatel, Viatel Acquisition Corp., and DCI executed an Agreement and Plan of Merger. The proposed transaction is structured as a merger of Viatel Acquisition Corp., a wholly-owned subsidiary of Viatel created solely for the purpose of completing the transaction with and into DCI, with DCI as the surviving entity. Following the merger, Econophone will become an indirect wholly-owned subsidiary of Viatel. Petition at 6.

5. As consideration for the proposed transaction, Viatel will exchange 0.445 share of its common stock for each DCI share. The Petitioners plan to complete the transaction in early December 1999, subject to regulatory approvals and other customary conditions. Petition at 6.

6. Though the merger will result in a change of the ultimate corporate parent of Econophone, it will not result in a change in the manner in which Econophone provides services to its Vermont customers. Econophone will continue to provide seamless service to existing Vermont customers pursuant to its CPG, with no change in the rates, terms or conditions of service as a direct result of this merger. Petition at 6-7.

7. Petitioners' managerial, technical and financial qualifications of the combined management and operational personnel should assure that this transaction will not in any way disrupt service or cause inconvenience or confusion to Econophone's Vermont customers. Petition at 7.

8. Econophone also asks that the Board amend Econophone's existing Certificate of Public Good to reflect a name change in its corporate name from Econophone Services, Inc. to Destia Communications Services, Inc. Petitioners have supplied the required documentation from

the Vermont Secretary of State. Petition at 7-8.

9. The proposed name change will have no material effect on the day-to-day operations of the company. The rates, terms and conditions of services currently offered by Econophone to its Vermont customers will not be affected by the name change. Petition at 7-8.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107 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) and does not result in obstructing or preventing competition (30 V.S.A § 311). These standards are 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 Petition of Econophone and Viatel, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of Econophone, which will become an indirect wholly-owned subsidiary of Viatel, into the control of Viatel, and thus results in the transfer of more than ten percent of the shares of Econophone to another company. We further conclude that the merger will allow both companies to operate more efficiently in the current telecommunications marketplace and that the reorganization will not affect the services that Econophone provides to 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 311, and should be approved.

With respect to the request for an amendment of Econophone's CPG to reflect its new

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).

corporate name of DCSI, pursuant to 30 V.S.A. § 231, we believe this should also be approved. 30 V.S.A. § 231(a) provides that the Board may amend or revoke any CPG for good cause, after hearing. Since there is no controversy surrounding the Company's name change, it follows that good cause exists to amend Econophone's CPG to reflect the new name of the holder of the certificate.

IV. CONCLUSIONS

The transfer of control of Econophone to Viatel 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), 311.

The CPG held by Econophone should be amended to reflect the new name of the certificate-holder: Destia Communications Services, Inc. 30 V.S.A. § 231.

V. 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 Econophone Services, Inc. to Viatel, Inc. will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transfer of control, within one week of such completion.
3. Petitioners shall provide notice to customers of the name change of Econophone Services, Inc. to Destia Communications Services, Inc. via a bill insert or statement in the bill upon Board approval.
4. The CPG that was issued to Econophone Services, Inc. on December 21, 1998, in Docket No. 6126 shall be amended to reflect the new name of the holder of the certificate: Destia Communications Services, Inc.
5. Petitioners shall file an amended tariff with the Board that reflects the name change within 30 days of issuance of its amended CPG.

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.

