

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6304

Joint Petition of RCN Telecom Services, Inc. )  
(formerly RCN Telecom Services of Pennsylvania, Inc.), )  
RCN Telecom Services, Inc., RCN Telecom Services of )  
Vermont, Inc. and RCN Long Distance Company for )  
Approval of Merger and Associated Transactions )

Order entered: 4/19/2000

INTRODUCTION

On October 15, 1999, RCN Telecom Services, Inc. (formerly RCN Telecom Services of Pennsylvania, Inc.) ("RCN PA"), RCN Telecom Services, Inc. ("RCN TS"), RCN Telecom Services of Vermont, Inc. ("RCN VT"), and RCN Long Distance Company ("RCN LD")(collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109, 231 and 311, for approval of (1) a merger of RCN VT and RCN LD with and into RCN PA with RCN PA being the surviving entity and assuming the name RCN TS; (2) revocation of RCN VT's and RCN LD's respective Certificates of Public Good ("CPGs") to provide telecommunications services in Vermont; and (3) issuance of a CPG to provide telecommunications services in Vermont to RCN TS.

On December 9, 1999, the Vermont Department of Public Service filed a letter with the Board recommending the Board approve the Petition subject to the following conditions: (1) written notification to the Board within one week of the final restructuring; (2) RCN TS complying with Vermont Statutes and Board Orders and Rules; (3) within 60 days of the Order, RCN TS must file a tariff with the Board, incorporating the rates, terms and conditions identical to those of RCN VT and RCN LD.

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. RCN Corporation is a publicly-held Delaware corporation headquartered in Princeton, New Jersey. RCN Corporation is the ultimate corporate parent of the RCN subsidiaries, including the Petitioners. In Vermont, RCN VT was authorized to provide resold and facilities based local exchange services in Docket No. 6098, Order entered October 30,

1998; and its affiliate, RCN LD was authorized to provide resold interexchange services on May 28, 1996 (CPG No. 251). Petition at 2.

2. RCN VT presently is a wholly-owned subsidiary of RCN TS. RCN TS and RCN LD currently are wholly-owned subsidiaries of RCN PA, which in turn, is a wholly-owned subsidiary of RCN Corporation, the ultimate parent company of the RCN subsidiaries. Petition at 3.

3. The proposed corporate restructuring will take place as (1) a merger of RCN LD into RCN PA; and (2) a merger of RCN VT into RCN TS, which will then be merged into its direct parent RCN PA. RCN PA will assume RCN VT's and RCN LD's operations. As a result, RCN VT and RCN LD will cease to exist as corporate entities and RCN PA will be renamed RCN TS. Petition at 3-4 and Attachment B.

4. Following the merger, RCN PA will continue serving current customers of RCN VT and RCN LD under existing service arrangements pursuant to the terms and conditions of RCN VT's and RCN LD's respective tariffs. Accordingly, the merger will, apart from the change in name, be virtually transparent to customers of RCN VT and RCN LD. Petition at 4.

5. Completion of the reorganization will serve the public interest in promoting competition among providers of interexchange telecommunications services. Petitioners anticipate that the merger and resulting corporate restructuring will result in a company better equipped as a competitive telecommunications service provider. The merger is expected to enhance significantly Petitioners' operational flexibility and efficiency, as well as its long-term financial viability. These enhancements should inure directly to the benefit of Vermont customers. The merger, therefore, should ensure the continued provision of telecommunications services to RCN VT's and RCN LD's respective existing customers and should promote competition in the Vermont telecommunications service market. In sum, the proposed transaction will benefit the public interest by enhancing the ability of Petitioners to offer competitively priced services in the Vermont telecommunications marketplace. Petition at 5.

#### DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109, 231 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 statutes also condition approval of a merger upon a finding that the merger 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. § 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).<sup>1</sup> 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 Petitioners, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of RCN VT and RCN LD, which will cease to exist as corporate entities, into the control of RCN PA, and thus results in the transfer of more than ten percent of the shares of both RCN LD and RCN VT to another company. We further conclude that the merger will allow the restructured entity to operate more efficiently in the current telecommunications marketplace and that the merger will not affect the services that RCN VT and RCN LD currently 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, 109 and 311, and should be approved.

In addition, the issuance of a CPG to RCN PA pursuant to 30 V.S.A. § 231 is also in the public interest, as such authorization will allow the above-described transaction to occur in a seamless manner.

#### CONCLUSIONS

The merger of RCN VT and RCN LD with and into RCN PA 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), 231 and 311.

#### ORDER

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

1. The merger of RCN VT and RCN LD with and into RCN PA is approved.

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<sup>1</sup> 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).

2. A Certificate of Consent to the merger of RCN VT into RCN TS and RCN LD into RCN PA shall be issued.

3. The transfer of ultimate control of RCN VT and RCN LD to RCN PA will promote the public good and, therefore, is approved.

4. Petitioners shall file a letter notifying the Board of the completion of the reorganization within ten days of such completion.

5. RCN PA shall, within 60 days, file a tariff incorporating the rates, terms and conditions identical to those of RCN VT and RCN LD.

6. The ownership and operation of telecommunications service by RCN PA will promote the general good of the State, subject to the conditions in the attached Certificate of Public Good issued to RCN PA.

7. The Certificate of Public Good issued to RCN VT in Docket No. 6098 on October 30, 1998, is hereby revoked, effective upon the completion of the merger between RCN VT and RCN TS.

8. The Certificate of Public Good issued to RCN LD on May 28, 1996 (CPG No. 251) is hereby revoked, effective upon the completion of the merger between RCN LD and RCN PA.

DATED at Montpelier, Vermont, this 19<sup>th</sup> day of April, 2000.

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

OFFICE OF THE CLERK

Filed: April 19, 2000

Attest: s/Judith C. Whitney \_\_\_\_\_

Deputy 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 (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*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.*