

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6309

Petition of Dakota Services, Ltd. for Approval)
of a Transfer of Control and an Amended)
Certificate of Public Good to Reflect a Name)
Change)

Order entered: 1/12/2000

I. INTRODUCTION

This case involves a petition filed on October 1, 1999, by @link Networks, Inc. ("@link")(formerly known as Dakota Services, Ltd. ("Dakota")), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. §§ 107,109, 231, and 311, of a transfer of control of Dakota to Madison Dearborn Capital Partners III, L.P. ("MDCP") and Dakota's name change to @link. The request is made pursuant to the execution on May 27, 1999, of a Plan of Merger ("Merger Agreement") by Dakota and @link Holdings, Inc., a wholly-owned subsidiary of MDCP. As a result of the transaction, Dakota became an indirect wholly-owned subsidiary of MDCP and changed its name to @link.

On December 15, 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 control of Dakota to @link. Further, the Department recommended the Board amend Dakota's CPG to reflect the corporate name change to @link and issue an order approving the transfer of control without hearing or further investigation, as provided under 30 V.S.A. §§ 107 and 231(a).

II. FINDINGS OF FACT

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

1. Dakota is a Wisconsin corporation headquartered Waukesha, Wisconsin. Dakota is authorized to provide telecommunications services in Vermont pursuant to certification granted in

Docket No. 6161 on May 18, 1999. Dakota does not currently offer its services in Vermont, and, therefore, currently has no Vermont customers. Petition at 1.

2. MDCP, a Delaware limited partnership, is a private equity fund, engaged in the business of financing telecommunications companies. Petition at 2-3.

3. MDCP and Dakota have determined that they will realize significant economic and marketing efficiencies by establishing Dakota as a wholly-owned subsidiary of MDCP. Accordingly, MDCP and Dakota entered into a Plan of Merger, on May 27, 1999, whereby MDCP acquired control of Dakota. Petition at 2.

4. Pursuant to the Plan of Merger, Dakota was merged with and into @link Holdings, Inc., a wholly-owned subsidiary of MDCP formed specifically for purposes of accomplishing the transfer of control. As a result of the merger, Dakota became a wholly-owned subsidiary of @link Holdings, Inc., under the ultimate control of MDCP. Immediately following the transfer of control, Dakota changed its name to @link. Petition at 2.

5. Dakota will continue to operate in all respects as they currently operate, pursuant to present operating authority and tariff rate structure, and will continue to provide service to current customers in Vermont as indirect subsidiaries of MDCP under its new name of @link. Accordingly, the terms and conditions of service offered by Dakota will not be affected by the transaction. The proposed transaction simply changed the ultimate corporate parent and name of Dakota. Vermont consumers have not been inconvenienced by the transaction, since Dakota has no customers in the state. Petition at 1-2.

6. MDCP's acquisition and financial investment in Dakota should allow it to improve the operational efficiency and competitive position of Dakota. Petition at 2.

7. Completion of the proposed transaction will serve the public interest in that it will promote competition among long distance carriers by providing Dakota with the opportunity to strengthen its competitive position and improve its operational efficiency. Petition at 2.

III. CONCLUSIONS OF LAW AND DISCUSSION

The previously completed 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 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).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).

Under 30 V.S.A. § 107(c)(1), "[i]f any company acquires such a controlling interest without the prior approval of the public service board, the board may then, after due notice and hearing, approve the acquisition. . . ." While 30 V.S.A. § 107(c) requires that a hearing be held before approval of an acquisition which has taken place prior to requesting Board approval, 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. Since there has been no objection to the merger from the time of its completion, we find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant approval of the merger without a hearing.

After reviewing the petition, we conclude that 30 V.S.A. § 107 applies because the merger involved the transfer of controlling interest of Dakota, which became a wholly-owned subsidiary of MDCP, into the control of MDCP, and thus results in the transfer of more than ten percent of the shares of MDCP to another company. We further conclude that the merger allowed both companies to operate more efficiently in the current telecommunications marketplace. The reorganization, therefore, promoted the public good. For all of these reasons, we conclude that

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).

the transaction meets the standards set forth in 30 V.S.A. §§ 107, 109 and 311, and should be approved.

Dakota has also requested that the Board amend its CPG, issued on May 18, 1999, in Docket No. 6161, to reflect the new name of the certificate holder: @link, pursuant to 30 V.S.A. §§ 102(c) and 231(a). The Board finds the reasons articulated by Dakota in support of its request to be convincing. This finding, together with the fact that no opposition to Dakota's filing has been registered with the Board, leads us to conclude that Dakota's CPG should be amended.

IV. CONCLUSIONS

The transfer of control of Dakota to MDCP should be approved because it promoted the public good of the State of Vermont and did not result in obstructing or preventing competition in the provision of the services they were currently offering. 30 V.S.A. §§ 107(b), 311. The CPG issued to Dakota Services, Ltd. should be amended to reflect the new name of the certificate holder: @link Networks, Inc. 30 V.S.A. §§ 102(c) and 231(a).

V. ORDER

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

1. The acquisition of control of Dakota Services, Ltd. by Madison Dearborn Capital Partners III, L.P., is approved.
2. A Certificate of Consent to the merger of Dakota Services, Ltd. with and into @link Holdings, Inc. shall be issued.
3. The Certificate of Public Good that was issued to Dakota Services, Ltd. on May 18, 1999, shall be amended to reflect the new name of the holder of the certificate: @link Networks, Inc.
4. Dakota shall file an amended tariff with the Board that reflects the company's new name, within 30 days of issuance of its amended CPG.

DATED at Montpelier, Vermont, this 12th day of January, 2000.

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

PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

Filed: January 12, 2000

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.