

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6313

Petition of PaeTec Communications, Inc. for)
Approval of a Transfer of Control)

Order entered: 6/14/2000

I. INTRODUCTION

This case involves a petition filed on November 9, 1999, by PaeTec Communications, Inc. ("PaeTec"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of an indirect, minority transfer of control of PaeTec that may result from a planned equity offering of its holding company parent, PaeTec Corp.

On December 8, 2000, 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 PaeTec. The Department recommended that the Board approve the petition conditioned on the requirement that PaeTec file with the Board, within ten days of the stock offering in sufficient detail to allow the Board to determine the percentage of interest in PaeTec which was transferred as a result of the offering, and whether any purchaser obtained a controlling interest as defined in 30 V.S.A. § 107(e). 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. § 107.

On March 2, 2000, PaeTec filed an amendment to its petition to seek after the fact approval of the transfer and providing the Board with the investor identities and results of the transaction.

On June 9, 2000, the Department filed a letter with the Board noting that it continued to recommend conditional approval of the transfer of control without the need for investigation of hearings.

II. FINDINGS OF FACT

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

1. PaeTec is a privately-held Delaware corporation with principal offices located at 290 Woodcliff Drive, Fairport, New York 14450. PaeTec is authorized to provide intrastate

telecommunications service, including local exchange service, within the State of Vermont pursuant to certification granted by the Board in Docket No. 6212 (July 27, 1999). Additionally, PaeTec is authorized to provide intrastate interexchange and/or competitive local exchange services in numerous states pursuant to certification, registration or tariff requirements, or on a deregulated basis. PaeTec is also authorized by the Federal Communications Commission to provide international services as a nondominant carrier. Petition at 1-2.

2. PaeTec is a wholly-owned subsidiary of PaeTec Corp., a privately-held Delaware holding company, whose principal business is telecommunications. PaeTec Corp. holds no regulatory licenses from this or any other regulatory commission. Petition at 2.

3. The indirect, minority transfer of control of PaeTec resulted from an equity offering of its corporate parent, PaeTec Corp. Specifically, PaeTec Corp. made a private placement offering of PaeTec Corp. stock which resulted in a transfer of control of approximately 35% of PaeTec Corp. and, in turn, resulted in an indirect, minority transfer of control of PaeTec to the purchasers of such stock. Two investors, through affiliates, participated in this placement, Madison Dearborn Partners, Inc. (which acquired a 20.7% interest), and the Blackstone Group (which acquired 14.8%). Petition at 3; March 2 Correspondence from PaeTec to the Board.

4. The indirect, minority transfer of control did not involve a change in the name under which PaeTec currently operates nor any change in the manner in which PaeTec currently provides service in the State of Vermont. Petition at 4.

5. PaeTec continues to offer the services pursuant to its certification with no change in the rates or terms and conditions of service as a result of the transaction. PaeTec, moreover, continues to be led by telecommunications managers comprised of existing personnel. The indirect, minority transfer of control of PaeTec, therefore, has been transparent to consumers in the State of Vermont. Petition at 4.

6. The transaction is consistent with the public interest in promoting competition among telecommunications carriers. The transaction provides PaeTec with an opportunity to strengthen its competitive position with greater financial resources. The transaction also enhances PaeTec's operational flexibility and efficiency, as well as its long-term financial viability. These enhancements should inure to the benefit of Vermont consumers by supporting the continued

provision of telecommunications services to the public, thereby promoting competition in the Vermont telecommunications service market. Petition at 4.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility.¹ Under Section 107 a "controlling interest" is defined as 10% or more of the outstanding voting securities of a company. Section 107 requires a finding that the transfer of control will promote the public good. This standard is met in this case. The proposed transaction will promote the public good, because the indirect, minority transfer of control of PaeTec from PaeTec Corp. to Madison Dearborn Partners, Inc. and the Blackstone Group, will allow the petitioner to operate in a more flexible manner. In the competitive arena of telecommunications, the overall effect of this merger 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 control will not have an adverse impact on Vermont consumers as PaeTec will continue to operate according to its present authority.

For all of the above reasons, the proposed indirect transfer of control of PaeTec, through the above described equity offering, should be approved.

ORDER

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

1. The minority transfer of control of PaeTec Communications, Inc. from PaeTec Corp., to Madison Dearborn Partners, Inc. and Blackstone Group, is approved.

1. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holder of the Certificate of Public Good, PaeTec, will continue to be the entity providing telecommunications service in Vermont.

DATED at Montpelier, Vermont, this 14th day of June, 2000.

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

OFFICE OF THE CLERK

Filed: June 14, 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 (by e-mail, telephone, or in writing) 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.