

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6350

Joint Petition of STE/NE Acquisition Corp. d/b/a)
Northland Telephone Company of Vermont; ST Long)
Distance, Inc. d/b/a Northland Long Distance; Kelso)
Investment Associates V, L.P.; Kelso Equity Partners V,)
L.P.; and Thomas H. Lee Equity Fund IV, L.P. and certain)
related parties for authority pursuant to 30 V.S.A. § 107)
for Kelso Investment Associates V, L.P., Kelso Equity)
Partners V, L.P. and Thomas H. Lee Equity Fund IV, L.P.)
and certain related parties to acquire an indirect)
controlling interest in STE/NE Acquisition Corp. d/b/a)
Northland Telephone Company of Vermont and in ST)
Long Distance, Inc. d/b/a Northland Long Distance)

Order Entered: 5/5/2000

I. INTRODUCTION

On February 7, 2000, a petition was submitted in the above-captioned matter by STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont ("Northland"); ST Long Distance, Inc., d/b/a Northland Long Distance ("Northland L.D."); Thomas H. Lee Equity Fund IV, L.P. and certain related parties ("THL"); and Kelso Investment Associates V, L.P. and Kelso Equity Partners V, L.P. (jointly "Kelso") (collectively "Joint Petitioners"), seeking an order of the Public Service Board ("PSB" or "Board") for approval pursuant to 30 V.S.A. § 107 to permit Kelso and THL to acquire an indirect controlling interest in Northland and Northland L.D. The Joint Petitioners submitted prefiled testimony of Walter Leach, Chief Operating Officer of Northland and Northland L.D. and Chief Financial Officer of MJD Communications, Inc. ("MJD") and ST Enterprises, Ltd. ("STE").

On March 20, 2000, the Joint Petitioners and the Department of Public Service ("DPS") submitted a stipulation in which they agreed that the Board could make a finding that the recapitalization in which Kelso and THL will acquire an indirect controlling interest in Northland and Northland L.D., as described in the testimony of Mr. Leach, is consistent with the general good of the State of Vermont and issue an order approving and consenting to the proposal.

The stipulation also sets forth the agreement of the parties that there is no genuine issue as

to any material fact. The parties have waived their right to a hearing.¹

I have reviewed the petition and prefiled testimony and exhibits. I conclude that approval of the Joint Petitioners' petition pursuant to 30 V.S.A. § 107 is appropriate, and that such approval should occur without hearing.

Based upon the evidence and the testimony in this Docket, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

FINDINGS OF FACT

1. MJD is a closely held Delaware corporation, headquartered in Charlotte, North Carolina. It is the parent company of STE, a Delaware corporation with its principal offices at 521 East Morehead Street, Suite 250, Charlotte, North Carolina. Leach pf. at 1-2.

2. STE's subsidiary corporation, STE/NE Acquisition Corp., operates as Northland Telephone Company of Vermont, serving roughly 5,900 access lines from exchanges located in Alburg, Isle La Motte, Cabot, Groton, Marshfield, Peacham, West Newbury, and Montgomery pursuant to a Certificate of Public Good issued in 1994. *Id.*

3. Northland L.D has received a Certificate of Public Good to operate as a reseller of intrastate interexchange telecommunications services in Vermont. *Id.* at 2.

4. MJD seeks to change its capitalization by means of a two-phase transaction. The first phase has already occurred, and the second will occur upon receipt of all necessary regulatory approvals, including the approval of the Board. *Id.*

5. In the first phase, the following transactions have occurred: (a) two current investors, Kelso Investment Associates V, L.P. and Kelso Equity Partners V, L.P. (jointly "Kelso"), have exchanged a portion of their voting common stock for shares of non-voting common stock and have purchased additional shares of non-voting common stock from MJD; (b) one shareholder, Carousel Capital Partners, L.P., has exchanged all of its voting common stock for non-voting preferred stock and transferred such preferred stock to a new investor, THL; and (c) THL has acquired additional non-voting preferred shares from MJD management employees and certain founders of MJD who had exchanged a portion of their voting common stock in MJD for such non-voting preferred stock. *Id.* at 2-3.

¹ The Statute does not require a hearing, but rather the opportunity for a hearing. 30 V.S.A. § 107 (b).

6. In the second phase of the transaction, upon the receipt of all required regulatory approvals, the preferred shares and the non-voting common shares will convert into Class A Common (voting) Stock and, as a result, a change in control of MJD will occur. *Id.* at 3.

7. Prior to the first phase of this transaction, described above, the majority of the Class A Common (voting) Stock of MJD was held by Kelso and Carousel, with the remaining shares held by certain management shareholders and the founders of the Company. After the conversion, based upon ownership of issued and outstanding voting securities, Kelso will own approximately 40.1% of MJD's voting stock, THL will own approximately 47.2%, and MJD management and others will own approximately 12.7%. *Id.* at 3-4; exhs. WL-3 and WL-4.

8. In addition, THL has committed to invest an additional \$50 million in MJD. After the fulfillment of this commitment, THL will hold approximately 51.3% of the voting power of MJD. Leach pf. at 4.

9. As indicated in the Stockholders' Agreement, prior to the conversion to voting stock, THL and Kelso each have the right to designate two members of MJD's seven-member board of directors. The last three members are founders of MJD, Daniel G. Bergstein, Eugene B. Johnson, and Jack H. Thomas. After the conversion, the Board positions now held by the three founders will be designated jointly by Kelso and THL. *Id.* at 4-5; exh. WL-2.

10. Even after the change in control of the Board, however, the Joint Petitioners do not anticipate any changes in the day-to-day governance of MJD or its subsidiaries, including Northland and Northland L.D. Northland and Northland L.D. will continue to be operated by essentially the same management group presently in place. Northland and Northland L.D. will continue to operate in all respects as they currently operate, pursuant to their present operating authority and rate structures, and will continue to provide service to their current customers in Vermont. Accordingly, neither the name nor the terms and conditions of service offered by Northland or Northland L.D. will be affected by the transaction. The proposed transaction will simply change the investors of MJD and will be virtually transparent to customers in terms of the services that they receive. Leach pf. at 5.

11. Thomas H. Lee Company is a Boston-based investment firm focused on acquiring substantial investment in growth companies. Founded in 1974, Thomas H. Lee Company and its affiliates currently manage approximately \$6 billion in committed capital. Thomas H. Lee

Company is investing in MJD's securities through certain affiliates -- primarily Thomas H. Lee Equity Fund IV, L.P. ("THL Fund IV"). THL Fund IV, a limited partnership formed under the laws of Delaware and one of four funds run by Thomas H. Lee Company, manages approximately \$3.45 billion. *Id.* at 5-6.

12. The proposed recapitalization will allow MJD and its subsidiaries, including Northland and Northland L.D., to have access to greater financial resources. In addition, current management of MJD will gain access to additional financial management and strategic planning resources offered by THL and Kelso. *Id.* at 6.

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.² 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 MJD and its Vermont operating companies will have access to a larger pool of managerial, technical and financial resources due to the relatively larger resources offered by THL and Kelso. 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 result in any rate increase to existing customers of Northland and Northland L.D.

For all of the above reasons, I recommend the change in control, as described in the testimony and exhibits of Mr. Leach, should be approved by the Board as consistent with the general good of the State of Vermont. I also recommend that this matter be decided without hearing pursuant to 30 V.S.A. § 107 and Board Rule 2.219.

All parties to this proceeding have waived the opportunity to comment on this Proposal for Decision in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 3rd day of May, 2000.

2. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holders of the Certificates of Public Good, Northland and Northland L.D., (MJD's Vermont operating companies), will continue to be the entities providing telecommunications service in Vermont.

s/Gregg C. Faber
Gregg C. Faber
Hearing Officer

ORDER

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

1. The findings, conclusions and recommendations of the Hearing Officer are adopted.
2. The Stipulation is accepted.
3. The change in control, as described in the testimony of Mr. Leach, is approved.

Dated at Montpelier, Vermont, this 5th day of May, 2000.

<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: May 5, 2000

Attested: 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.