

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6355

Joint Petition of Touch 1 Communications,)
Inc. and Z-Tel Technologies, Inc. for)
Approval of Transfer of Control)

Order entered: 3/30/2000

INTRODUCTION

On February 2, 2000, Z-Tel Technologies, Inc. ("ZTT") and Touch 1 Communications, Inc. ("Touch 1") (collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109 and 311, for approval to transfer ownership and control of Touch 1 from its current shareholders to ZTT through a proposed merger which would establish Touch 1 as a wholly-owned subsidiary of ZTT.

By letter dated March 16, 2000, the Vermont Department of Public Service ("Department") notified the Board that the Department recommends approval of the proposed merger without the need for hearings or investigation.

The Department also commented that since the merger will permit Touch 1 to continue operating in Vermont under its current name and service offerings, the transaction will be transparent and in terms of service would not cause inconvenience or confusion to its customers. Further, the Department believes approval should be conditioned on the requirement that ZTT notify the Board within ten days of the finalization of the merger and supply the Board with a copy of the final merger agreement.

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. Touch 1 is a privately-held Alabama corporation headquartered in Atmore, Alabama. Touch 1 is a nationwide provider of telecommunications services and is authorized to provide resold interexchange services in numerous other states. In Vermont, Touch 1 is

authorized to provide intrastate interexchange telecommunications services pursuant to a Certificate of Public Good granted by the Board on June 3, 1996 (C.P.G. No. 243). Petition at 1 and 2.

2. ZTT is a Delaware corporation headquartered in Tampa, Florida. ZTT provides intrastate interexchange telecommunications service through its wholly-owned subsidiary, Z-Tel Communications, Inc. ("ZTC"). ZTC was granted a Certificate of Public Good to provide telecommunications service in Vermont on May 11, 1999 (C.P.G. No. 472) Petition at 2.

3. Touch 1 and ZTT have agreed in principle to a plan of merger ("Plan") whereby ZTT will acquire Touch 1. The transfer of control will be accomplished through a triangular merger whereby a newly formed subsidiary of ZTT, Z-Tel Merger Subsidiary, will be merged with and into Touch 1, with Touch 1 as the surviving entity and wholly-owned subsidiary of ZTT. Following the reorganization, Touch 1 will continue serving current customers of Touch 1 under existing service arrangements pursuant to Touch 1's certification. Accordingly, the reorganization will be virtually transparent to customers of Touch 1. Petition at 3-4.

4. ZTT and Touch 1 have determined that they can realize significant economic and marketing efficiencies and, ultimately, strengthen the respective businesses of the two companies by establishing Touch 1 as a direct, wholly-owned subsidiary of ZTT. Petition at 4-5.

5. Completion of the reorganization should serve the public interest in promoting competition among providers of interexchange telecommunications services by combining the financial resources and managerial skills and experience of ZTT and Touch 1 in providing telecommunications services to the public. Petitioners anticipate that the transfer of control will result in a company better equipped as a competitive telecommunications service provider. The reorganization will allow Touch 1 access to ZTT's significant financial resources and is expected to enhance significantly Touch 1's operational flexibility and efficiency, as well as its long-term financial viability. The reorganization, therefore, should ensure the continued provision of telecommunications services to Touch 1's existing customers and should promote competition in the Vermont telecommunications service market. In sum, the transfer of control should benefit the public interest by enhancing the ability of Touch 1 to offer competitively priced services in the Vermont interexchange telecommunications marketplace. Petition at 4-5.

DISCUSSION

The proposed 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).

After reviewing the Joint Petition of ZTT and Touch 1, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of Touch 1, which will become a wholly-owned subsidiary of ZTT, into the control of ZTT, and thus results in the transfer of more than ten percent of the shares of Touch 1 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 Touch 1 provides to customers in Vermont. The transfer of control, 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.

CONCLUSIONS

The transfer of control of Touch 1 to ZTT through their proposed plan of merger 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.

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).

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 Touch 1 Communications, Inc. to Z-Tel Technologies, Inc. through their proposed plan of merger is approved.
2. A Certificate of Consent to the merger of Touch 1 with and into Z-Tel Merger Subsidiary shall be issued.
3. Petitioners should file a letter notifying the Board of the completion of the reorganization and a copy of the final merger agreement, within ten days of such completion.

DATED at Montpelier, Vermont, this 30th day of March, 2000.

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

OFFICE OF THE CLERK

Filed: March 30, 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 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.