

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6362

Petition of NEXTLINK Long Distance Services,)
Inc. for Approval of a Transfer of Control)

Order entered: 5/26/2000

I. INTRODUCTION

This case involves a petition filed on February 28, 2000, by NEXTLINK Long Distance Services, Inc. ("NLDS" or "Petitioner"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of a pro forma transfer of control of NLDS from its parent corporation, NEXTLINK Communications, Inc. ("NCI"), to a newly formed holding company: NM Acquisition Corp. ("NMAC").

On May 4, 2000, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the pro forma transfer of control of NLDS to NMAC. The Department noted that the transaction would not affect the Vermont consumers, as NLDS does not yet provide service in Vermont. Further, the Department also had no objection to the issuance of an order, as soon as possible in order for the parties to consummate the proposed transactions, without hearing or further investigation, as provided under 30 V.S.A. § 107.

II. FINDINGS OF FACT

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

1. NLDS is a Washington corporation authorized as a provider of resold long distance telecommunications service by the Board on February 16, 2000 (CPG No. 484). Petition at 1.
2. NCI is a corporation organized under the laws of the State of Delaware. Petition at 1.
3. NMAC is a newly formed Delaware corporation. Petition at 2.
4. NLDS is a wholly-owned subsidiary of NCI, which in turn is controlled by Eagle River Investments, LLC ("Eagle"), a Washington limited liability company. Petition at 2.

5. On January 9, 2000, NCI, NMAC and Eagle entered into an Agreement and Plan of Merger and Share Exchange Agreement ("Agreement") with Concentric Network Corporation ("Concentric"), an Internet service provider incorporated in Delaware, whereby NCI and Concentric will each merge into NMAC, with NMAC as the surviving entity (these transactions shall hereafter be referred to as the "Mergers"). Petition at 3.

6. In the event NCI and Concentric are unable to obtain the consent of stockholders to the above described Mergers, NMAC may, according to the Agreement, commence the "Exchange Offer." In the Exchange Offer, NMAC would seek to acquire all of the issued and outstanding shares of Concentric and NCI would be merged with and into a newly created subsidiary of NMAC, with NCI as the surviving entity and a wholly-owned subsidiary of NMAC. Petition at 4.

7. Following completion of the merger or Exchange Offer, ownership and control of NLDS will be transferred from NCI to NMAC. However, the transfer of control would be purely pro forma in nature because Eagle would continue to ultimately control NMAC and its subsidiary NLDS after the Exchange Offer or the Mergers. In addition, NMAC would change its name to NCI. NLDS will continue to operate in all respects as it currently operates, pursuant to present operating authority. NLDS has not yet begun providing service to Vermont consumers. Accordingly, neither the name of, nor the terms and conditions of service offered by NLDS, will be affected by the transaction. Accordingly, the transaction should not inconvenience customers within the State of Vermont. Petition at 5.

8. Completion of the proposed transaction will serve the public interest in that it will promote competition among long distance carriers by providing NLDS with the opportunity to strengthen its competitive position and to pursue its marketing and business plans more effectively. Petition at 5.

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 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 pro forma transfer of control of NLDS from NCI to NMAC (with Eagle remaining as the ultimate corporate parent) 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 NLDS has not yet begun operating in Vermont.

For all of the above reasons, the proposed transfer of control of NLDS to NMAC, through the holding company reorganization, should be approved.

IV. 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 NEXTLINK Long Distance Services, Inc. from NEXTLINK Communications, Inc. to NM Acquisition Corp. is approved.
2. Petitioners shall notify the Board, within one week, upon completion of the transfer of control.

DATED at Montpelier, Vermont, this 26th day of May, 2000.

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

OFFICE OF THE CLERK

Filed: May 26, 2000



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

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.