

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6369

Joint Petition of ICG Communications, Inc. and)
Liberty Media Corporation for Approval of a)
Transfer of Control)

Order entered: 5/26/2000

I. INTRODUCTION

This case involves a joint petition filed on March 14, 2000, by ICG Communications, Inc. ("ICG") and Liberty Media Corporation ("Liberty") (jointly "Petitioners"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of a transaction whereby Liberty will acquire a 19.66% interest in ICG, which is the parent company of ICG Telecom Group ("ICG Telecom"), a certified interexchange and competitive local exchange carrier in Vermont.

On May 5, 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 ICG Telecom to Liberty. The Department noted that the transaction would be transparent to Vermont consumers and should not cause any changes in services or rates. 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.

II. FINDINGS OF FACT

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

1. ICG is a Delaware corporation which provides competitive telecommunications services to interexchange carriers. Petition at 1.
2. ICG Telecom is a wholly-owned subsidiary of ICG, which is authorized by the Board to provide facilities-based and resold telecommunications service in Vermont. A Certificate of Public Good (CPG No. 419) to provide interexchange service was issued to ICG Telecom on

September 29, 1998. The CPG was later amended (in Docket No. 6130 issued January 7, 1999) to include authorization as a competitive local exchange carrier. Petition at 1-2.

3. Liberty is a subsidiary of AT&T Corporation. Liberty is a member of the Liberty Media Group ("LMG"), which is a tracking stock group of AT&T consisting primarily of the assets and businesses of Liberty and its subsidiaries. Petition at 2.

4. ICG and Liberty have entered into an investment funding arrangement whereby Liberty, in return for cash investments in ICG, will receive convertible preferred stocks and warrants. The proposed transaction will result in Liberty acquiring 19.66% of the outstanding shares of ICG. This in turn will result in an indirect transfer of control of ICG Telecom to Liberty. Petition at 4.

5. Following completion of the transaction, ICG Telecom will continue to operate in all respects as it currently operates, pursuant to present operating authority. Neither the name of, nor the terms and conditions of service offered by ICG Telecom, will be affected by the transaction. Accordingly, the transaction should not inconvenience customers within the State of Vermont. Petition at 4.

6. Completion of the proposed transaction will serve the public interest in that it will promote competition among long distance carriers by providing ICG Telecom with the opportunity to strengthen its competitive position and to pursue its marketing and business plans more effectively. 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 transfer of control of ICG Telecom from ICG to Liberty will allow ICG Telecom to operate in

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

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 ICG Telecom will continue to operate according to its present authority.

For all of the above reasons, the proposed transfer of control of ICG Telecom to Liberty, through the above described investment funding arrangement, 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 ICG Telecom Group from ICG Communications, Inc. to Liberty Media Corporation 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)
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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: May 26, 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.