

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6388

Joint Petition of American Long Lines, Inc.)
and Teligent, Inc. and its Affiliates for)
Approval of Transfer of Control and Merger)

Order entered: 7/19/2000

INTRODUCTION

On May 22, 2000, American Long Lines, Inc. ("ALL") and Teligent, Inc. ("Teligent") (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 of a transfer of control of ALL from its current shareholders to Teligent. The transfer of control is to be accomplished through a merger of ALL into a newly created and as yet unnamed subsidiary of Teligent with ALL as the surviving entity.

On June 26, 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 ALL to Teligent. 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.

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. ALL is a Pennsylvania corporation qualified to transact business in the State of Vermont. ALL was granted a Certificate of Public Good ("CPG") on July 1, 1997, to operate as a reseller of intrastate telecommunications services (CPG No. 320). Petition at 1.

2. Teligent is a Delaware corporation which, through its wholly-owned subsidiary Teligent Services, Inc. ("TSI"), provides resold intraLATA and interLATA long distance telecommunications services to customers in Vermont. TSI was issued a CPG to provide telecommunications services in Docket No. 6232, on December 16, 1999. Petition at 1-2.

3. Teligent and ALL are negotiating an agreement whereby Teligent will ultimately acquire

indirect ownership and control of 100 percent of the equity of ALL. The proposed acquisition as currently contemplated will be accomplished through a proposed reverse triangular merger involving a yet unnamed merger company ("Merger Sub"), a wholly-owned subsidiary of Teligent that will be created solely to effectuate the merger. Pursuant to the proposed merger agreement, Merger Sub will be merged with and into ALL, with ALL the surviving entity, and wholly owned by Teligent. Teligent will then contribute the ALL stock to TSI, resulting in ALL becoming a wholly-owned subsidiary of TSI and an indirect wholly-owned subsidiary of Teligent. Petition at 2.

4. Following the merger, ALL will continue serving current customers under existing service arrangements pursuant to the terms and conditions of its tariff. Accordingly, the merger will be virtually transparent to customers of ALL. Petition at 3.

5. Completion of the merger and transfer of control will serve the public interest in promoting competition among providers of interexchange telecommunications services. Petitioners anticipate that the merger will result in a company better equipped as a competitive telecommunications service provider. The merger is expected to enhance significantly ALL's operational flexibility and efficiency, as well as its long-term financial viability. These enhancements will inure directly to the benefit of Vermont customers. The merger, therefore, should ensure the continued provision of telecommunications services to ALL's existing customers and should promote competition in the Vermont telecommunications service market. In sum, the proposed transaction will benefit the public interest by enhancing the ability of ALL to offer competitively priced services in the Vermont interexchange telecommunications marketplace. Petition at 3.

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 ALL and Teligent, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of ALL into the control of Teligent, and thus results in the transfer of more than ten percent of the shares of ALL to another company. We further conclude that the merger will allow ALL to operate more efficiently in the current telecommunications marketplace and that the merger will not affect the services that ALL currently provides to customers in Vermont. The reorganization, 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 ALL to Teligent, through the above described merger agreement, 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.

ORDER

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

1. The merger of ALL with and into Merger Sub is approved.
2. A Certificate of Consent to the merger of ALL with and into Merger Sub shall be issued.
3. The transfer of control of ALL to Teligent will promote the public good and, therefore, is approved.
4. Petitioners shall file a letter notifying the Board of the completion of the merger within ten days of such completion.

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).

DATED at Montpelier, Vermont, this 19th day of July, 2000.

s/Michael H. Dworkin)

) PUBLIC SERVICE

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) BOARD

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s/David C. Coen)

OFFICE OF THE CLERK

Filed: July 19, 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.