



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: JUNE 27, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FONDO, GILCHRIST)
OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *JAE*

RE: DOCKET NO. 020474-TI - REQUEST FOR WAIVER OF CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, F.A.C., BY WORLDXCHANGE CORP. FOR ACQUISITION OF ASSETS OF RSL COM U.S.A., INC., INCLUDING LONG DISTANCE CUSTOMER BASE AND ASSETS ASSOCIATED WITH THOSE OPERATIONS.

AGENDA: 07/09/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020474.RCM

CASE BACKGROUND

On May 28, 2002, this Commission received a petition (Attachment A) seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from WorldxChange Corp (WorldxChange). WorldxChange and RSL COM U.S.A., Inc. (RSL) are certificated interexchange companies (IXCs) operating in Florida. WorldxChange is acquiring the assets of RSL, including RSL's long distance customer base and the assets associated with those operations. On June 14, 2002, the Commission received a supplemental filing (Attachment B) which includes a Customer Notification that WorldxChange mailed to RSL's customer base.

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Since March 16, 2001, RSL has been operating in bankruptcy status under the protection of the Bankruptcy Court of the Southern District of New York. Counsel Springwell Communications, LLC, the indirect parent company of WorldxChange, and RSL entered into an Asset Purchase Agreement dated March 25, 2002. On April 25, 2002, Counsel Springwell Communications, LLC assigned its rights under the Asset Purchase Agreement to WorldxChange, and accordingly, WorldxChange will acquire RSL's assets.

The basis for seeking a waiver is set forth in Rule 25-24.455(4), Florida Administrative Code. The Commission may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may serve the same purpose. Rule 25-24.490, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, into the IXC provisions of Chapter 25-24; thus, the waiver provisions are applicable to a petition by an IXC to waive Rule 25-4.118, Florida Administrative Code.

WorldxChange mailed a notification to all affected RSL customers explaining the transfer and assuring them that the quality of service and low rates they receive with RSL will continue with WorldxChange. The customers were also informed that they are under no obligation to take service from WorldxChange, and are free to select another company for their long distance calls, unless under a contractual agreement with RSL. The petition states that the company expects the transfer of the customers from RSL to WorldxChange to be complete on or before August 15, 2002.

This is not the first request in which a certificated company purchasing the customer base of another certificated company has come before the Commission seeking a waiver of the interexchange carrier selection rules. The Commission granted previous requests in Order Nos. PSC-00-1090-PAA-TI, issued June 6, 2000, in Docket No. 000364-TI, and PSC-01-0050-PAA-TI, issued January 8, 2001, in Docket No. 001669-TI.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should WorldxChange be relieved in this instance of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

RECOMMENDATION: Yes. (FONDO, GILCHRIST, ELLIOTT)

STAFF ANALYSIS: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's service provider shall not be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that an IXC shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, Florida Administrative Code, and applies to IXCs.

Rule 25-24.455(4), Florida Administrative Code, states as follows:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) The factors enumerated in Section 364.337 (4), Fla. Statutes;

- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and
- (c) Alternative regulatory requirements for the company which may serve the purposes of this Part.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The company has provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The customers will receive sufficient notification of the transfer and will be given the opportunity to choose another carrier. According to WorldxChange's counsel, the Customer Notification has already been mailed to RSL's customer base. If prior authorization had been sought from the affected customers in accordance with Rule 25-4.118, Florida Administrative Code, customers may have failed to respond to the request for authorization or neglected to select another carrier, thereby losing their long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, staff recommends that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived for the WorldxChange purchase of RSL's customer accounts.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, then a Proposed Agency Action (PAA) Order will be issued. The PAA Order will become final and effective upon the issuance of a Consummating Order, unless a person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed administratively upon issuance of the Consummating Order. **(ELLIOTT)**

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1, then a PAA Order will be issued. The PAA Order will become final and effective upon the issuance of a Consummating Order, unless a person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed administratively upon issuance of the Consummating Order.

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May 24, 2002

BY OVERNIGHT MAIL

Blanca S. Bayo, Director
Division of Records & Recording
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

020474-TI

Re: WorldxChange Corp. and RSL COM U.S.A., Inc.

Dear Ms. Bayo:

WorldxChange Corp. ("WorldxChange") and RSL COM U.S.A., Inc. ("RSL") (together the "Parties"), through their undersigned counsel hereby advise the Commission and, to the extent necessary, request that the Commission grant a waiver of the Commission's rules on presubscribed carrier changes, to enable WorldxChange to acquire the assets of RSL identified herein, including RSL's long distance customer base and the assets associated with those operations ("Assets"). Since March 16, 2001, RSL has been operating in bankruptcy status under the protection of the Bankruptcy Court for the Southern District of New York.¹ As set forth in greater detail below, WorldxChange's indirect corporate parent Counsel Springwell Communications LLC ("Counsel Communications") and RSL entered into an Asset Purchase Agreement ("Agreement") dated as of March 25, 2002. Subsequently, on April 25, 2002, Counsel Communications assigned its rights under the Agreement to WorldxChange and, accordingly, WorldxChange will acquire the RSL Assets.

¹ See RSL COM U.S.A., Inc., Case No. 01-11469-alg (S.D.N.Y. Filed Mar. 16, 2001) and RSL COM PrimeCall, Inc., Case No. 01-11457-alg (S.D.N.Y. Filed Mar. 16, 2001).

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The transaction proposed herein is necessary to ensure that RSL's current Florida customers will continue to receive uninterrupted service. The Parties emphasize that following the completion of the proposed transaction, RSL's customers will continue to receive service under the same rates, terms and conditions as that service is currently being provided. However, given the current bankrupt status of RSL, the proposed transaction must be completed rapidly in order to minimize disruption to existing customers being served by RSL.

The Parties hereby request a waiver of the Commission's presubscription carrier changes including Section 25-4.118 of the Florida Administrative Code. The Parties respectfully request that the Commission grant a waiver of its presubscription carrier rules and any other approval that may be necessary as expeditiously as possible in order to allow the Parties to consummate the proposed transaction on or about August 15, 2002.

An original and twelve (12) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, postage prepaid envelope provided.

The Parties further state as follows:

I. Description of the Parties

A. WorldxChange Corp. ("WorldxChange")

WorldxChange Corp. is a corporation organized and existing under the laws of the State of Delaware with principal offices located at 9775 Business Park Avenue, San Diego, California 92131. WorldxChange is a wholly owned indirect subsidiary of I-Link Incorporated ("I-Link"), a publicly traded company organized under the laws of the State of Florida. I-Link is controlled by Counsel Communications which holds a direct majority interest in I-Link and therefore, an indirect majority interest in WorldxChange. Counsel Communications is, in turn, majority owned and controlled by Counsel Corporation ("Counsel") a publicly traded Canadian corporation which specializes in investments, including communications companies.

WorldxChange has the managerial and technical resources necessary to operate the RSL Florida operations it proposes to acquire. In particular, WorldxChange has already been authorized by the Commission to provide telecommunications service pursuant to a certification granted by the Commission in Docket No. 011023-TI, issued on August 27, 2001 (Certificate No. 7570).² Further information concerning WorldxChange's legal, technical, managerial and

² The Order issued on August 27, 2001 amended Certificate Number 7570. WorldxChange was formerly known as PT-1 Counsel, Inc. but changed its name in connection with its acquisition of certain operations of WorldxChange Communications, Inc. out of bankruptcy in 2001.

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financial qualifications to provide service was submitted with its application for certification with the Commission as noted above and is, therefore, a matter of public record. WorldxChange respectfully requests that the Commission take official notice of that information and incorporate it herein by reference.

B. RSL COM U.S.A., Inc. ("RSL")

RSL is a corporation organized and existing under the laws of the State of Delaware. RSL's principal place of business is located at 1001 Brinton Road, Pittsburgh, PA 15221. RSL currently provides a variety of regulated and unregulated telecommunications services, including long distance and frame relay data services, through the resale of the facilities of other carriers and RSL's own circuit and data switches. In Florida, RSL provides intrastate toll service by virtue of a certification granted by the Commission in Docket No. 970588-TI, issued on June 13, 1997 (Certificate No. 4068).⁴

II. Contact Information

Questions or inquiries concerning this filing may be directed to:

William B. Wilhelm, Jr.
Edward S. Quill, Jr.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

with a copy to:

Eric Fishman
David O'Connor
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006-6801
(202) 955-3000 (Tel)
(202) 955-5564 (Fax)

⁴ The Order issued on June 13, 1997 amended Certificate Number 4068 to change the name of the company from International Telecommunications Corporation to RSL.

Blanca S. Bayo, Director
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III. Description of the Transaction

Through the proposed transaction ("Transaction"), WorldxChange proposes to acquire the long distance business of RSL. Specifically, the Assets to be acquired by WorldxChange include, among other things, most of the regulated communications assets associated with RSL's domestic telecommunications operations, including the telecommunications equipment and all of the long distance customers and customer accounts of RSL located in Florida.⁵ Because WorldxChange is already authorized to provide service in Florida, however, WorldxChange will not need to obtain additional operating authority to provide service RSL's customer base. As a result, WorldxChange is not seeking to acquire RSL's certification in connection with the Transaction.

The contemplated Transaction will allow RSL's long distance operations to emerge from bankruptcy into WorldxChange and provide greater certainty to RSL's existing customers.⁶ In order to complete the Transaction and gain Bankruptcy Court approval, WorldxChange's corporate parent, Counsel Communications, and RSL entered into an Asset Purchase Agreement as of March 25, 2002.⁷ Counsel Communications is a holding company that does not provide telecommunications in any jurisdiction. As a result, Counsel Communications has completed an assignment whereby through the proposed Transaction, the RSL regulated customers and Assets will be assigned directly to Counsel Communications's operating subsidiary, WorldxChange, which will assume the day to day management and operational responsibilities necessary to provide service to RSL's customers.

Although through the proposed Transaction, WorldxChange will replace RSL as the service provider for RSL's customers, WorldxChange will continue to provide service to RSL customers under the same rates, terms and conditions of services as currently provided by RSL.⁸ The Transaction will therefore be (other than the change in the name of their service provider) virtually transparent to customers because they will experience no change in the services they receive as a result of the transaction. In order to avoid customer confusion, upon issuance of the sale order by the Bankruptcy Court, now expected on May 23, 2002, the Parties will provide pre-consummation customer notice of the proposed transaction. The Parties will provide a copy of such customer

⁵ WorldxChange will also acquire RSL's data customers which are served through RSL's frame relay based service. RSL provides such services on an unregulated basis. As a result, The Parties understand that no authority is required to complete the acquisition with respect to such assets. If, however, the Commission determines that such approval is required, The Parties respectfully request that such approval be granted through this filing as well.

⁶ A chart illustrating the Transaction is provided in Exhibit A.

⁷ The Parties will provide a copy of the Agreement upon request.

⁸ WorldxChange will adopt RSL's tariffs in conjunction with the proposed transaction and/or make other appropriate arrangements to ensure continuity of service to RSL's existing customers in compliance with Florida law.

Bianca S. Bayo, Director
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notice to the Commission once it becomes available. By separate application, RSL will seek Commission authority, as necessary, to voluntarily withdraw RSL's certification and terminate service in the State, effective upon consummation of the Transaction.

IV. Public Interest Considerations

The Parties respectfully submit that this Transaction serves the public interest. In particular, the Parties submit that (1) the Transaction will increase competition in the Florida telecommunications market by reinforcing WorldxChange's status as a viable competitor and (2) the Transaction will minimize the disruption of service and be virtually transparent to remaining RSL customers.

The proposed Transaction is expected to invigorate competition in Florida. RSL's financial position at this stage effectively precludes it from becoming or remaining a viable competitor in the telecommunications market. As a practical matter, RSL is no longer able to effectively compete for new customers. As a result, the proposed transaction will not diminish competition in Florida. At the same time, the expansion of WorldxChange's customer base is expected to enhance WorldxChange's position in the Florida telecommunications market and permit WorldxChange to compete more effectively for customers in Florida.

Existing RSL customers, in particular, will realize significant public interest benefits from the Transaction. In light of RSL's precarious financial position, the proposed Transaction will provide greater stability to RSL's customers and ensure that those customers can continue to enjoy high quality, affordable service without interruption. Moreover, given that WorldxChange proposes to provide service on the same rates, terms and conditions of services that RSL currently provides, the Parties expect the Transaction to be virtually transparent to customers (except for the change in name of the carrier from RSL to WorldxChange, about which RSL's customers will be notified).

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V. Conclusion

Given that RSL's customer base is subject to continuing erosion and that RSL is unable to compete effectively as a result of its capital constraints and the uncertainty of its current financial position, the Parties seek to complete the proposed acquisition as quickly as possible. Rapid completion of the Transaction is a critical factor in order to avoid interruption of service or other inconvenience to affected RSL customers. Accordingly, the Parties respectfully request that the Commission advise the Parties as soon as possible if it believes further filings are required in connection with the Transaction.

Respectfully submitted,

By: 

William B. Wilhelm, Jr.
Edward S. Quill, Jr.
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
(202) 424-7500 (Tel)
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COUNSEL FOR THE PARTIES

Dated: May 24, 2002

LIST OF EXHIBITS

Exhibit A - Illustrative Chart
Verifications

DOCKET NO. 020474-TI
DATE: June 27, 2002

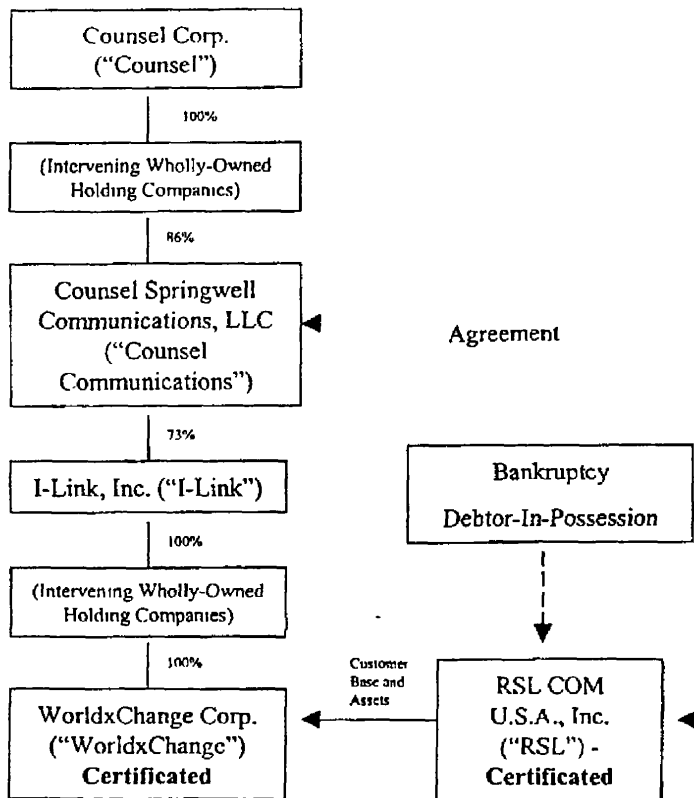
Attachment A

Exhibit A

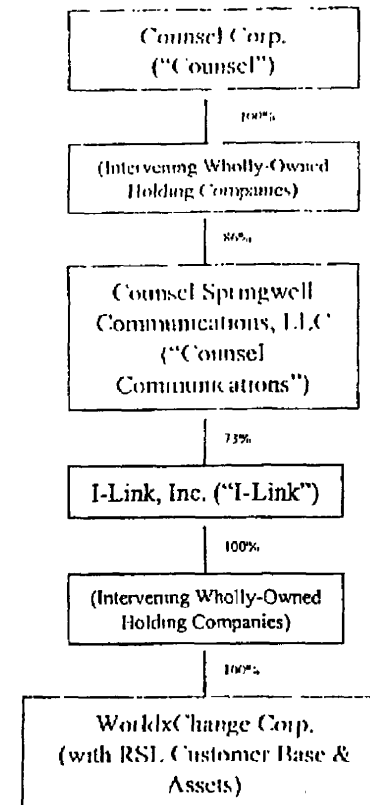
Illustrative Chart

Exhibit B: Illustrative Chart of WorldxChange/RSL Transaction

Pre-Transaction



Post-Transaction



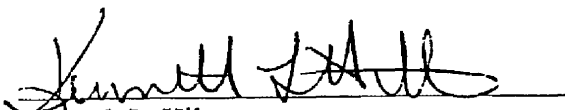
DOCKET NO. 020474-TI
DATE: June 27, 2002

Verifications

VERIFICATION


STATE OF California :
 :
 : ss.
COUNTY OF San Diego :

I, Kenneth L. Hilton, being first duly sworn, state that I am Chief Executive Officer of WorldxChange Corp., party in the foregoing filing before the Florida Public Service Commission, that I am authorized to make this Verification on behalf of WorldxChange Corp. and that the contents of the foregoing filing are true and correct to the best of my knowledge, information, and belief.



Name: Kenneth L. Hilton
Title: Chief Executive Officer
WorldxChange Corp.

Sworn and subscribed before me this 23rd day of May, 2002.


Notary Public

My commission expires 7/30/04



VERIFICATION

~~STATE OF~~ DISTRICT OF COLUMBIA
:
CITY OF :
:

ss.

I, Eric Fishman, being first duly sworn, state that I am Assistant Secretary of RSL COM U.S.A., Inc., Parties in the foregoing Filing; that I am authorized to make this Verification on behalf of RSL COM U.S.A., Inc. and that the contents of the foregoing Filing are true and correct to the best of my knowledge, information, and belief.



Eric Fishman
Assistant Secretary
RSL COM U.S.A., Inc.

Sworn and subscribed before me this 16th day of May, 2002.



Notary Public

Laura E. Ledet
Notary Public of the District of Columbia

My commission expires _____ My Commission Expires 11/30/06

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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June 13, 2002

VIA OVERNIGHT DELIVERY

Blanca S. Bayo, Director
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RECEIVED-FPSC
02 JUN 14 PM 12:17
COMMISSION
CLERK

Re: Docket No. 020474-TI ; WorldxChange Corp. and RSL COM U.S.A., Inc. Form of Customer Notice Letter

Dear Bayo:

On May 24, 2002, WorldxChange Corp. ("WorldxChange") and RSL COM U.S.A., Inc. ("RSL") (together "the Parties") submitted a filing with the Commission seeking approval from the Commission of a transaction whereby WorldxChange will acquire certain assets of RSL.

In that previous filing, the Parties advised the Commission that, in compliance with applicable law, the Parties would provide pre-consummation notice to RSL customers but that the form of such customer notice was not yet available. Accordingly, the Parties now supplement their previous filing in the above referenced docket with the attached form of Customer Notification.

Questions regarding this document may be directed to the undersigned. An original and twelve (12) copies of this letter are enclosed for filing. Kindly date-stamp and return the enclosed extra copy of this notice in the postage-paid envelope provided.

Respectfully submitted,

RECEIVED & FILED

William B. Wilhelm, Jr.

Edward S. Quill, Jr.

FPSC BUREAU OF RECORDS

Counsel of WorldxChange Corp.

- AUS _____
- CAF _____
- CMP _____ Enclosure
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
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- SEC _____
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FPSC-COMMISSION CLERK

Dear Valued Customer:

Recently, Counsel Springwell Communications LLC, through its subsidiary, WorldxChange Corp. ("WorldxChange"), entered into an agreement to purchase the business of RSL COM U.S.A., Inc. ("RSL"). RSL today provides its customers with various services, including but not limited to long distance services. Under the terms of the agreement between RSL and WorldxChange, WorldxChange will, upon the closing of the purchase transaction, replace RSL as your service provider.

Please rest assured that the transition of your service to WorldxChange will not affect the services you currently receive. As a customer of WorldxChange, you will continue to receive services with the same rates, features, terms and conditions as the service you currently enjoy. With the operations of WorldxChange and RSL integrated and supported by new and improved billing and other systems, you will continue to receive top quality services with performance which meets or exceeds that of the services you currently receive from RSL. As a result, this change in providers will be beneficial and virtually seamless for you. Please also be assured that you will incur no charges related to the transfer of your services to WorldxChange.

WorldxChange has offered premium communications services nationwide for many years. The customer service team at WorldxChange will be equipped to assist you with questions about your new service or on-going monthly billing matters after completion of the purchase. Until that time, the customer service number and procedures that you are accustomed to will remain the same.

You may, of course, choose another carrier for your telephone service, subject to any termination restrictions in your contract. Unless you choose another service provider, you will automatically become a customer of WorldxChange.

We at WorldxChange look forward to serving you and appreciate your continued business. In the meantime, if you have specific questions about this notice, please contact us at 800-834-8735.

Sincerely,

WorldxChange Corp.