

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 020474-TI
ORDER NO. PSC-02-0985-PAA-TI
ISSUED: July 19, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER OF RULE 24-4.118,
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

On May 28, 2002, this Commission received a petition 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

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distance customer base and the assets associated with those operations. On June 14, 2002, we received a supplemental filing which includes a Customer Notification that WorldxChange mailed to RSL's customer base.

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. This Commission has 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.

We are vested with jurisdiction over these matters pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

DISCUSSION

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.

This Commission finds 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, granting this waiver will avoid unnecessary slamming complaints during this transition.

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

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code be waived to facilitate the transfer of the customer base and associated assets from RSL COM U.S.A., Inc. to WorldxChange Corp.

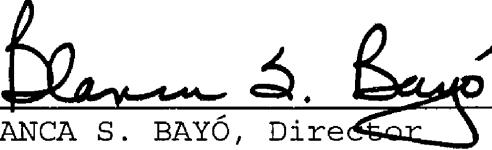
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee,

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Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th Day of July, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

JAE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 9, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.