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DOCKET NO. 02-0153

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DIV OF CONSUMER ADVOCACY
DEPT OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF ILLINOIS

Filed August 1, 2002
At 1:30 o'clock P.M.

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commissioner, State of Hawaii.

Commissioner State of Hawaii
R. Hight.

OF THE STATE OF HAWAII

For Approval to Transfer Certain Assets.

Decision and Order No. 19498

DECISION AND ORDER

I.

By joint application filed on June 17, 2002, WORLDxCHANGE CORP. and RSL COM U.S.A., INC. (collectively, Applicants) request expedited approval to transfer certain assets, pursuant to Hawaii Revised Statutes (HRS) § 269-19. Applicants also request a waiver of HRS § 269-16.92, to the extent applicable.

Copies of the application were served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). On July 11, 2002, Applicants submitted updated financial statements, in response to the commission's directive.

II.

A.

WorldxChange Corp. holds a commission-issued certificate of authority (COA) to operate as a reseller of telecommunications services in the State of Hawaii (State).¹

WorldxChange Corp. is a wholly-owned, indirect subsidiary of I-Link Incorporated. Counsel Springwell Communications, LLC, in turn, holds a majority interest in I-Link Incorporated. Counsel Corporation, in turn, a publicly traded Canadian corporation, holds a majority interest in Counsel Springwell Communications, LLC. The respective organizational chart is attached as Exhibit B to the joint application.

RSL COM U.S.A., Inc. holds a commission-issued COA to operate as a reseller of telecommunications services in the State.² It currently provides intrastate toll service in the State. Since March 2001, RSL COM U.S.A., Inc. has been operating under the protection of the United States Bankruptcy Court.

B.

Pursuant to an assets purchase agreement, dated March 25, 2002, Counsel Springwell Communications, LLC, agreed to acquire certain assets of RSL COM U.S.A., Inc. Thereafter, on

¹See In re PT-1 Counsel Inc., Decision and Order No. 18089, filed on September 28, 2000, in Docket No. 00-0208. WorldxChange Corp. states that it "was formerly known as PT-1 Counsel, Inc. but changed its name in connection with its acquisition of certain operations of the now bankrupt WorldxChange Communications, Inc. in 2001."

²See Decision and Order No. 15594, filed on May 22, 1997, in Docket No. 97-0149.

April 25, 2002, Counsel Springwell Communications, LLC, assigned its rights under the agreement to WorldxChange Corp. Essentially, Applicants explain that WorldxChange Corp. will acquire RSL COM U.S.A., Inc.'s long distance business assets, including its telecommunications equipment. WorldxChange Corp. will also acquire "all of the long distance customers and customer accounts of RSL located in Hawaii."

C.

Applicants seek expedited commission approval to transfer the subject assets as part of the assets purchase agreement between them. Specifically, they seek approval as soon as possible, in order to "consummate the transaction on or about August 15, 2002."

HRS § 269-19 provides that no public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, nor by any means, directly or indirectly, merge or consolidate with any other public utility, without first having secured from the commission "an order authorizing it so to do."

HRS § 269-16.9(e) authorizes the commission to waive regulatory requirements applicable to telecommunications providers if the commission determines that competition will serve the same purpose as public interest regulation. Similarly, Hawaii Administrative Rules (HAR) § 6-80-135 authorizes the commission to exempt or waive a telecommunications carrier or

service from the provisions of HRS chapter 269 or any other telecommunications rules, upon a determination that the exemption or waiver is in the public interest.

Applicants state that the subject transaction will allow RSL COM U.S.A., Inc.'s long distance operations "to emerge from bankruptcy into WorldxChange and provide greater certainty to RSL's existing customers." WorldxChange Corp will: (1) assume the day to day management and operational responsibilities necessary to provide service to RSL COM U.S.A., Inc.'s customers; and (2) continue to provide service to these customers under the same rates, terms, and conditions of service, by adopting RSL COM U.S.A., Inc.'s existing tariff. Thus, Applicants represent that the subject transaction will be seamless and transparent to RSL COM U.S.A., Inc.'s customers.

Upon review, the commission finds that the subject transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Accordingly, the commission, on its own motion, will waive the requirements of HRS § 269-19, to the extent applicable.³

WorldxChange Corp. currently holds a commission-issued COA. Hence, upon the closing of the subject transaction, RSL COM

³At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-19, or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

The commission further notes its previous rulings that a telecommunications carrier's customer base and accounts are not assets or property under HRS § 269-19.

U.S.A., Inc., by separate application in Docket No. 97-0149, intends to voluntarily surrender its existing COA.⁴

D.

HRS § 269-16.92 provides that a telecommunications carrier shall not initiate a change in a subscriber's selection or designation of a long distance carrier without first obtaining authorization from the affected subscriber.

Applicants seek a waiver of HRS § 269-16.92, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135. They explain that:

1. The subject transaction will affect 15 Hawaii-based customers, and will be transparent to them.
2. The affected customers have been notified in writing of: (A) the subject transaction and resulting change in carriers; and (B) their ability to select another long distance carrier of their choice.⁵
3. If a customer opts for another long distance carrier, the customer will be reimbursed for any "switching" charge imposed by the local exchange carrier.
4. The affected customers have been provided a toll-free telephone number to contact WorldxChange Corp. if they have any questions regarding the subject transaction.

The commission finds that the waiver of HRS § 269-16.92, under the circumstances of this case, is consistent with the public interest. Applicants, in good-faith, represent that any of the fifteen affected customers may switch, without

⁴In this respect, the commission notes that RSL COM U.S.A., Inc. will need to file the applicable annual financial reports and pay the corresponding public utility fees before the commission approves the voluntary surrender of the carrier's COA.

⁵The customer notification form is attached as Exhibit C to the joint application.

charge, to another long distance carrier. In addition, customers who choose to remain will do so under the same rates, terms, and conditions of service. The commission, thus, will waive the requirements of HRS § 269-16.92, to the extent applicable. Applicants must, however, by written letter, provide the commission's business address and telephone number to the affected Hawaii-based customers, consistent with the intent of HAR § 6-80-107(4).

III.

THE COMMISSION ORDERS:

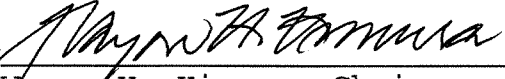
1. HRS § 269-19, to the extent applicable, is waived with respect to the subject transaction described in the joint application, filed on June 17, 2002.

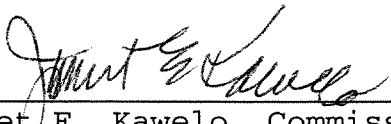
2. HRS § 269-16.92, to the extent applicable, is waived. Applicants must, however, by written letter, provide the commission's business address and telephone number to the affected Hawaii-based customers.

3. Upon the closing of the subject transaction, RSL COM U.S.A., Inc. shall: (A) comply with the conditions set forth in footnote 4, supra; and (B) surrender its COA, issued in Docket No. 97-0149.

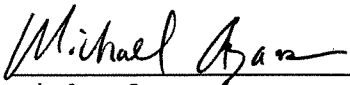
DONE at Honolulu, Hawaii this 1st day of August, 2002.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

02-0153.sl

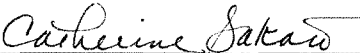
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19498 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Catherine Sakato

DATED: August 1, 2002