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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 7, 2000

DAVID A. O'CONNOR
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Internet Address:
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VIA HAND DELIVERY

Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: RSL COM U.S.A., Inc.
Petition for Limited Waiver
CC Docket No. 94-129

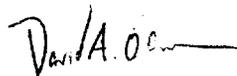
Dear Ms. Salas:

Transmitted herewith, on behalf of RSL COM U.S.A., Inc. and its wholly-owned subsidiary, LDM Systems, Inc., are an original and four (4) copies of a Petition for Limited Waiver of the Commission's subscriber carrier selection rules. No filing fee is required pursuant to the Commission's rules.

An extra copy of the filing is enclosed. Please date-stamp the copy and return it to the courier for return to me.

If you have any questions, please contact the undersigned.

Respectfully submitted,



David A. O'Connor
Counsel for RSL COM U.S.A., Inc.

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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DEC 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier) CC Docket No. 94-129
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
RSL COM U.S.A., Inc.)

To: Chief, Common Carrier Bureau

PETITION FOR LIMITED WAIVER

RSL COM U.S.A., Inc. ("RSL USA"), by its attorneys, and pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, hereby petitions the Commission for a limited waiver of the Commission's authorization and verification rules, 47 C.F.R. §§ 64.1100-64.1190. RSL USA requests this waiver to enable it to transfer those customers presubscribed to its wholly-owned subsidiary, LDM Systems, Inc. ("LDM"), to RSL USA's customer base without having first obtained the customers' authorization and verification.

As this Petition sets forth, a grant of this limited waiver of the Commission's rules is consistent with overwhelming Commission precedent and will serve the public interest by ensuring the stability and continuity of telecommunications services to LDM's subscribers.

I. Background.

RSL USA, formerly known as International Telecommunications Corporation, is authorized by the Commission, pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), to provide domestic interstate and international services as a non-dominant carrier.¹ The Company is also authorized to provide intrastate interexchange services in 49 states.

LDM, a wholly-owned subsidiary of RSL USA,² is also a non-dominant interstate and international carrier authorized pursuant to Section 214.³ LDM is authorized to provide intrastate interexchange services in 46 states and competitive local exchange services in 36 states. LDM's underlying carrier for the provision of its interexchange services has been, and continues to be, RSL USA.

RSL USA has made the internal business decision to consolidate the majority of its telecommunications offerings into RSL USA. As part of this consolidation, upon receipt of all necessary regulatory approvals, RSL USA intends to merge the telecommunications assets of its subsidiary, LDM, into RSL USA and to dissolve LDM as a separate entity. It is RSL USA's intent to migrate LDM customers to the RSL USA customer base.

¹ See *International Telecommunications Corp.*, File Nos. ITC-92-175, 7 FCC Rcd 6491 (1992); ITC-92-112, 7 FCC Rcd 3559 (1992); ITC-93-332, 9 FCC Rcd 109 (1993); ITC-92-105, 7 FCC Rcd 4060 (1992); ITC-92-072, 7 FCC Rcd 2311 (1992); ITC-95-568 and SCL-93-004(M), DA 96-805 (rel. May 28, 1996); ITC-96-362, Pub. Notice Rep. No. I-8196 (Aug. 15, 1996), 11 FCC Rcd 9371 (1996).

² See *In re LDM Systems, Inc.; Application for Authority, Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of an Authorized International Carrier*, 13 FCC Rcd 843 (rel. Jan. 16, 1998) (authorizing the transfer of control of LDM to RSL USA).

II. Petition for Limited Waiver.

A. Standard for Waiver.

Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation is in the public interest.⁴ RSL USA submits that both prongs of this test are satisfied in this case, for the reasons set forth below.

B. Special Circumstances and Public Interest Showing.

In its *Second Report and Order*, as modified by the *First Order on Reconsideration*,⁵ the Commission established a comprehensive framework to combat aggressively and deter unauthorized preferred carrier changes. Pursuant to Section 258 of the Act, the Commission has adopted detailed verification procedures. 47 C.F.R. § 64.1100-64.1190. The new rules also create financial and other disincentives for rule violations. RSL USA and its wholly-owned subsidiaries, including LDM, strongly support the Commission's initiatives in this area, and have adopted company-wide anti-slamming policies which conform with state and federal regulations.

The instant circumstances, however, warrant grant of a limited waiver of the Commission's rules for three reasons: 1) RSL USA is not only the parent company of LDM, but is already the underlying carrier for LDM customers, making the customer base transfer virtually transparent; 2) RSL USA has notified customers of

³ See File No. ITC-94-068, Pub. Notice Rep. No. I-6920 (Feb. 2, 1994).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁵ FCC 00-135 (rel. May 3, 2000).

the billing change pursuant to the notice attached hereto as Exhibit A, and to date has not received any complaints from LDM customers regarding the notice; and 3) the customer base transfer is necessitated by a purely internal corporate decision to consolidate long distance services.

First, RSL USA has been, and continues to be, the underlying carrier for LDM customers. Accordingly, the transfer of LDM customers to RSL USA will be swift and virtually transparent to LDM customers. As LDM customers' current underlying carrier, RSL USA is able to provide these services directly to former LDM customers, at the same rates, terms and conditions as LDM customers are accustomed to, without a cessation of service. Indeed, LDM customers stand to benefit from RSL USA's cost savings through consolidation, by receiving services directly as opposed to being serviced by a reseller.

Second, pursuant to the customer notice in Exhibit A, RSL USA has notified LDM customers of the change to their billing statements and the fact that no changes were made to their rates or services.⁶ The notice also provided customers with a 1-800 number to discuss the billing change and to speak about RSL USA services. Although the notice differs slightly from notices the Commission has approved in the past, RSL USA submits that it has sufficiently notified customers of the change to their billing statements. Importantly, neither RSL USA nor LDM

⁶ The attached notice in Exhibit A was sent to LDM customers as a result of a name change which did not entail a transfer of LDM's customer base to RSL USA. The merger of LDM into RSL USA does entail such a customer base transfer, thereby triggering the Commission's subscriber carrier selection rules.

received any complaints arising from this notice. In addition, upon approval of this petition, RSL USA will, if deemed advisable by the Commission, send LDM customers the attached notice in Exhibit B to reiterate the information contained in Exhibit A.

Third, because of RSL USA's internal business decision to promote efficiency by dissolving LDM and consolidating its operations with those of RSL USA's, LDM customers will potentially have no long distance service provider. If RSL USA were required to obtain verification from each customer, there is a risk that the long distance services of certain customers might temporarily be interrupted when LDM ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization. Those LDM customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. Given these risks, a deviation from the Commission's rules is in the public interest.

Moreover, the special circumstances in this case are analogous to cases in which the Commission recently granted limited waivers. *See, e.g., RCN Telecom Services of Illinois, Inc.*, DA 00-2428 (rel. Oct. 27, 2000); *McLeodUSA Telecommunications Services, Inc.* ("McLeodUSA"), DA 00-2151 (rel. Sept. 21, 2000); *Broadwing Telecommunications, Inc.*, DA 00-748 (Mar. 31, 2000); *International Exchange Communications, Inc.*, DA 00-742 (Mar. 31, 2000); *Sprint Communications Co., L.P.*, DA-00-620 (Mar. 17, 2000). In those cases, the Commission found that special circumstances existed because the acquired

company's customers were at risk of either losing their long distance service or of being charged substantially higher rates than those rates the customers received from the acquired company. Of particular relevance here is the *McLeodUSA* case, in which the Commission authorized McLeodUSA to consolidate its operations with those of its affiliates, including customer bases. The Commission found that a waiver was necessary in order for McLeodUSA to provide a seamless transition with no disruption of service to the transferred customers. *See McLeodUSA* ¶ 6. As in the *McLeodUSA* case and the other cases cited above, the Commission should grant a limited waiver here under these special circumstances.

Finally, RSL USA has worked vigorously with LDM to resolve any outstanding customer complaints that have been made against LDM. RSL USA affirms its dedication to resolving any such complaints. If the Commission waives its rules to permit RSL USA to provide service to LDM's former customers, RSL USA will work with the complainants and the Commission to investigate and resolve any outstanding customer complaints regarding services provided by LDM.

WHEREFORE, for the reasons set forth herein, RSL USA submits that good cause exists for waiver of the Commission's authorization and verification rules, 47 C.F.R. §§ 64.1100 to 64.1190. Such a waiver will enable RSL USA to execute the seamless transfer of LDM long distance subscribers to its customer base and will serve the public interest.

Respectfully submitted,

For RSL COM U.S.A., Inc.

By: 
Eric Fishman, Esq.
David A. O'Connor, Esq.

Its Attorneys

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December 7, 2000

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EXHIBIT A

NOTICE TO LDM CUSTOMERS

BILLING CHANGE FOR CUSTOMERS OF LDM SYSTEMS

November __, 1999

Dear Customer:

LDM Systems, your preferred long distance service provider, will soon make a small change on the long distance portion of your monthly phone bill. LDM Systems, a subsidiary of RSL COM U.S.A., will begin billing its customers in selected states under the name **RSL COM U.S.A.** starting in November 1999.

No changes are being made to your rates or services. You will continue to receive the same long distance calling plan that you have chosen with the same competitive rates. Just the name of your long distance service provider will be changing. However, if you should have any questions regarding this change, or if you wish to speak with us about your service, you can call us toll-free at **1-800-266-2006**. A customer service representative will be happy to assist you.

RSL COM U.S.A. is a growing provider of domestic and international telecommunications services. As part of its growth, RSL COM U.S.A. purchased LDM Systems almost two years ago.

We appreciate your business and look forward to serving your telecommunications needs in the future.

EXHIBIT B

SECOND NOTICE TO LDM CUSTOMERS

(IF DEEMED APPROPRIATE BY THE COMMISSION)

Dear Customer:

Last year, we notified you that you would see a name change on your long distance phone bill. Our customers previously served by LDM Systems began billing under the name of **RSL COM U.S.A.** LDM Systems has been a separate subsidiary of RSL COM U.S.A. for three years, but we are now consolidating our long distance operations. RSL COM U.S.A. is working with federal and state regulatory agencies to merge LDM Systems into RSL COM U.S.A. As a result, you are now being serviced by RSL COM U.S.A. directly.

As part of this effort, our regulators have asked us to send you this brief message. This consolidation will NOT affect your long distance service or rates in any way. You will continue to receive the same high quality service and affordable rates that you receive today.

In order to eliminate confusion and ensure continuity of service, your long distance service will be maintained pursuant to the terms and conditions of LDM Systems' filed tariffs. Under federal and state law, you have the right to switch your long distance or local exchange carrier at any time. If you decide to do so within thirty (30) days of the date of this letter, RSL COM U.S.A. will reimburse you for the carrier change charge, if any, imposed by your local exchange carrier. Also, if you feel that in any way you have been unfairly treated by LDM Systems, we would be happy to address your concerns. Should you have any questions regarding your service, please feel free to call us at our toll-free number, **1-800-266-2006**.

We appreciate your business and look forward to serving your telecommunications needs into the future.

Best wishes,

Michael Marino
President
RSL COM U.S.A., Inc.