

DT 99-077

RSL COM U.S.A., INC.

Order Approving the Acquisition of Certain Assets of One Step
Billing, Inc. by RSL COM U.S.A., Inc.

O R D E R N O. 23,234

June 14, 1999

On February 18, 1999, RSL COM U.S.A., Inc. (RSL USA) and One Step Billing, Inc. (OSBI) jointly filed a "Letter of Notification" (LON) informing the New Hampshire Public Utilities Commission (Commission) of its transfer of certain assets from OSBI to RSL COM, and requesting approval of the transfer *nunc pro tunc*, effective October 1, 1998. In the transaction, RSL USA purportedly acquired: a) the right to provide telecommunications and ancillary services to all of OSBI's telecommunications customers in New Hampshire; b) the right to receive payment from those customers; c) the names "One Step Billing" and "OSBI"; and d) all of OSBI's accounts receivable.

Consistent with Order No. 22,473, both RSL USA and OSBI registered as Competitive Toll Providers (CTP) in New Hampshire. The LON indicates that although RSL USA and OSBI are unaffiliated entities, RSL USA and its wholly owned subsidiary, LDM Systems, Inc. (LDM), were parties to a resold services agreement under which OSBI resold to its customers the telecommunications services of RSL USA and LDM. OSBI ceased operations effective December 9, 1998 and purported to relinquish its certification in New Hampshire by filing the aforementioned LON.

The LON states that "OSBI's decision to cease operations leaves its customers without a presubscribed telecommunications carrier." However, under RSL USA's agreement with OSBI, RSL USA stated that it will continue to furnish service to these subscribers directly rather than via the resold services agreement. Thus, the underlying carrier of OSBI's telecommunications customers would not change. According to the LON, "(t)he only change which will occur is that OSBI's existing customers will now become customers of RSL USA, and RSL USA will invoice them under the RSL USA name, pursuant to the terms of applicable RSL USA tariffs." Until such time as regulatory approval for RSL USA's acquisition of OSBI's assets has been obtained, these customers' long distance service will be maintained pursuant to OSBI's existing tariffs.

RSL USA proposes to notify OSBI's customers of this information by providing them with a letter, a copy of which was appended to the LON.

RSA 374:30 requires a finding that the transfer of a utility's "franchise, works or system" is for the public good. RSL USA submits that by acquiring OSBI's customer base, the existing OSBI customers will benefit by the availability of more products and services. In addition, RSL USA points out that since OSBI has decided to cease operations, its customers are without a presubscribed telecommunications carrier. A continuation of service by the underlying carrier, RSL USA, would

enable these customers to continue to recover uninterrupted service.

Our Docket DE 90-002 introduced the element of choice to intraLATA toll customers. Competition in the toll market was further enhanced by Order No. 22,281, when the Commission established dialing parity for intraLATA toll customers by ordering intraLATA presubscription (ILP). The practice of building up a competitive subscriber base can help contribute to a vibrant competitive market. For this reason, transactions such as this can provide benefits for customers.

However, we must be mindful of the prohibitions against slamming. RSA 374:28-a prohibits a change in a customer's telecommunications carrier or provider without the customer's knowledge or consent. Thus, we find that it would not be in the public good to approve the transfer of a "customer base", as this would run afoul of the slamming statute. Further, to assign the successor carrier as the default customers without prior notice to the affected customers would deprive the customers of effective choice. It is imperative that customers have adequate advance notice that a carrier proposes to stop serving them, of their ability to choose another carrier, and of the identity of the carrier that will serve them if they do not make a choice by the end of the notice period.

In this case, RSL COM has evidently already begun to serve OSBI's customers as its own, as OSBI ceased operations in

December, 1998. As our discussion of this case makes clear, such a transfer, without advance notice and an opportunity to select a different carrier, violates the anti-slamming statute. However, given that (a) this is a case of first impression regarding the interplay between the anti-slamming statute and the emerging competitive market, and (b) OSBI customers are being served under the same tariffs, terms and conditions, and by the same carrier that provided their services when OSBI was carrier of record, no enforcement proceedings will be commenced, so long as notice is provided as required herein.

It should be noted that we cannot approve the transfer of a "customer base" in any event. Rather, we can only approve the transfer of a "franchise, works or system." RSA 374:30. The name under which the company does business, its accounts receivable, and other similar assets may be transferred with our approval. Id.

Accordingly, we will approve the transfer of OSBI's regulatory assets and other "franchise, works or system" assets *nunch pro tunc* on the condition that RSL USA provide OSBI's customers with written notice consistent with this order.

Based upon the foregoing, it is hereby

ORDERED, that the proposed transfer of the customer base of One Step Billing to RSL COM USA, is DENIED; and it is

FURTHER ORDERED, that the proposed transfer of the franchise, works and system of One Step Billing to RSL COM USA is GRANTED, subject to completion of the following conditions:

1) That OSBI inform its customers in writing, in a manner meeting the approval of the Consumer Affairs Department of the Commission, of the fact that it has ceased operations in New Hampshire, that its customers have been served by RSL COM USA, that they have the opportunity to choose another long distance carrier, that they have until a date not less than fourteen days after the date of the notice to choose another long distance carrier, and that should its customers not choose another such carrier, RSL USA COM will be the default carrier; and that

2) That before the notice period begins, RSL USA file tariff pages encompassing the services provided by OSBI, pursuant to which it will provide service to those former customers of OSBI who choose RSL USA as their intraLATA toll provider.

By order of the Public Utilities Commission of New

Hampshire this fourteenth day of June, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary