STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-297

August 9, 2001

RSL COM PRIMECALL, INC.
Request to Abandon Services

ORDER ON RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we reconsider and modify the Order that we entered in this case on June 5, 2001. In that Order, we denied in part the petition of RSL COM PrimeCall, Inc. to abandon service.

II. DISCUSSION

On April 30, 2001, RSL COM PrimeCall, Inc. (PrimeCall) filed a request to abandon service pursuant to the provisions of 35-A M.R.S.A. § 1104. In an Order issued on June 5, 2001, we granted PrimeCall's request, but denied its request to do so immediately, ruling that the termination of its authority would not be effective until one year had passed. PrimeCall's primary service was the offering of prepaid calling cards, and we found that

> PrimeCall has provided scant notice of its actions to the Commission. As a practical matter, a carrier cannot provide notice to pre-paid calling card purchasers. However, it is not reasonable for a carrier to stop honoring pre-paid calling cards well prior to the cards' expiration date, if there are expiration dates. PrimeCall has not provided any information about expiration dates of the cards, when it ceased selling cards or what it will do to reimburse purchasers of those cards who have unused minutes, particularly if they purchased cards recently. We do not find it is appropriate to abandon service in the absence of this information from PrimeCall. PrimeCall will remain as a regulated public utility for one year so that if our Consumer Assistance Division may address any complaints it may receive about PrimeCall not honoring pre-paid calling cards.

> PrimeCall may request reconsideration of this ruling if it provides us with information such as that discussed above that indicates either that no customer interests are in jeopardy or that those interests are reasonably protected.

In its Petition for Reconsideration, PrimeCall did not provide specific information about the expiration dates, if any, of its calling cards, or about possible reimbursement. Instead, PrimeCall stated that it had

> ceased marketing of all calling cards in the State of Maine in January 2001, some four months prior to its intended date for ceasing operations. Based on historical data, PrimeCall projected that few, if any, customers would have minutes of use left on any PrimeCall cards by the intended shut-down data of May 10, 2001. Moreover, because each PrimeCall calling card was subject to a monthly usage fee, all cards likely would have reached a zero balance by May 2001 even if the cards had not been used. For those reasons, PrimeCall submits that it was rational for PrimeCall to project that its cessation of marketing calling cards in January 2001 would leave few, if any, unused cards by May 10, 2001.

PrimeCall also asserted:

> As a secondary matter, PrimeCall reiterates that it has filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York. On May 9, 2001, the bankruptcy court issued an Order authorizing the rejection and termination of PrimeCall's obligation to provide calling card services, effective May 10, 2001. A copy of the bankruptcy court's Order is attached hereto as Exhibit 1.
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> The United States Supreme Court has held that a state law cannot alter the obligations of a bankruptcy debtor and its creditors as provided for by federal bankruptcy law. *See International Shoe Co. v. Pinkus,* 278 U.S. 261, 265 (1929). Thus, the Commission cannot rely on state law in denying PrimeCall's request to abandon service, since the bankruptcy court has already issued an Order authorizing PrimeCall's abandonment of service. Because the Order of the bankruptcy court supercedes (sic) all state laws, PrimeCall urges the Commission to reconsider its Order denying the PrimeCall request, and to authorize PrimeCall's abandonment of services, effective immediately.

The Bankruptcy Court Order, issued on May 9. 2001, states that "a recording was created on the toll-free line that services the calling cards notifying all customers attempting to use the cards that PrimeCall has requested to reject its obligations under the calling cards and to terminated the Calling Card Services as of May 10, 2001." The Bankruptcy Court found that "notice of the proposed rejection and termination has been provided to calling card customers by a recording on the Debtors' toll-free number used to service the calls."

Given that this matter has been addressed in the bankruptcy proceeding, we will grant PrimeCall's petition. We must trust that the actions taken by the United States Bankruptcy Court adequately protected the interests of the holders of prepaid calling cards issued by PrimeCall.

Accordingly, we

M O D I FY

Our Order of June 5, 2001, which granted RSL COM PrimeCall, Inc.'s request to abandon service effective on June 5, 2002, to grant its request to abandon service effective instead on the date of this Order.

Dated at Augusta, Maine, this 9th day of August, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.