

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: October 24, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) OFFICE OF THE GENERAL COUNSEL (W. KNIGHT) *WPK* *DL*

RE: DOCKET NO. 021015-TI - COMPLIANCE INVESTIGATION OF GLOBALINX CORPORATION FOR APPARENT VIOLATION OF RULE 25-24.470, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

AGENDA: 11/05/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\021015.RCM

CASE BACKGROUND

Globalinx Corporation (Globalinx), located in McLean, Virginia, is a wholly-owned subsidiary of Orion Technologies, Inc.

- August 28, 2000 - In Docket No. 000661-TI, the Commission issued Consummating Order PSC-00-1553-CO-TI making Order PSC-00-1390-PAA-TI effective and final in which the Commission approved the transfer of control of Special Accounts Billing Group, Inc. (SABG) from the current shareholder to Orion Technologies, Inc. through a merger of SABG with Globalinx. SABG was the holder of interexchange company (IXC) certificate No. 5778.
- February 6, 2001 - In Docket No. 001312-TI, the Commission issued Consummating Order PSC-01-0329-CO-TI making Order PSC-

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01-0068-PAA-TI effective and final in which IXC certificate No. 5778 (held by SABG) was cancelled for violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

- August 1, 2001 - Orion Technologies, Inc. issued a press release in which it announced that Globalinx completed the acquisition of erbia Network Inc. (erbia), and that Globalinx has consolidated its Alphretta, Georgia facilities into erbia's McLean, Virginia corporate offices. The text of that press release which is posted on Globalinx's website, www.globalinx.net, is included as Attachment A.
- January 4, 2002 - In Docket No. 011029-TI, the Commission issued Consummating Order PSC-02-0031-CO-TI making Order PSC-01-2405-PAA-TI effective and final in which IXC certificate No. 7042 (held by erbia) was cancelled for violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.
- March 22, 2002 - The Commission received a complaint (Request No. 444639T) from a Florida consumer regarding the taxes charged by Globalinx on her long distance bill.
- May 29, 2002 - Staff called Mr. Preston Riner, president of Globalinx, and spoke with him regarding the customer's complaint and the Commission's requirement for Globalinx to obtain an IXC certificate. The customer's issues were resolved and the complaint was subsequently closed.
- June 5, 2002 - Staff sent Mr. Riner a follow up letter to the phone conversation on May 29, 2002, and requested that Globalinx submit its application for an IXC certificate by June 21, 2002 (Attachment B).
- July 7, 2002 - The Commission received another complaint from a Florida consumer (Request No. 474617T) regarding the improper billing by Globalinx. The customer's bill indicates that Globalinx is his long distance provider.
- July 9, 2002 - Staff sent a certified letter via U.S. Postal Service to Globalinx. Staff requested that the company investigate the customer's complaint and submit an application for an IXC certificate by August 9, 2002 (Attachment C).

- July 19, 2002 - Staff received the U.S. Postal Service "green card" receipt indicating that Mr. Doug Crow signed for and received staff's certified letter on July 15, 2002 (Attachment D).
- September 3, 2002 - Staff received a phone call from Mr. Richard Gibbs of Globalinx in response to the customer complaint. Mr. Gibbs is the former president of erbia. Staff informed Mr. Gibbs that Commission rules require that Globalinx obtain an IXC certificate. Mr Gibbs indicated that the certification issue was forwarded to Mr. Pat Crocker at SABG in Kalamazoo, Michigan.
- September 4, 2002 - Staff received Globalinx's reply to the customer complaint (Request No. 474617T) via facsimile. The complaint was resolved and subsequently closed.
- October 2, 2002 - Staff opened this docket to address Globalinx's apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes. Further, staff's recommended penalty is consistent with penalties imposed upon other interexchange companies by the Commission in previous dockets for the same apparent rule violation. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$25,000 penalty on Globalinx Corporation for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should impose a \$25,000 penalty on Globalinx Corporation for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. Further, if Globalinx Corporation fails to timely protest the Commission's Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Public Convenience and Necessity.
(Buys, W. Knight)

STAFF ANALYSIS: Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states in pertinent part:

(1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. . . .

As outlined in the case background, Globalinx, through its parent company, Orion Technologies, Inc., acquired control of SABG in calendar year 2000, and apparently acquired erbia in calendar year 2001. The Commission cancelled SABG's IXC certificate in February, 2001, and subsequently cancelled erbia's IXC certificate in January, 2002.

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Further, in both complaints cited in the case background, the customers provided staff with copies of the bills they received from Globalinx. Both bills included a message that states, "Thank you for using Globalinx formally erbia Network as your telecommunications provider" (Attachment E). It appears that Globalinx is providing intrastate interexchange telecommunications services in Florida and has not obtained an IXC certificate from the Commission.

Staff informed both Mr. Preston Riner and Mr. Richard Gibbs of Globalinx about the Commission's Orders cancelling SABG's and erbia's certificates and the fact that Globalinx is apparently providing intrastate IXC services without Commission approval. Staff believes that Globalinx is aware of the requirement to obtain an IXC certificate and has been given a fair opportunity to submit its application to obtain an IXC certificate prior to the opening of this docket.

Staff also believes that Globalinx's apparent violation of Rule 25-24.470, Florida Administrative Code, is "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Globalinx's conduct at issue here, would meet the standard for a "willful violation."

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." *Barlow v. United States*, 32 U.S. 404, 411 (1833).

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Accordingly, staff recommends that the Commission should impose a \$25,000 penalty on Globalinx Corporation for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Office of the Comptroller. Further, if Globalinx Corporation fails to timely protest the Commission's Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Public Convenience and Necessity.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should then be closed administratively upon either receipt of the payment of the penalty, or upon referral of the penalty to the Office of the Comptroller for collection if the penalty is not paid within fourteen calendar days after issuance of the Consummating Order. **(W. Knight)**

STAFF ANALYSIS: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should then be closed administratively upon either receipt of the payment of the penalty, or upon referral of the penalty to the Office of the Comptroller for collection if the penalty is not paid within fourteen calendar days after issuance of the Consummating Order.

ORION TECHNOLOGIES COMPLETES THE ACQUISITION OF ERBIA NETWORK'S TELECOMMUNICATIONS BUSINESS

Orion Further Diversifies Product Offering and Increases Customer Base.

WASHINGTON, DC -- Orion Technologies, Inc. (OTC: ORTG) today announced that Orion and its wholly owned subsidiary, Globalinx Corporation, have completed the acquisition of erbia Network Inc.'s telecommunications business. By merging the management teams and resources of Globalinx and erbia, Globalinx expands its customer service capabilities and breadth of services offering to customers worldwide.

"This transaction is consistent with our strategy to expand Orion's national and worldwide network of telecommunications customers while continuously enhancing our offering of value-added bundled services," said A. Frans Heideman, President and CEO of Orion. "In erbia, we acquired a seasoned business and growing customer base to which we will offer the convenience of multiple products and services from one provider on one bill."

Founded in 1998, erbia Network provides long distance services to more than 25,000 small office/home office (SOHO), small-to-medium enterprises, and high-value residential customers nationwide. It also possesses a sizable agent base and a customer care call center in Margate, Florida.

"The synergistic value of this transaction is extremely compelling," said Preston Riner, President of Globalinx. "With Orion's subsidiaries and partners, Globalinx has multi-national customers and a facilities-based infrastructure while erbia brings an established and successful domestic business. This merger will enable Globalinx to offer more of the services our customers need today, with higher reliability and at competitive prices."

Globalinx has consolidated its Alpharetta, GA facilities into erbia's McLean, VA corporate offices and has expanded erbia's full-service Florida operations center. Globalinx will continue to operate and grow its New York gateway switch for domestic and international long distance services and will add enhanced network services such as its unified communications service, GlobalTrack, plus nearly twenty other telecom services for the residential, small business, and corporate markets. Globalinx is developing an international communications network using existing circuit-switched technology and leading-edge packet-switched technology. Soon, business customers and individuals will be able to purchase most of our services in any country and have access to those services worldwide. We will offer new competitive communications packages to our agents and specifically developed packages for our SOHO customers. For multi-national corporate customers, Orion will offer telecommunications services that meet their demanding needs for business, including voice, data, and video via packet-switched networks that utilize fiber and satellite technology.

"I am pleased to see how well our merger with Orion and Globalinx has developed," said Arne Dunhem, founding Chairman of erbia. "I am confident that Globalinx will add tremendous value to erbia customers given its broad product offerings and recognition."

Last week, Orion announced an agreement with a major worldwide communications carrier that enabled Orion and Globalinx to assume the carrier's contract with erbia and to acquire erbia's operations.

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

STATE OF FLORIDA



DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

June 5, 2002

CERTIFIED

Mr. Preston Riner
Globalinx Corporation
1483 Chain Bridge Road, Suite 300
McLean, VA 22101-5703

Dear Mr. Riner:

This letter is to follow up on our telephone conversation of May 29, 2002. I contacted you concerning two things – a consumer complaint and Globalinx Corporation's (Globalinx) need for a Certificate of Public Convenience and Necessity to provide Interexchange Company (IXC) telecommunications services in Florida. As you indicated in our conversation, Mr. Richard Gibbs of Globalinx has been working on resolving the consumer's complaint.

It is my understanding from the welcome letter that Globalinx sent to Mr. de Vries that Globalinx was formerly known as erbia Network, Inc. (erbia). erbia previously held a certificate to provide IXC telecommunications services in Florida. However, on January 4, 2002, erbia's certificate was canceled for failure to pay its annual Regulatory Assessment Fees (RAF). You indicated that Globalinx was unaware that erbia's certificate was not active and stated that Globalinx would like to have erbia's certificate reinstated, then request the Commission's approval for a transfer of control and name change on the certificate as it should have done prior to making the change. Since the certificate and the associated tariff have been canceled for several months, it cannot be reinstated unless a fact of law has been overlooked.

Globalinx may apply for certification by submitting the request in writing with a completed IXC application form to the Division of the Commission Clerk and Administrative Services. A copy of the IXC application and instructions can be obtained from the Commission's website, www.psc.state.fl.us.

Please be advised that, in similar cases, the Commission has not granted a new certificate unless the acquiring company resolves the issues in the docket that resulted in the cancellation of the previous certificate holder's certificate. Commission staff will review the company's application, make a determination as to whether granting the company a new certificate will be in the public interest, and submit a recommendation to the Commission consistent with its findings. We cannot recommend approval of the company's application until the Commission has received all Regulatory Assessment Fees, penalties, interest, and fines attributable to erbia. If Globalinx

Mr. Preston Riner
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continues to provide telecommunications services in Florida without obtaining a certificate, it will be subject to further penalties. Please respond with the company's application for a certificate by June 21, 2002.

For your convenience, I have attached a summary of erbia's RAF payment history. It shows that erbia owes Penalty and Interest (P&I) for 1999, and RAFs with P&I for 2000, 2001 and 2002. Also attached are the RAF forms for each of these years. Docket No. 011029-TI, Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate No. 7042 issued to erbia Network, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees: Telecommunications Companies, only addressed the RAFs and P&I due for 1999 and 2000 because, at the time the recommendation was presented to the Commission, the 2001 RAF was not yet due. However, since erbia's certificate was active in 2001 and 2002, RAFs and P&I are due for those years as well.

If you have any further questions, please do not hesitate to contact me at (850) 413-6952, or email mwatts@psc.state.fl.us.

Sincerely,



Melinda Watts
Bureau of Service Quality

Enclosures (5)

1. RAF history
2. 1999 P&I due
3. 2000 RAF form
4. 2001 RAF form
5. 2002 RAF form

cc: Division of Competitive Markets & Enforcement (Gilchrist)

Ref: CATS 444639T

STATE OF FLORIDA

COMMISSIONERS:
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RUDOLPH "RUDY" BRADLEY



DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

July 9, 2002

CERTIFIED

Mr. Preston Riner, President
Globalinx Corporation
1133 21st Street, 8th Floor
Washington, DC 20036

Re: Consumer complaint 474617T and certification requirement.

Dear Mr. Riner:

We received a complaint from Mr. Stan Helm regarding the unauthorized switching of his long distance provider and the subsequent billing by your company for fees and taxes (Enclosure). Please investigate Mr. Helm's complaint and provide me with a detailed written report that addresses the issues in Mr. Helm's correspondence and confirms that your company has contacted Mr. Helm and provided him with a resolution to his complaint. In your report, please include proof (either a letter of agency or third party verification recording) that Mr. Helm authorized Globalinx to be his long distance provider. Please provide me with your written reply by **July 29, 2002**.

In addition, it appears that Globalinx is providing intrastate telephone service in Florida, and thus, requires a certificate from the Florida Public Service Commission. According to our records, Globalinx has not obtained a certificate under that name. Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. . . .

To rectify this matter, Globalinx should submit an application for a certificate to the Division of the Commission Clerk and Administrative Services no later than **August 9, 2002**. You can obtain an application form and all the pertinent information, including a copy of the Commission's rules, from our website, www.psc.state.fl.us. Please note that registering with the Florida Department of State, Division of Corporations is a prerequisite. Should you have any questions, please call me at (850) 413-6536.

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Attachment C

Mr. Preston Riner
Page 2
July 9, 2002

Sincerely,

A handwritten signature in black ink that reads "Dale R Buys". The signature is written in a cursive style with a large, stylized "D" and "B".

Dale R. Buys
Regulatory Analyst
Bureau of Service Quality

DRB
Enclosure

cc: Jackie Gilchrist

Florida Department of Revenue

Mr. A. Frans Heideman, CEO
Orion Technologies, Inc.
1133 21st Street, 8th Floor
Washington, DC 20036

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

2002 JUL 19 AM 11:03
DIVISION OF
COMPETITIVE SERVICES

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Attachment E

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TO: Stanley Helm
368 W. Claridge St.
368 W. Claridge St.
Satellite Beach FL 32937

JUN 24 2002

CLERK OF COURT

Thank you for using Globalinx formerly erbia Network as your telecommunications provider.

We are changing to better serve you!
New invoice format and new services to save you time and money!

Whether you run a growing business or a growing household, Globalinx has an answer to make your life easier. Globalinx provides a suite of services that help you stay in global touch, whether with a client in Europe or a kid that is just in outer space.

As a worldwide service provider leading-edge communications solutions Globalinx can immediately increase your productivity and position you at the top of your game.