

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation
of Globalinx Corporation for
apparent violation of Rule 25-
24.470, F.A.C., Certificate of
Public Convenience and Necessity
Required.

DOCKET NO. 021015-TI
ORDER NO. PSC-02-1620-PAA-TI
ISSUED: November 25, 2002

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING PENALTY ON GLOBALINX CORPORATION
FOR APPARENT VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE
CODE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

Globalinx Corporation (Globalinx), located in McLean, Virginia, is a wholly-owned subsidiary of Orion Technologies, Inc. On August 28, 2000, in Docket No. 000661-TI, we issued Consummating Order PSC-00-1553-CO-TI making Order PSC-00-1390-PAA-TI effective and final, in which we 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.

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SABG was the holder of interexchange company (IXC) certificate No. 5778.

On February 6, 2001, in Docket No. 001312-TI, we issued Consummating Order PSC-01-0329-CO-TI making Order PSC-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.

Thereafter, on 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 Alpharetta, Georgia facilities into erbia's McLean, Virginia corporate offices.

On January 4, 2002, in Docket No. 011029-TI, we 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.

On March 22, 2002, we received a complaint from a Florida consumer regarding the taxes charged by Globalinx on her long distance bill. Our staff called Mr. Preston Riner, president of Globalinx, on May 29, 2002, and spoke with him regarding the customer's complaint and our requirement for Globalinx to obtain an IXC certificate. The customer's issues were resolved and the complaint was subsequently closed. On June 5, 2002, our 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.

On July 7, 2002, we received another complaint from a Florida consumer regarding the improper billing by Globalinx. The customer's bill indicates that Globalinx is his long distance provider. We then sent a certified letter via U.S. Postal Service to Globalinx, on July 9, 2002. Our staff requested that the company investigate the customer's complaint and submit an application for an IXC certificate by August 9, 2002. On July 19, 2002, our staff received the U.S. Postal Service "green card"

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receipt indicating that Mr. Doug Crow signed for and received staff's certified letter on July 15, 2002.

Thereafter, on September 3, 2002, our 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. Mr. Gibbs was informed that our 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. On September 4, 2002, our staff received Globalinx's reply to the customer complaint via facsimile. The complaint was resolved and subsequently closed.

On October 2, 2002 we opened this docket to address Globalinx's apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes. Further, the penalty is consistent with penalties imposed upon other interexchange companies by us in previous dockets for the same apparent rule violation.

DISCUSSION

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. We cancelled SABG's IXC certificate in February, 2001,

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and subsequently cancelled erbia's IXC certificate in January, 2002.

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

Both Mr. Preston Riner and Mr. Richard Gibbs of Globalinx were informed about our Orders cancelling SABG's and erbia's certificates and the fact that Globalinx is apparently providing intrastate IXC services without our approval. 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.

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, we are 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 of our lawful rules or orders, or any provision of Chapter 364. Utilities are charged with knowledge of our rules and the 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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DECISION

Accordingly, we hereby 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 shall 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 our 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 this Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company shall 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.

Based upon the foregoing it is

ORDERED by the Florida Public Service Commission that a penalty of \$25,000 is imposed upon Globalinx Corporation for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It is further

ORDERED that the penalty shall 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. It is further

ORDERED that if this 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. It is further

ORDERED that if Globalinx Corporation fails to timely protest this Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company shall immediately cease and desist providing interexchange telecommunications services in

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Florida upon issuance of the Consummating Order, until the company obtains an IXC Certificate of Public Convenience and Necessity. It is further

ORDERED that if Globalinx Corporation fails to timely protest this Order, this docket shall 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.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of November, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 16, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.