

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Tri-M Communications, Inc. d/b/a)	
TMC Communications and)	Case No. XM-2011-0027
5LINX Enterprises, Inc. for)	
Approval of a Stock Purchase Agreement)	

APPLICATION

COME NOW Tri-M Communications, Inc. d/b/a TMC Communications ("TMC"), Michelle Cutlip, an individual ("MC"), Michael E. Pfau, Trustee of the Melissa Marsch-Baker Trust U/D/T ("Trust") (Trust, together with MC, are hereinafter referred to as "Stockholders") and 5LINX Enterprises, Inc. ("5LINX"), collectively "Applicants", pursuant to Section 392.300.1, RSMo, 4 CSR 240-2.060 and 4 CSR 240-3.520, by and through undersigned counsel, and hereby file this Application respectfully requesting any necessary authority from this Commission for the transfer of control of the ownership of TMC from the Stockholders to 5LINX. Grant of the requested authority will permit consummation of a transaction whereby 5LINX will acquire all of Stockholders' stock in TMC, pursuant to a Stock Purchase Agreement between the parties, a copy of which is attached hereto as **Exhibit "A"**.

This filing does not involve any transfer of customers. Instead, the Application seeks approval of the change in ultimate control of TMC by virtue of a stock transaction. TMC will continue to provide competitive telecommunications services to its customers in the State of Missouri using substantially the same technical and managerial personnel following consummation of the proposed transaction.

In support of this Application, Applicants provide the following information:

I. THE APPLICANTS

A. Tri-M Communications, Inc. d/b/a TMC Communications ("TMC"):

TMC is a California corporation headquartered at 820 State Street, 5th Floor, Santa Barbara, California 93101. The nature of TMC's business is the provision of telecommunications services. TMC is authorized to provide long distance, local, voice over IP and data telecommunications services in 48 states.^{1/} TMC is a certificated provider of interexchange services in the State of Missouri.^{2/} A copy of a certificate of good standing for TMC from the Missouri Secretary of State, as required by 4 CSR 240-2.060(1)(C), is a matter of record with the Commission in Case No. XA-2006-0410. Applicants respectfully request that the Commission take official notice of that certificate and incorporate it herein by reference pursuant to 4 CSR 240-2.060(1)(G).

B. The Stockholders

1. Michelle Cutlip, an individual ("MC" or "Stockholder"):

MC is an individual whose mailing address is 14 Stafford Road, Chatham, New Jersey 07928. MC has no certificates of service authority.

2. Michael E. Pfau, Trustee of the Melissa Marsch-Baker Trust U/D/T ("Trust" or "Stockholder").

Trust is a juridical person whose business address is 1421 State Street, Suite B., Santa Barbara, California 93101. Trust has no certificates of service authority.

1. TMC provides long distance services in 48 states and basic local services in 5 states.
2. TMC received its authority to provide competitive long distance telecommunications

C. 5LINX Enterprises, Inc. ("5LINX").

5LINX is a Delaware corporation headquartered at 275 Kenneth Drive, Suite 100, Rochester, New York 14623. 5LINX has no certificates of service authority.^{3/}

II. DESIGNATED CONTACTS

Correspondence or communications pertaining to this Application should be directed to:

William Steinmeier
William D. Steinmeier, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
Telephone: (573) 859-8672
Facsimile: (573) 636-2305
Email: wds@wdspsc.com

with copies to:

Leon Nowalsky, Esq.
Nowalsky, Bronston & Gothard
1420 Veterans Blvd.
Metairie, Louisiana (LA) 70005
Telephone: (504) 832-1984
Facsimile: (504) 831-0892
lnowalsky@nbglaw.com

and

Michael E. Pfau, Secretary
Tri-M Communications, Inc.
d/b/a TMC Communications
820 State Street, 5th Floor
Santa Barbara, CA 93101

services in Missouri pursuant to Case No. XA-2006-0410, effective November 25, 2006.

3. 5LINX, through its wholly-owned subsidiary, GLOBALINX, provides VOIP services throughout the country.

The designated contact for questions concerning this Application is Mr. Nowalsky, at the contact information provided above.

III. DESCRIPTION OF THE TRANSACTION

Grant of the requested authority will permit consummation of a transaction whereby 5LINX will acquire 100% of the stock in TMC. Each customer of TMC will continue to be serviced by TMC pursuant to TMC's current certificate of service authority and tariff.

The proposed transaction will be seamless and transparent to TMC's customers. TMC's name, rates and service offerings, as reflected in its tariff, will not immediately change as a result of the proposed transaction.^{4/} There will be no interruption of service. The physical assets, property, and personnel of TMC will remain substantially the same after the transfer. The customer service numbers for billing and service problems, liaison with Commission Staff and tariffed rates will remain the same.

The only effect of the proposed transaction will be the change in the ownership and control of TMC. Simplified charts showing the current ownership structure and the new ownership structure are attached hereto as **Exhibits "B" and "C"**, respectively.

IV. PUBLIC INTEREST ANALYSIS

Grant of the instant Application will serve the public interest, convenience, and necessity. Consummation of the proposed transaction will result in net benefits to TMC's customers by strengthening the overall financial status of TMC. The transaction will enhance TMC's ability to offer a broader range of innovative products and services to customers.

4. In the future, TMC contemplates changing its name to GLOBALINX. Prior to making any

The proposed transfer will be seamless and transparent to TMC's customers. The Commission's ability and authority to regulate TMC and to ensure that it satisfies all obligations, commitments and regulatory requirements established by the laws of this State and the Commission will remain unchanged. For these reasons, approval of the Joint Application will not be detrimental to the public interest but will, in fact, promote the public interest.

V. RESPONSES TO 4 CSR 240-3.520

Applicants have complied with the requirements of the Commission's rules at 4 CSR 240-3.520 (2) as follows:

- (A) Brief Description of the Property Involved: All of the stock of TMC.
- (B) Contract or Agreement of Sale: Copy attached as **Exhibit A**.
- (C) Verification of Authority of Person Signing: Requirement not applicable per 4 CSR 240-3.520(1).
- (D) Reasons not Detrimental to the Public Interest: Please see Section IV., above.
- (E) Balance Sheet and Income Statement: Requirement not applicable per 4 CSR 240-3.520(1).
- (F) Tax Impact: None. The proposed transaction will have no impact on the tax revenues of any political subdivision of the state.
- (G) Customer Notice: Since only the ownership of TMC stock will change as a result of this transaction, and not the service or rates of TMC to its Missouri customers, no

such change, a separate filing shall be made with this Commission.

notice to TMC customers is planned. No TMC customers will be transferred to a different certificated telecommunications carrier as a result of the instant transaction.

VI. ADDITIONAL INFORMATION REQUIRED BY RULES

Pursuant to the requirements of 4 CSR 240-2.060(K), Applicants state that they do not have any pending action or unsatisfied final judgments or decisions against them in any state or federal agency or court which involve customer service or rates, which action, judgment or decision occurred within the last three (3) years.

Pursuant to the requirements of 4 CSR 240-2.060(L), Applicants state that, to the best of their knowledge, they have no annual report or assessment fees that are overdue.

VII. JURISDICTIONAL ISSUE

Commission jurisdiction of this matter would be under Section 392.300, RSMo. For purposes of Section 392.300.1, RSMo, the Missouri operating entity (TMC) affected by this transaction would retain its own assets and would merely be owned by different shareholders. Thus, there will be no conveyance of assets or facilities, but merely a transfer of stock ownership of TMC. As an interexchange carrier, TMC has no franchise within the meaning of 392.300.1. As a reseller of interexchange services, TMC has no lines, facilities or system within the meaning of 392.300.1. In addition, since the transaction will not affect the corporate name, or the rates, terms or conditions, under which TMC provides service in Missouri, the transfer of control does not affect the operations of the certificated entity. *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917).

For purposes of Section 392.300.2, RSMo, TMC is not organized or existing under or by virtue of the laws of Missouri, but rather, under the laws of California. In addition, TMC was granted a waiver of Section 392.300.2 in its *Order Approving Interexchange*

Certificate of Service Authority and Order Approving Tariff (issued November 15, 2006, effective November 25, 2006.)

If the Missouri Public Service Commission concludes, as a matter of law, that this transaction is not within the jurisdiction of the Commission, then Applicants request that the Commission dismiss this Application for lack of jurisdiction.

VIII.CONCLUSION

WHEREFORE, for the reasons stated herein, Applicants respectfully request Commission approval of this Application; or, in the alternative, dismissal of this Application for lack of jurisdiction.

Respectfully submitted,

/s/ William D. Steinmeier

William D. Steinmeier, MoBar #25689
WILLIAM D. STEINMEIER, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City, Missouri 65110-4595
Phone: 573-659-8672
Fax: 573-636-2305
Email: wds@wdspsc.com

Counsel for Tri-M Communications, Inc. d/b/a
TMC Communications, Stockholders and 5LINX
Enterprises, Inc.

Certificate of Service

I hereby certify that a copy of this document has been electronically transmitted to the Office of the General Counsel of the Missouri Public Service Commission, and to the Office of Public Counsel, on this 29th day of July 2010.

/s/ William D. Steinmeier

VERIFICATIONS

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

VERIFICATION

I, Michael Pfau, am the Secretary of Tri-M Communications, Inc. d/b/a TMC Communications, and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: Michael E. Pfau
Name: **Michael Pfau**
Title: **Secretary**

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 13th day of July, 2010.

Mary Carralejo
Notary Public


My commission expires: 9/16/2012



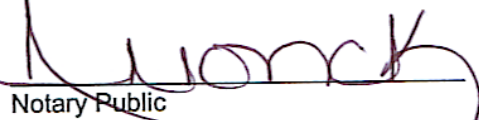
STATE OF NY
COUNTY OF Monroe

VERIFICATION

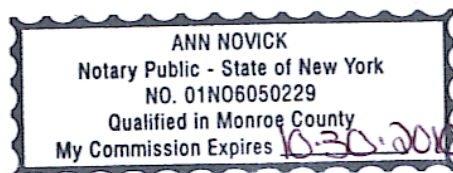
I, Craig Jerabeck, am the President and CEO of 5LINX Enterprises, Inc., and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: 
Name: Craig Jerabeck
Title: President & CEO

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 13 day of July, 2010.


Notary Public

My commission expires: 10-30-2010



TMC – 5LINX

EXHIBIT A

Stock Purchase Agreement

(Attached as separate pdf document.)

EXHIBIT B

TRI-M Communications, Inc. d/b/a TMC Communications

5LINX Enterprises, Inc.

Transfer of Control

Pre-Transaction Flow Chart

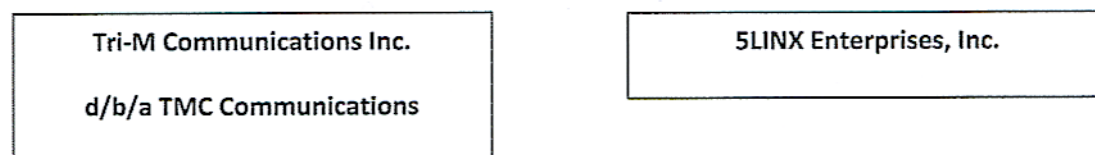


EXHIBIT C

TRI-M Communications, Inc. d/b/a TMC Communications

and

5LINX Enterprises, Inc.

Transfer of Control

Post-Transaction Flow Chart

