

State of Florida



Public Service Commission

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

-M-E-M-O-R-A-N-D-U-M-

DATE: March 4, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Earnhart, Gurry) *RCC*
Office of the General Counsel (Brooks) *JB* *AT* *2/28/10*

RE: Docket No. 090444-TX – Application for certificate to provide competitive local exchange telecommunications service by Crystal Link Communications, Inc.

AGENDA: 03/16/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RAD\WP\090444.RCM.DOC

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Case Background

On September 10, 2009, Crystal Link Communications, Inc. (Crystal Link) filed an application (Form PSC/CMP 8 (1/06)) seeking Commission authority to provide competitive local exchange telecommunications services (CLEC) within Florida. After receiving Crystal Link's application, staff reviewed the application. When completing a CLEC application the company must:

- identify the persons responsible for the application and on-going company operations;
- provide contact information (address, phone number, etc.);
- provide proof of active registration with the Florida Secretary of State;

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- complete a series of questions about the company, officers, directors, and stockholders; and
- provide proof that it has the managerial, technical, and financial capability to operate as a CLEC in Florida.

Crystal Link's application identified Mr. Ricardo Cruz as liaison to the Commission regarding the application and for ongoing operations of the company. Staff verified Crystal Link's corporate registration, reviewed the managerial, technical, and financial information, and checked the Commission's databases for historical information about the company, officers, and directors. The corporate registration filed with the Secretary of State identified Crystal Link's officers as Mr. Richard V. Caceres, President and Mr. Ricardo Cruz, Secretary. The Commission's records indicate that Mr. Cruz is associated with three telecommunications companies whose registration and or certificate was cancelled by the Commission for failure to pay regulatory assessment fees (RAF). The Commission's records did not indicate that Mr. Caceres was associated with any telecommunications companies that were registered with or certificated by the Commission.

Mr. Cruz is listed in the Master Commission Directory and with the Secretary of State as the President of International Telnet, Inc., Transglobal Communications Enterprises, Inc., and Crystal Link Communications, Inc. International Telnet, Inc., Transglobal Communications Enterprise, Inc., and Crystal Link Communications, Inc. were all registered with the Commission as interexchange telecommunications companies (IXCs) (IXC Registration Nos. TI377, TI310, and TJ960 respectively). International Telnet, Inc. was also a certificated CLEC (CLEC Certificate No. 8378).

In Docket No. 060466-TI, In Re: Compliance Investigation of IXC Registration Holders for apparent first-time violation of Section 364.336, Florida Statutes, by Order No. PSC-06-0615-PAA-TI, issued July 20, 2006, the Commission cancelled International Telnet, Inc., Transglobal Communications Enterprise, Inc., and Crystal Link Communications, Inc.'s IXC tariffs and registrations. The Commission furthered ordered each of the companies to pay penalties and collection cost, totaling \$500, any past due RAFs, and statutory late payment charges. The Order became final and effective on August 15, 2006, upon issuance of Consummating Order No. PSC-06-0701-CO-TI.

In Docket No. 060642-TX, In Re: Compliance investigation of CLEC certificate holders for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, by Order No. PSC-06-0611-PAA-TX, issued July 20, 2006, International Telnet, Inc.'s CLEC certificate was cancelled by the Commission and the company was ordered to pay penalties and collection cost, totaling \$500, any past due RAFs, and statutory late payment charges. The Order became final and effective on August 15, 2006, upon issuance of Consummating Order No. PSC-06-0705-CO-TX.

Part 16.(e) of the CLEC application requires the company to list the states in which the company has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved. Crystal Link's response to Part 16.(e) was "None" which implies that the company has not had any penalties imposed against it for violations of

telecommunications statutes in any state. However, a penalty was imposed upon the company in the State of Florida for a violation of telecommunications statutes by this Commission.

Part 17.(c) of the CLEC application reads as follows:

Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been an officer, director, partner or stockholder in any other Florida certificated or registered telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

Crystal Link's response to Part 17.(c) of the CLEC application was "None." Crystal Link failed to disclose Mr. Cruz's association with International Telnet, Inc., Transglobal Communications Enterprise, Inc., and Crystal Link Communications, Inc. on its CLEC application. Based upon Crystal Link's responses to Part 16.(e) and Part 17.(c) on its CLEC application, it appears that Crystal Link has failed to accurately respond to parts of the CLEC application.

In addition, on January 28, 2010, staff received a letter from BellSouth Communications, Inc. d/b/a AT&T Florida and AT&T Communications of the Southern States, LLC (collectively AT&T). Staff also received a letter from Sprint Communications Company, Limited Partnership d/b/a Sprint (Sprint) on February 26, 2010. The letters from both companies are included in Attachment A.

While neither AT&T nor Sprint are parties in this docket, both companies expressed concern regarding Crystal Link's CLEC application. AT&T stated that it was concerned that certain responses included in Crystal Link's application, while not false, may not accurately reflect facts that are material to the Commission's consideration of the application for certification. Specifically, Crystal Link failed to identify Mr. Cruz when asked if any of its officers, directors, or ten largest stockholders were previously denied certification or had such certification revoked. Sprint expressed similar concerns and both companies urged the Commission to thoroughly examine Crystal Link's CLEC application.

Additionally, AT&T and Sprint also alleged in their letters to the Commission that one of the companies previously operated by Mr. Cruz, whose certificate was revoked, also engaged in questionable business practices known as "churning." Churning occurs when a CLEC purchases lines from an incumbent local exchange carrier and allows its customers to make dial around toll calls then disconnects the lines to avoid paying the charges.

Accordingly, staff believes the following recommendations are appropriate. The Commission has jurisdiction over these matters pursuant to Sections 364.02, and 364.337, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission deny Crystal Link Communications' application for authority to provide competitive local exchange telecommunications services within Florida?

Recommendation: Yes, the Commission should deny Crystal Link Communications' application for authority to provide competitive local exchange telecommunications services within Florida. (Curry, Earnhart, Brooks)

Staff Analysis: Section 364.337(1), Florida Statutes, provides in part that the Commission shall grant a certificate of authority to provide competitive local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

As stated in the Case Background, Crystal Link has failed to accurately respond to Part 16.(e) and Part 17.(c) of the CLEC application. Staff notes that it is imperative that each company respond accurately when answering the questions on the CLEC application because staff routinely uses the information provided to assist in evaluating a company's managerial capability. After reviewing Crystal Link's CLEC application staff determined that one of Crystal Link's current officers was associated with three other telecommunications companies who were subject to compliance investigations by the Commission. Crystal Link's current Secretary, Mr. Cruz, served as President for three separate companies whose certificates and or registrations were cancelled by the Commission for failing to pay regulatory assessment fees. However, Crystal Link failed to disclose that information on the CLEC application.

Each company that Mr. Cruz operated was notified and aware of its financial responsibility as a telecommunications company to pay regulatory assessment fees. When each failed to pay those fees and became subject to a compliance investigation, the companies were again notified. As a managing officer of a company, it is the officer's managerial responsibility to make sure that the company operates smoothly and is in compliance with the rules and statutes governing the entity. It is also management's responsibility to respond to the Commission when contacted. However, under Mr. Cruz's management, each of the companies operated by him failed to comply with the Florida Statutes and the Commission's rules. In addition, neither the president of each of the companies nor the other presiding officers responded to the Commission when contacted or paid the companies' RAFs. As a result, each companies' registration or certificate was revoked by the Commission.

In similar dockets, the Commission has denied a company authorization to provide competitive local exchange services in Florida. In Docket No. 070172-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by Premier Telecom-VoIP, Incorporated, the Commission denied Premier Telecom-VoIP, Incorporated's application to provide competitive local exchange telecommunications services for lack of managerial capability and for having a history of mismanagement.

Staff believes that Crystal Link lacks the appropriate managerial capability and apparently lacks financial resources (unpaid RAFs), as required by Section 364.337(1), Florida Statutes, to provide CLEC services. Therefore, based on the lack of managerial capability that

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has been displayed in the past by companies that Crystal Link's current Secretary operated and Crystal Link's inability to accurately complete the CLEC application, staff recommends the Commission deny Crystal Link Communications' application for authority to provide competitive local exchange telecommunications services within Florida.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company's authority to provide CLEC services is denied and there is no protest, this docket shall be closed upon issuance of the Consummating Order. **(Brooks)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.



Tracy Hatch
AT&T Legal
General Attorney

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Suite 400
150 S. Monroe Street
Tallahassee, FL 32301
850-425-6360

January 27, 2010

Mr. Ray Kennedy
Ms. Toni Earnhardt
Division of Regulatory Analysis
Florida Public Service Commission
2540 Shumarde Oak Blvd.
Tallahassee, FL 32399

Re: Docket No. 090444-TX Application for certificate to provide competitive local exchange telecommunications service by Crystal Link Communications, Inc.

Dear Mr. Kennedy
Ms. Earnhardt:

This letter is to share some concerns that BellSouth Communications, Inc. d/b/a AT&T Florida and AT&T Communications of the Southern States, LLC (collectively "AT&T") have concerning the application of Crystal Link Communications, Inc. ("Crystal Link") for a certificate of public convenience and necessity. In particular, AT&T is troubled that certain of the responses included in Crystal Link's application, while not false, may not accurately reflect facts that are material to the Commission's consideration of the application for certification. As a result, AT&T believes that it is imperative that Staff thoroughly examine Crystal Link's application, including the status of previously de-certified carriers operated by Crystal Link's president, Ricardo Cruz before making any recommendation to the Commission.

A review of publicly available information shows that Mr. Cruz previously operated International Telnet (Company Code TX731), a competitive local carrier ("CLEC") certificated in Florida.¹ The Commission revoked International Telnet's certification for violations of the Commission's Rules and Statutes. See Order No. PSC-06-611-PAA-TX, issued in Docket No. 060462-TX. Additionally, Mr.

¹ As president of International Telnet, Mr. Cruz executed an Interconnection Agreement between the CLEC and AT&T. In 2008, services provided by AT&T to International Telnet were disconnected as the result of the company's breach of the ICA for failure to maintain its certification.

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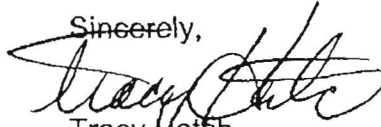
Cruz was the president of two interexchange carriers, International Telnet, Inc. (Company Code TI377) and Crystal Link Communications, Inc. (Company Code TJ960). The Commission revoked each of these certificates for violation of the Commission Rules and Statutes. See Order No. PSC 06-615 PAA TX, issued in Docket No. 060466-TI.

In response to Question 17(b) on its current application, Crystal Link failed to identify Mr. Cruz when asked if any of its officers, directors, or ten largest stockholders have previously been denied certification or had such certification revoked. This information suggests that Crystal Link's responses to Questions 16(a) 16(e) and 17(b) were designed to mislead the Commission.

Additionally, and perhaps most significantly, AT&T has information that indicates that prior to de-certification, International Telnet engaged in fraudulent business practices, including a scheme designed to avoid the payment of toll charges for both domestic and international long distance provided by AT&T and other IXCs, by improperly 'churning'² local telephone numbers purchased from AT&T under the terms of the parties' ICA..

Based on this information, AT&T requests that the Staff carefully review Crystal Link's application and the prior practices of Mr. Cruz and the carriers with which he was associated. AT&T believes such a review will confirm AT&T's concerns regarding Crystal Link's suitability for CLEC certification. If you have any questions, please do not hesitate to contact me at (850) 425-6360.

Sincerely,



Tracy Hatch

² 'Churning' refers to the practice of purchasing wholesale local service pursuant to an ICA, allowing end users to originate large volumes of long distance calls using dial around (1010XXX) codes, and then changing or disconnecting the customer's telephone numbers or disconnecting the local service prior to the IXC having the opportunity to bill and collect for the long distance services.



Douglas C. Nelson
Counsel, State Regulatory Affairs

Sprint Nextel
233 Peachtree St., N.E., Suite 2200
Atlanta, GA 30303

February 26, 2010

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket 090444; Application for certificate to provide competitive local exchange telecommunications service by Crystal Link Communications, Inc.

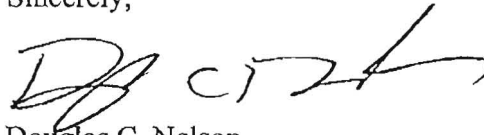
Dear Ms. Earnhardt:

Sprint Communications Company, Limited Partnership d/b/a Sprint ("Sprint"), a certificated interexchange carrier operating in Florida (Company Code TI793), shares the concerns raised by AT&T in its January 27, 2010 letter concerning the above-captioned application for certificate to provide competitive local exchange telecommunications service filed by Crystal Link Communications, Inc. ("Crystal Link"). Crystal Link's application should be thoroughly examined, particularly with regard to ensuring disclosure and consideration of any prior activities undertaken by its principals to engage in "churning" operations through entities such as International Telnet that are no longer certificated in Florida.

Generally, such "churning" operations involve competitive local exchange carriers ("CLECs") engaging in suspect business practices that prevent interexchange carriers from collecting valid dial-around calling charges. In one variation of "churning" the CLEC procures a bank of local lines from the incumbent local exchange carrier on a wholesale basis and permits its "customers" to make dial-around toll calls, particularly expensive international calls, for a fee. Then the CLEC disconnects the lines or orders new telephone numbers so the dial-around call charges cannot be billed to the CLEC or collected upon. By switching local telephone numbers, local lines and locations and using different dial around codes, the CLEC often can continue the practice over an extended period.

Thank you for your attention to this matter and please to not hesitate to contact me with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. C. Nelson", written in a cursive style.

Douglas C. Nelson