

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
ACQUISITION OF GLOBENET)
COMMUNICATIONS GROUP LIMITED BY)
360NETWORKS INC.)
)
Application for Transfer of Control of) File No. ITC-T/C-20000328-00186
Submarine Cable Landing Licenses) File No. SCL-T/C-20000328-00010
)
Application for Transfer of Control of)
International Section 214 Authority)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 19, 2000

Released: June 20, 2000

By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we grant the application of 360networks inc. ("360networks")¹ and
GlobeNet Communications Group Limited ("GlobeNet" and together "Applicants") seeking authority to
transfer control of the international Section 214 authorization held by TeleBermuda International Limited
("TeleBermuda"), a subsidiary of GlobeNet, as well as interests in certain submarine cable landing licenses
held by subsidiaries of GlobeNet to 360networks, in connection with the proposed acquisition of GlobeNet
by 360networks.

II. Background

2. 360networks, a Canadian corporation headquartered in Vancouver, British Columbia, is
an indirect subsidiary of Leducor Inc., a privately-held Canadian corporation with interests in the
construction and communications industries. Through its subsidiaries, 360networks offers fiber optic
capacity to communications carriers, Internet service providers and other large end-users. GlobeNet, a
Bermudian corporation headquartered in Hamilton, Bermuda, is an independent developer of fiber-optic
cable facilities.

3. On March 11, 2000, 360networks and GlobeNet entered into an agreement whereby
360networks would acquire GlobeNet through the exchange of shares of 360networks for shares of

¹ 360networks was formerly known as Worldwide Fiber Inc.

GlobeNet, pending shareholder and governmental approvals. After the transaction is completed, GlobeNet will become a wholly-owned, direct subsidiary of 360networks. Through the acquisition of GlobeNet, 360networks will acquire control of GlobeNet's subsidiaries, including TeleBermuda, which currently holds an international Section 214 authorization to provide global facilities-based and resale service,² controls an interest in the TAT-14 cable,³ and operates the BUS-1 cable.⁴ Furthermore, GlobeNet, through its subsidiary, Atlantica USA LLC, is licensed to land and operate the Atlantica-1 cable,⁵ which is currently under construction and, when complete, will connect the United States, Venezuela, Brazil and Bermuda.

III. Discussion

4. On March 28, 2000, Applicants submitted the above-captioned Applications ("Applications") requesting authority to transfer control of the international Section 214 authorization held by TeleBermuda and various cable landing licenses held by GlobeNet's subsidiaries for the BUS-1, Atlantica-1, and TAT-14 submarine cables to 360networks.⁶ We placed the Applications on public notice on April 7, 2000.⁷ We received no comments.

² See *Overseas Common Carrier Section 214 Applications Actions Taken*, 13 FCC Rcd 11222, Rep. No. I-8311, File No. ITC-98-321 (1998); see also *International Authorizations Granted*, DA 99-3033, Rep. No. TEL-00174, File No. ITC-T/C-19991201-00749, (rel. Dec. 30, 1999) (authorizing the transfer of control of the international Section 214 authorization held by TeleBermuda to GlobeNet).

³ See *In re AT&T Corp., et. al.*, DA 99-2042, File No. SCL-LIC-19990303-00004, Cable Landing License (Int'l Bur. rel. Sept. 30, 1999) (authorizing AT&T and others to land and operate TAT-14, a digital fiber optic submarine cable system extending between the United States, Denmark, Germany, the Netherlands and the United Kingdom on a non-common carrier basis).

⁴ See *TeleBermuda International, L.L.C.*, 11 FCC Rcd 21141, Cable Landing License, File No. SCL-95-009 (Int'l Bur. 1996) (authorizing TeleBermuda International, L.L.C. to land and operate BUS-1, a digital private fiber optic submarine cable system extending between the United States and Bermuda, on a non-common carrier basis); see also *TeleBermuda International, L.L.C.*, 14 FCC Rcd 18951, Memorandum Opinion and Order, File No. SCL-T/C-19990210-00003 (Int'l Bur. 1999) (authorizing the transfer of control of the BUS-1 submarine cable landing license held by TeleBermuda International, L.L.C., to TeleBermuda International Limited).

⁵ See *Atlantica USA LLC*, 14 FCC Rcd 20787, Cable Landing License, File No. SCL-LIC-19990602-00010, (Int'l Bur. 1999) (authorizing Atlantica USA LLC to land and operate Atlantica-1, a private fiber optic submarine cable system extending between the United States, Venezuela, Brazil and Bermuda, on a non-common carrier basis).

⁶ See *In the Matter of Acquisition of GlobeNet Communications Group Limited by 360networks inc.*, Application for Transfer of Control of Submarine Cable Landing Licenses, File No. SCL-T/C-20000328-00010 (filed March 28, 2000); *In the Matter of Acquisition of GlobeNet Communications Group Limited by 360networks inc.*, Application for Transfer of Control of International Section 214 Authority, File No. ITC-T/C-20000328-00186 (filed March 28, 2000).

⁷ See *Non-Streamlined International Applications Accepted for Filing*, Report No. TEL-00213NS (rel. April 7, 2000).

5. Pursuant to Section 1.767(b) of the Commission's rules,⁸ the Cable Landing License Act,⁹ and Executive Order No. 10530,¹⁰ we informed the Department of State of the application to transfer control of the submarine cable landing licenses.¹¹ After coordinating with the National Telecommunications and Information Administration and the Department of Defense, the Department of State stated that it has no objection to transferring control of the submarine cable landing licenses held by GlobeNet to 360networks.¹²

6. Pursuant to Section 1.767(a)(8) of the Commission's rules,¹³ 360networks is required to disclose its affiliations with foreign carriers. According to the Applications, 360networks is affiliated with non-dominant foreign carriers in Canada, Ireland and the United Kingdom.¹⁴ Because Canada, Ireland and the United Kingdom are Members of the World Trade Organization, it is presumed that 360network's affiliations with these carriers do not pose any concerns that would justify conditioning or denying this application.¹⁵ Moreover, the foreign carrier affiliates of 360networks do not have market power in their respective markets or the ability to discriminate against unaffiliated U.S. carriers on the foreign end of routes through the control of bottleneck facilities or services.

7. As the Applications state, approval of this transaction will result in economies of scale that will allow customers to secure a broader range of value-added services for consumers while reducing transaction costs for end-users of submarine cable capacity.

8. Upon consideration of the Applications and in view of the foregoing, we conclude that this

⁸ 47 C.F.R. § 1.767(b) (1997).

⁹ An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act).

¹⁰ Exec. Order No. 10530, *reprinted as amended* in 3 U.S.C. § 301.

¹¹ *See* Letter from Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven W. Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (April 7, 2000).

¹² *See* Letter from Malcolm R. Lee, United States Coordinator, Office of International Communications and Information Policy, United States Department of State, to Donald Abelson, Chief, International Bureau, Federal Communication Commission (June 16, 2000).

¹³ *See* 47 C.F.R. 1.767(a)(8).

¹⁴ 360networks is affiliated with three Canadian carriers: Worldwide Fiber F.O.T.S. Ltd., Leducor Industries Limited and Worldwide Telecom (Canada) Inc., an Irish carrier, WTI Telecom (Ireland) Limited and a U.K. carrier, WTI Telecom (U.K.) Limited.

¹⁵ *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 23912 at ¶ 50, 23933-34 at ¶ 93 (1997) (*Foreign Participation Order*), *recon. pending*.

transfer of control does not raise any of the concerns listed in the Cable Landing License Act,¹⁶ and that consent to transfer control of GlobeNet's interest in the above-mentioned cables to 360networks will serve the public interest, convenience and necessity. We therefore grant Applicants' request for authority to transfer control of the international Section 214 authorization held by TeleBermuda as well as GlobeNet's interests in the BUS-1, Atlantica-1, and TAT-14 submarine cables to 360networks.

IV. Ordering Clauses

9. Consistent with the foregoing and pursuant to the Cable Landing License Act, Section 214 of the Communications Act of 1934, as amended, and Executive Order 10530, IT IS ORDERED that Application File Nos. ITC-T/C-20000328-00186 and SCL-T/C-20000328-00010 ARE GRANTED, and that the transfer of control of the international Section 214 authorization held by TeleBermuda International Limited is authorized and that the transfer of control of the interests of GlobeNet Communications Group Limited in the BUS-1, Atlantica-1 and TAT-14 cables is authorized. The Cable Landing Licenses of the BUS-1 cable, File No. SCL-95-009, the TAT-14 cable, File No. SCL-LIC-19990303-00004 and the Atlantica-1 cable, File No. SCL-LIC-19990602-00010 ARE MODIFIED to reflect this transfer of control.

10. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

¹⁶ See 47 U.S.C. § 35.

¹⁷ See 47 C.F.R. § 1.4 (b)(2).