

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of the Transfer of Control of

Tri-M Communications, Inc. d/b/a TMC Communications,  
from the Estate of John Marsch, Transferor  
and  
5LINX Enterprises, Inc., Transferee

Application Pursuant to Section 214 of the  
Communications Act of 1934 and  
Section 63.24 of the Commission's Rules for  
Consent to the Transfer of Control  
Tri-M Communications, Inc. d/b/a TMC Communications.  
from  
The Estate of John Marsch, Transferor  
To 5LINX Enterprises, Inc., Transferee

File No. ITC/T/C-2010

and

Application Pursuant to Section 214 of the  
Communications Act of 1934 and  
Section 63.04 of the Commission's Rules for  
Consent to the Transfer of  
of  
Tri-M Communications, Inc. d/b/a TMC Communications.  
from  
The Estate of John Marsch, Transferor  
to  
5LINX Enterprises, Inc., Transferee

WC Docket No. 10-\_\_\_\_\_

*Attention: International Bureau and Wireline Competition Bureau*

**COMBINED/JOINT INTERNATIONAL AND DOMESTIC  
APPLICATION FOR  
TRANSFER OF CONTROL**

Pursuant to section 214 of the Communications Act of 1934, as amended (the "Act"), and sections 63.04 and 63.24 of the Commission's rules, this Application seeks Commission approval to transfer control of Tri-M Communications, Inc. d/b/a TMC Communications

("TMC") from the Estate of John Marsch ("Marsch Estate"), comprised of Michelle Cutlip, an individual ("MC"), and Michael E. Pfau, Trustee of the Melissa Marsch-Baker Trust U/D/T ("Trust") (Trust, together with MC, are hereinafter referred to as "Stockholders") to 5LINX Enterprises, Inc ("5LINX") (the "Acquisition"). On July 6, 2010, TMC and its Stockholders entered into a Stock Purchase Agreement with 5LINX. TMC holds authority to provide domestic and international telecommunications services pursuant to section 214 of the Act.<sup>1</sup> The Agreement provides that 5LINX will purchase all of the issued and outstanding common stock of TMC from the Stockholders (the "Acquisition"). The Acquisition will therefore result in the change of ownership of TMC from Stockholders to 5LINX, including control of TMC's section 214 authorities. A separate and simultaneous transfer of control application has been filed for the involuntary transfer of control of TMC's shares from the John Marsch Revocable Trust to the Estate of John Marsch. In addition, an application for Special Temporary Authority for the Marsch Estate was also filed concurrent with this filing.

TMC is a provider of interstate, international and intrastate interexchange telecommunications services. The customers of TMC will benefit from the resources and assets of 5LINX, which will help ensure continuity of service and enhance the ability of TMC to offer a broader range of innovative products and services to customers. The Acquisition will therefore serve to enhance the overall capacity of TMC to compete in the marketplace and to provide telecommunications services for a greater number of consumers at competitive rates. Grant of this Application clearly will promote competition in the interstate and international long distance telecommunications markets and will serve the public interest.

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<sup>1</sup> TMC holds domestic and international authority pursuant to section 214 of the Act. Authority was granted in File No. ITC-214-19981218-00897 on February 18, 1999..

**I. INFORMATION REQUIRED BY SECTION 63.24**

This Application seeks authority to transfer the control of the common stock of TMC, which holds authority pursuant to section 214 of the Act to provide domestic interstate and international telecommunications service, from Stockholders to TMC. Section 63.24(e)(2) of the Commission's rules requires that an application for a substantial transfer of control of a carrier holding international section 214 authority include the following information, as described in section 63.18:

- (a) The name, address and contact number of the transferor is:

Tri-M Communications, Inc. d/b/a TMC Communications  
820 State Street, 5<sup>th</sup> Floor  
Santa Barbara, California 93101  
Telephone: (866) 999-1133  
Fax: (877) 965-7822

The name, address and contact number of the transferee is:

5LINX Enterprises, Inc.  
275 Kenneth Drive, Suite 100  
Rochester, New York 14623  
Telephone: (585) 334-2600  
Fax: (585) 359-0233

The name, address and contact number of the holder of section 214 authorities is:

Tri-M Communications, Inc. d/b/a TMC Communications  
820 State Street, 5<sup>th</sup> Floor  
Santa Barbara, California 93101  
Telephone: (866) 999-1133  
Fax: (866) 965-7822

- (b) TMC is a California corporation.  
MC is a person of the full age of majority, citizen of the United States and a resident of New Jersey.  
Trust is a person of the full age of majority and a resident of California  
5LINX is a Delaware corporation.

- (c) Correspondence concerning this Application should be addressed to:

Leon Nowalsky, Esq.  
Nowalsky, Bronston & Gothard  
1420 Veterans Blvd.  
Metairie, LA 70005  
Phone: (504) 832-1984  
Fax: (504) 831-0892  
Email: [lnowalsky@nbglaw.com](mailto:lnowalsky@nbglaw.com)

- (d) TMC was granted authority in File No. ITC-214-19981218-00897.

Responses (e) through (g) are not applicable to this Application.

- (h) The following are the names, addresses, citizenship, and principal businesses of any person or entity that will directly or indirectly own at least ten percent of the equity of the applicants. There will be no interlocking directorates with any foreign carrier.

**The Estate of John Marsch**

**Michelle Cutlip, an individual**

Address: 14 Stafford Road, Chatham, New Jersey 07928

Citizenship: United States

Principal Business: Stockholder

Percent Ownership: Cutlip owns 50% of the common stock of TMC prior to the Acquisition

Cutlip does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**Michael E. Pfau, Trustee of the**

**Melissa Marsch-Baker Trust ("Trust")**

Address: 1421 State Street, Suite B, Santa Barbara, CA 93101

Principal Business: Stockholder

Percent Ownership: Trust owns 50% of the common stock of TMC prior to the Acquisition

Trust does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**5LINX Enterprises, Inc.**

Address: 275 Kenneth Drive, Suite 100, Rochester, NY 14623

Citizenship: United States

Principal Business: Telecommunications

Percent Ownership: 5LINX will own 100% of the common stock of TMC following the Acquisition

**Craig Jerabeck, an individual**

Address: 11 Langley Rise, Pittsford, NY 14534

Citizenship: United States

Principal Business: Telecommunications

Percent Ownership: Jerabeck owns 22% of the common stock of 5LINX  
Jerabeck does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**Jeb Tyler, an individual**

Address: 61 Brantley Way, Penfield, NY 14562

Citizenship: United States

Principal Business: Telecommunications

Percent Ownership: Tyler owns 22% of the common stock of 5LINX  
Tyler does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**Jason Guck, an individual**

Address: 14 Nuthatch Drive, Henrietta, NY 14586

Citizenship: United States

Principal Business: Telecommunications

Percent Ownership: Guck owns 22% of the common stock of 5LINX  
Guck does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**Trillium Lakefront Partners III, LP, ("Trillium LP") a limited partnership**

Address: 1221 Pittsford Victor Road, Pittsford, NY 14534

Citizenship: United States

Principal Business: limited partnership

Percent Ownership: Trillium LP owns 15% of the common stock of 5LINX

Trillium LP does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**Trillium Group, LLC (“Trillium LLC”), a limited liability company**

Address: 1221 Pittsford Victor Road, Pittsford, NY 14534

Citizenship: United States

Principal Business: Investment manager

Percent Ownership: 100%

Trillium LLC does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

**Shalam Investment Co., LLC, a limited liability company**

Address: 180 Marcus Blvd., Hauppauge, NY 11788

Citizenship: United States

Principal Business: limited liability company

Percent Ownership: Shalam owns 10% of the common stock of 5LINX

Shalam does not own a 10% or greater ownership or equity interest in any other telecommunications companies.

- (i) Applicants certify that they are not, and following the proposed transaction will not be, affiliated with any foreign carrier within the meaning of section 63.09(d) and (e).
- (j) The Applicants certify that they do not seek authority to provide service to any country described in paragraphs (1) through (4) of section 63.18(j).
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) Applicants certify that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) This international section 214 Application qualifies for streamlined processing pursuant to section 63.12 because the applicants are not affiliated with any foreign carriers; are not affiliated with any dominant U.S. carriers whose international switched or private line services the applicant seeks authority to resell; and do not seek authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines. This Application therefore should be granted, pursuant to section 63.12(a), fourteen days after the date of public notice listing this Application as accepted for filing.

## II. ADDITIONAL INFORMATION REQUIRED BY SECTION 63.04

This Application seeks Commission consent to transfer control of TMC, which holds authority to provide domestic and international telecommunications services pursuant to section 214 of the Act. Pursuant to section 63.04(b) of the Commission's rules, the parties submit the following information in support of this Application in response to items 6 through 12 of section 63.04(a):

- 6) As set forth above, this Application seeks Commission consent to transfer control of TMC from the Estate of John Marsch and its Stockholders to 5LINX. As a result of the transfer, TMC will continue to operate and provide service pursuant to its current authority.
- 7) [intentionally omitted]
- 8) This Application qualifies for streamlined processing under section 63.03(b)(2)(I) because the transferee will have a market share in the interstate interexchange market of less than 10 percent, the transferee will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction, and no party to this Application is dominant with respect to any service.
- 9) The parties will file a slamming certification letter with the Commission, if necessary.
- 10) Only standard streamlined processing of this domestic section 214 transfer of control application is sought pursuant to Section 63.03.
- 11) No waiver requests are being filed in conjunction with the transaction.
- 12) As discussed above, grant of this Application will strengthen TMC as the post-transaction company will become a stronger competitor in the marketplace for interstate and international telecommunications services. The customers of TMC will benefit from 5LINX's resources and assets, which will help ensure continuity of service and enhance the ability of TMC to offer a broader range of innovative products and services to customers. Grant of this Application will promote competition in the domestic interexchange and international telecommunications markets and will serve the public interest.

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STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA

VERIFICATION

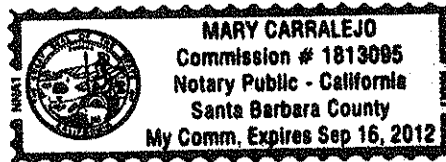
I, Michael Pfau, am the Secretary of Tri-M Communications, Inc. d/b/a TMC Communications, and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, 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 13<sup>th</sup> day of July, 2010.

Mary Carralejo  
Notary Public

My commission expires: 9/16/2012





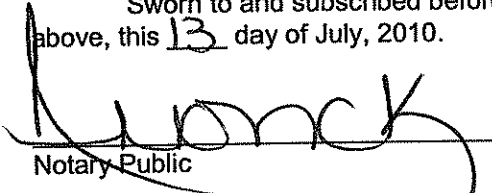
STATE OF NY  
COUNTY OF Monroe

VERIFICATION

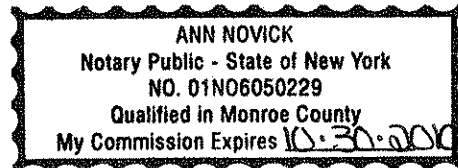
I, Craig Jerabeck, am the President and CEO of 5LINX Enterprises, Inc., and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those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



State of CALIFORNIA

County of SANTA BARBARA

**AFFIDAVIT**

The applicant below certifies that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance.

By: Michael F. Pfau  
Michael Pfau, Secretary  
Tri-M Communications, Inc.  
d/b/a TMC Communications

Sworn to and subscribed before me this  
10<sup>TH</sup> day of AUGUST, 2010

Mary Carralejo  
Notary Public

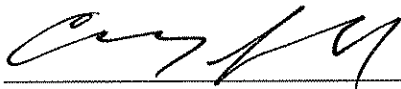
My commission expires 9/16/2012



State of NY  
County of Monroe

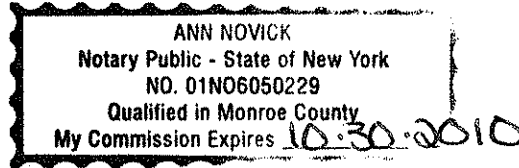
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By:   
Craig Jerabeck, President  
5LINX Enterprises, Inc.

Sworn to and subscribed before me this  
11<sup>th</sup> day of August, 2010

  
Notary Public



My commission expires \_\_\_\_\_