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November 21, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554

Re: Review of Commission Consideration of Applications under the Cable Landing
License Act, IB Docket No. 00-106

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are the original and four copies of
Global Crossing Ltd.'s Opposition to Motion to Strike.

Please date stamp the additional copy provided herewith for that purpose and return the
same to the bearer. Thank you for your assistance.

Sincerely,



Kanika Johnson

Enclosures

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LIST A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of Commission Consideration) IB Docket No. 00-106
of Applications under the Cable Landing)
License Act)

OPPOSITION TO MOTION TO STRIKE

Global Crossing Ltd., by its attorneys, hereby opposes the Motion to Strike filed on November 14, 2000 by AT&T Corp. and its affiliates Global Networks USA L.L.C. and Concert Global Network Services Ltd. ("AT&T/Concert"). AT&T/Concert ask the Commission to strike the Affidavit of S. Wallace Dawson, Jr. ("Dawson Affidavit") that was attached to Global Crossing's reply comments in this proceeding.

Global Crossing originally submitted the Dawson Affidavit, which is dated March 12, 1999, in the Japan-U.S. ("JUS") cable landing license proceeding ("*JUS Proceeding*"). The Dawson Affidavit discusses, among other things, problems Global Crossing encountered in 1998 in constructing PC-1, its undersea cable linking the U.S. and Japan, as the result of the conduct of Kokusai Denshin Denwa ("KDD") and its subsidiary, Kokusai Denshin Denwa Submarine Cable Systems ("KDD/SCS"). AT&T/Concert assert that press releases issued by Global Crossing in December 1999 contradict the statements made in the Dawson Affidavit regarding KDD and render them "patently false." Motion to Strike at 1. AT&T/Concert argue that this represents a lack

of candor toward the Commission and that the Dawson Affidavit should be stricken from the record in this proceeding.

As an initial matter, Global Crossing submitted the Dawson Affidavit in this proceeding to substantiate a point wholly unrelated to the Affidavit's discussion of KDD's conduct. In particular, the Declaration of Andrew Joskow, at ¶ 26, submitted as Attachment A to Global Crossing's reply comments, cites paragraphs 39-48 of the Dawson Affidavit in stating:

... the risks associated with undersea cable construction in the past, when international traffic was often thin on certain routes and generally grew slowly, have been reduced substantially. In fact, as stated in the affidavit of S. Wallace Dawson submitted in the *JUS Proceeding*, a cable station to cable station fiber optic network can be a less complex and less costly enterprise than domestic fiber network.

There is no reference in Global Crossing's reply comments or the Joskow Declaration to the Dawson Affidavit's statements in paragraphs 19-38 regarding KDD. AT&T/Concert's quibbling concerning these statements is consequently immaterial. This alone warrants the denial of AT&T/Concert's Motion to Strike.

Not only are AT&T/Concert's allegations beside the point, they are incorrect. AT&T/Concert presents the Global Crossing press releases as its "smoking gun," emphatically asserting that they "show beyond a doubt that the allegations made in the Affidavit regarding KDD are false." Motion to Strike at 3. Not so fast. The press releases in no way contradict the Dawson Affidavit, let alone demonstrate a lack of candor with the Commission. The only smoke emanating from AT&T/Concert's motion is its own self-righteous bluster.

The Dawson Affidavit recounts the difficulties Global Crossing encountered from March 1998 through March 1999 (the date of the Dawson Affidavit) in retaining

KDD/SCS to assist in the construction of PC-1. These difficulties involved construction delays by KDD/SCS as well as its delay in obtaining landing rights in northern Japan. Dawson Affidavit at ¶¶ 19-38. The Dawson Affidavit expressed the concern that these delays were being caused by the "serious potential conflict of interest" arising from the fact that KDD/SCS was also a supplier of JUS -- a competing cable -- and that its parent company, KDD, was a member of the JUS consortium. Dawson Affidavit at ¶ 23.

In late December 1999, Global Crossing issued press releases announcing the completion of PC-1 ahead of schedule and the award of a contract with KDD/SCS to construct another Global Crossing cable in Asia. AT&T/Concert claim that these press releases "directly refute each of the key assertions in the Dawson Affidavit." Motion to Strike at 4. AT&T/Concert, however, overlook the fact that the December 1999 press releases were issued *nine months* after the date of the Dawson Affidavit, and that much could and did transpire during this intervening period.

In particular, during this time period the Commission was closely examining the competitive concerns raised in the JUS proceeding.¹ The Commission's scrutiny undoubtedly prompted KDD and KDD/SCS to be on their best behavior and to satisfy fully KDD/SCS's commitments involving PC-1, just as this scrutiny prompted the JUS parties to amend their C&MA in June 1999 to address the Commission's competitive

¹ Global Crossing filed a petition to defer the JUS application on January 4, 1999. On March 1, 1999, the International Bureau issued a public notice seeking additional comment on the application. On June 18, 1999, the JUS applicants amended their "C&MA to provide for a more pro-competitive balance among the parties to that agreement," and on July 8, 1999, the Commission granted the amended JUS application. *JUS Order*, 14 FCC Rcd 13066, ¶¶ 3, 26 (1999).

concerns. This scrutiny, in conjunction with Global Crossing's own efforts,² permitted the completion of PC-1 in December 1999. Indeed, Global Crossing noted in its reply comments in the instant rulemaking proceeding that it "believes the Commission's careful scrutiny in the *Japan-U.S. Proceeding*, and the pro-competitive conditions that arose out of it, contributed to Global Crossing's success in arranging for the termination of its traffic in Japan." Global Crossing Reply Comments at 30 n. 61.

AT&T/Concert bear the burden of persuasion in moving to strike the Dawson Affidavit. They have fallen far short of meeting this burden by advancing an argument that pretends that time stood still between the date of the Dawson Affidavit and the release of the Global Crossing's press releases. Far from contradicting the Dawson Affidavit or demonstrating a lack of candor, the press releases show that the Commission's scrutiny of the JUS application was important in safeguarding against the competitive concerns raised by consortium cables.

The Commission would be better served by AT&T/Concert focusing on the substantive issues raised by these important concerns rather than filing frivolous motions.

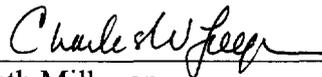
² In fact, the Dawson Affidavit described some of these ongoing efforts. They included efforts by Tyco, the primary contractor retained by Global Crossing to construct PC-1, "to mitigate the damage caused by KDD/SCS by, in part, swapping construction tasks between KDD/SCS and Tyco. Tyco took on the more difficult southern link of the cable, while sharing the northern link, in order to expedite construction." Dawson Affidavit at ¶ 27. They also included requests by Global Crossing to KDD/SCS that the latter adhere to its contractual commitments. For example, the Dawson Affidavit, at ¶ 37, states that "[d]uring meetings called by Global Crossing in February 1999 with KDD/SCS, Global Crossing reiterated its position and needs, and insisted that KDD/SCS fulfill its obligations to act in good faith and diligently secure the consents for its northern landing. Global Crossing has received some assurances, but at this time it is impossible to tell when the landing rights will be secured." These efforts, and the Commission's scrutiny, subsequently bore fruit with the successful completion of PC-1 as described in the press releases.

See Public Notice: Commission Takes Tough Measures Against Frivolous Pleadings, 11
FCC Rcd 3030 (1996). The Commission should deny AT&T/Concert's Motion to Strike.

Respectfully submitted,

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November 21, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2000, I caused true and correct copies of the foregoing Opposition to Motion to Strike of Global Crossing Ltd. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Date: November 21, 2000
Washington, D.C.



Charles W. Logan

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