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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

REPLY TO OPPOSITION OF GLOBAL CROSSING LTD.

AT&T Corp. and its affiliates Global Networks USA L.L.C. and Concert Global Network Services Ltd. (collectively "AT&T") hereby Reply to the Opposition of Global Crossing Ltd. ("Global Crossing"). For the reasons explained below, Global Crossing's Opposition confirms that the Commission should grant AT&T's Motion to Strike.

In its Reply Comments, Global Crossing submitted as an appendix the affidavit of Global Crossing Senior Vice President S. Wallace Dawson, Jr. ("Dawson Affidavit"), which was originally submitted in the Japan-US ("JUS") cable landing license proceeding. AT&T subsequently moved on November 14, 2000 to strike portions of that Affidavit because Global Crossing had issued a series of press releases that contradicted several of the assertions Mr. Dawson made regarding the conduct of Kokusai Denshin Denwa Submarine Cable Systems ("KDD-SCS"), which was hired as a subcontractor to help build Global Crossing's Pacific Crossing-1 ("PC-1) submarine cable.¹ Global Crossing opposed the Motion to Strike on

¹ Specifically, the Dawson Affidavit asserted that Global Crossing's competitive position in the Asian market had been badly compromised because: (1) KDD-SCS, had diverted resources from the PC-1 cable to the JUS cable project, despite assurances that PC-1 would be accorded manufacturing priority, Dawson Aff. ¶¶ 24-26, and (2) that KDD-SCS's parent had improperly failed to secure necessary northern landing rights for PC-1, again in contravention of prior assurances, *id.* ¶¶ 29-37.

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November 14, 2000, arguing *inter alia* that the Motion challenged “immaterial” aspects of the Dawson Affidavit. *See* Global Crossing Opp. at 2.

In so arguing, Global Crossing effectively concedes that the Commission should grant AT&T’s Motion to Strike. Global Crossing now acknowledges that it is not seeking to rely on the primary point of the Dawson Affidavit – *i.e.*, Mr. Dawson’s allegations that KDD-SCS diverted resources from Global Crossing’s PC-1 cable and instead gave preference to the competing JUS cable – but only a handful of paragraphs in that Affidavit concerning the risks of building submarine cables. *See id.*² Thus, it is now undisputed that although the entire Dawson Affidavit was placed into the record in the record in this proceeding, the portion of that Affidavit challenged by AT&T should play no role in the Commission’s decisionmaking in this proceeding. Accordingly, the Commission should, at a minimum, strike the portions of the Dawson Affidavit challenged by AT&T.

In this regard, Global Crossing’s “defense” is illustrative of a broader problem with Global Crossing’s conduct in this proceeding. Global Crossing contends that it should be permitted to resubmit the prior affidavits it filed in the JUS proceeding in their entirety and then subsequently pick and chose which provisions of those affidavits it wants to rely on depending upon whether or not the affidavits are subsequently challenged. The advantages of this strategy are clear. Global Crossing can force parties in this proceeding to go through the effort and expense to rebut all of the arguments made in the JUS affidavits and then, to the extent Global Crossing recognizes statements made in those affidavits are not defensible, simply claim that the

² While Global Crossing asserts AT&T should have divined this from the fact that it only cited particular parts of the Dawson Affidavit in its Reply Comments, Global Crossing Opp. at 2, Global Crossing indicated that it was relying on the Dawson Affidavit in its entirety, *see* Global Crossing Reply Comments at 22 n.41.

challenge concerns a portion of the affidavit upon which Global Crossing is not relying in this proceeding.

The two statements by Dr. Joskow attached to Global Crossing's Reply Comments provide a particularly vivid example of this regulatory shell game. One of the principal arguments advanced in the Joskow Affidavit filed in the JUS proceeding was that open investment cables facilitate collusion among carriers. *See* Joskow JUS Aff. ¶¶ 50, 60, 86-92. In the Dr. Joskow's September 20, 2000 Declaration, however, he states such "horizontal" theories are not the "issue of primary concern in this proceeding." Joskow Dec. ¶ 4. Whether or not Global Crossing is actively advancing these conspiracy arguments, it has submitted affidavits containing them and other parties to this proceeding therefore have little choice but to address them.

Finally, while ultimately irrelevant in light of Global Crossing's concessions that the challenged provisions of the Dawson Affidavit should be given no weight, the Commission should nonetheless reject Global Crossing's attempts to square the patent inconsistencies between the Dawson Affidavit and the press releases AT&T cited in its Motion to Strike. Tellingly, Global Crossing does not claim that AT&T misread those press releases and effectively concedes that, contrary to the allegations made by Mr. Dawson in his Affidavit, Global Crossing's competitive position was *not* harmed by KDD-SCS's conduct but rather KDD-SCS got the PC-1 cable in place three months ahead of schedule. Rather, Global Crossing's explanation is that that KDD-SCS was on its "best behavior" after Global Crossing filed the Dawson Affidavit to the Commission. *See* Global Crossing Opp. at 3. This explanation is unconvincing for several independent reasons.

Most fundamentally, it is entirely unsubstantiated. Global Crossing does not offer a shred of evidence to support its speculation that KDD-SCS was “scared straight” because of Global Crossing’s complaints to the Commission. Rather, Global Crossing relies solely on the bare assertions of its attorneys. But these lawyer’s assertions are not supported by sworn declarations or any other evidence, and they should be given no weight. That is particularly true, because Global Crossing’s lawyers’ explanation cannot be reconciled with the undisputed facts. KDD-SCS, a foreign submarine cable construction company, is not regulated by the Commission and was not an applicant in the JUS cable landing license proceeding. Thus, there is no reason why KDD-SCS would have felt compelled to be on its “best behavior” because Global Crossing was complaining about its actions to the Commission.

Moreover, Global Crossing’s lawyers’ explanation is contradicted by Global Crossing’s award of the new East Asia Crossing cable to KDD-SCS. If Global Crossing was able to get KDD-SCS to complete the PC-1 cable on time only because of its complaints to the Commission in the JUS proceeding, it is absurd to suggest that Global Crossing would award KDD-SCS the enormous new East Asia Crossing cable contract. *See* Global Crossing December 23, 1999 Press Release. Likewise, if Global Crossing was able to get KDD-SCS to complete the PC-1 cable on time only because of its complaints to the Commission, Global Crossing’s CEO would never have described the award of that new contract as “*ensur[ing]*” that the new East Asia Crossing cable will be “completed on or before schedule.” *Id.* (emphasis added).

Global Crossing’s lawyers’ explanation is further called into question by the fact that the East Asia Crossing cable contract awarded to KDD-SCS is a contract to build a cable

that does *not* land in the United States but instead connects several southeast Asian countries.³ The purported reason KDD-SCS was “scared straight” was the Commission’s regulatory authority over the JUS cable landing license. *See* Global Crossing Opp. at 3-4. But the Commission clearly has no authority over the East Asia Crossing cable. This suggests strongly that Global Crossing really believes that KDD-SCS has no incentive to favor the open investment cables in which its parent has an interest and that will compete with the East Asia Crossing cable, and that Commission oversight is in no way necessary to ensure that KDD-SCS lives up to its contractual obligations.

CONCLUSION

For the reasons stated above, the Dawson Affidavit should be stricken from the record of this proceeding.

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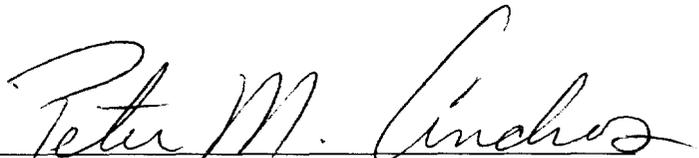
November 14, 2000

³ According to Global Crossing’s December 23, 1999 Press Release cited by AT&T in its Motion to Strike, the East Asia Crossing cable will connect Japan, Taiwan, Korea, Hong Kong, and China.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2000, I caused true and correct copies of the forgoing Reply to Opposition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: November 30, 2000
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