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May 30, 2001

BY HAND DELIVERY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

MAY 30 2001

Re: **Ex Parte Presentation**
CC Docket No. 99-216

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

Enclosed, please find an two copies of an *ex parte* presentation made by GlobeSpan, inc. in the above-referenced rule making proceeding. 47 C.F.R. § 1.1206 (2000). The presentation consists of correspondence that was sent by GlobeSpan to the Administrative Council for Terminal Attachments ("ACTA") on May 25, 2001, concerning g.shdsl transmission technologies. A copy of that correspondence was forwarded to FCC employees Susan Magnotti and William Howden on May 29, 2001, and relates to ACTA-related procedural issues considered by the Commission in the above-referenced rule making proceeding.

If you have any questions concerning this matter, please call me.

Respectfully,



R. C. Taylor, III

Enclosures

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May 25, 2001

By Electronic Mail

ACTA Secretariat
c/o ATIS
1200 G Street, N.W.
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Washington, D.C. 20005

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MAY 30 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Technical Criteria Submission
G.SHDSL Technical Standard**

Dear Sir or Madam:

GlobeSpan, Inc. ("GlobeSpan"), by its attorneys, hereby withdraws the proposed "G.SHDSL" technical criteria it submitted for consideration by the Administrative Council for Terminal Attachments ("ACTA") on May 16, 2001.

During ACTA's May 22, 2001 meeting, we were informed that ACTA will adhere to its newly-adopted Operating Principles and Policies ("OP&P"),^{1/} which ACTA believes conform to an FCC-imposed requirement that ACTA adopt and publish only those technical criteria that are submitted by ANSI-accredited Standards Development Organization ("SDO").^{2/} ACTA informed GlobeSpan's representatives that GlobeSpan should therefore resubmit the G.SHDSL technical criteria through an SDO. Accordingly, subject to ACTA's guidance with respect to the matters raised below, GlobeSpan will follow ACTA's directive and re-submit G.SHDSL technical criteria at the earliest possible opportunity. Further, we urge ACTA to facilitate this

^{1/} ACTA's OP&P was adopted, at least in part, at the May 22, 2001 meeting. Before that meeting, there were not adopted operating procedures.

^{2/} See also 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216, Report and Order, FCC 00-400, rel. Dec. 21, 2000 ("Part 68 Order").

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process; such a pro-active role was clearly contemplated by the *Part 68 Order*,^{3/} and reiterated at the ACTA meeting by an FCC observer in attendance. In particular, we urge ACTA to refer the G.SHDSL criteria matter to the appropriate SDO for expedited consideration.

On at least one occasion during the ACTA meeting, ACTA indicated that it might seek clarification or further guidance from the FCC with respect to certain requirements contained in the FCC's *Part 68 Order*. We urge ACTA to similarly request clarification, or otherwise internally resolve, the following issues:

- The *Part 68 Order* provides that qualified SDOs shall propose technical criteria to ACTA, but does not state, for example, whether a manufacturer may propose technical criteria on behalf of an SDO. GlobeSpan believes that such submissions are permissible, and more consistent with FCC precedent^{4/} than a narrow reading of the technical criteria submission process. SDOs are not necessarily as “entrepreneurial” as manufacturers and permitting only SDOs to propose criteria will necessarily involve delay that otherwise may not occur.
- The *Part 68 Order* provides for interim relief to manufacturers such as GlobeSpan, whose devices may not conform with existing technical criteria.^{5/} We were informed by an ACTA representative that such interim procedures may only be employed through SDOs. GlobeSpan believes that this interpretation of the *Part 68 Order* is erroneous, and further undermines the pre-existing rights of manufacturers in the Part 68 process.
- The G.SHDSL products covered by GlobeSpan's requests of both the FCC^{6/} and ACTA are “broadband” transmission devices that are covered by Section 706 of the

^{3/} *Part 68 Order* at ¶ 55 (“[ACTA] may also coordinate, if necessary, which industry SDOs will take on a particular development project.”).

^{4/} The FCC's procedures that pre-dated the *Part 68 Order* clearly allowed manufacturers to propose technical criteria or seek waivers of existing criteria. Because nothing in the *Part 68 Order* indicates that the Commission intended to diminish the rights of manufacturers, GlobeSpan doubts that the FCC intended for ACTA to adopt the narrow interpretation that it did.

^{5/} *Part 68 Order* at ¶ 57.

^{6/} As we stated during ACTA's meeting, on April 2, 2001, a GlobeSpan customer initially requested that the FCC approve the G.SHDSL transmission technologies by means of waiver of its Part 68 regulations. The FCC referred that customer directly to ACTA, and did not state that the customer would be required to route its request through an SDO.

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Telecommunications Act of 1996.^{7/} As the FCC has noted, Section 706 is a Congressional mandate that the Commission accelerate the deployment of broadband technologies.^{8/} However, GlobeSpan has been informed that, if it conforms to the SDO process required by ACTA, G.SHDSL technical criteria will likely not be adopted and published until at least December 2001 - a six-month delay.^{9/} GlobeSpan urges ACTA to fashion procedures, either on its own in cooperation with the FCC, that are consistent with whatever procedural (*e.g.*, ANSI) protections are deemed adequate, yet take into account marketplace realities and Congressional mandates associated with broadband deployment.

- We have been informed that Industry Canada has already approved G.SHDSL devices on at least two occasions, using a “Provisional SDSL” standard. GlobeSpan believes that ACTA should employ that standard for U.S. manufacturers immediately,^{10/} unless it can be shown to be defective or flawed. Otherwise, importers of Canadian equipment will have greater rights than U.S. manufacturers. We would appreciate ACTA’s or the FCC’s guidance with respect to this matter.

* * *

^{7/} Pub. L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153 (reproduced in the notes to 47 U.S.C. § 157).

^{8/} *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC Rcd 2398, ¶¶ 9-10 (1999).

^{9/} ACTA even expressed concern at its meeting with its ability to comply with the FCC’s July 23, 2001, deadline for transitioning the existing Part 68 regulations.

^{10/} See Amendment of Part 68 of the Commission’s Rules, Report and Order, 12 FCC Rcd 19218, ¶ 13 (1997) (“[A] manufacturer in one country can design and test terminal equipment to a single, consistent set of technical standards accepted in both the United States or Canada.”).

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

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May 25, 2001

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We trust that the foregoing is useful, and permits ACTA to expeditiously proceed to adopt technical criteria for G.SHDSL devices. Should you have any questions related to these matters, please direct them to the undersigned counsel.

Respectfully submitted,

/ s /

Russell H. Fox
R. C. Taylor, III

cc: William Howden, FCC, Common Carrier Bureau
Susan Magnotti, FCC, Common Carrier Bureau