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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY



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June 5, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A-325  
Washington, DC 20554

**Re: Review of Commission Consideration of Applications under the  
Cable Landing License Act (IB Docket No. 00-09).** *00-100*

Dear Ms. Salas:

AT&T Corp. ("AT&T") and its affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd. (collectively "Concert") respectfully submit these *ex parte* comments in response to the March 26, 2001 filing by TyCom Networks (US) Inc. ("TyCom") and the February 8, 2001 filing of Global Crossing, Ltd. ("Global Crossing").

**1. The Commission Should Apply Section 214 Streamlining Procedures to Submarine Cable License Applications.**

There is broad support in this proceeding for the Commission's goal of streamlining submarine cable licensing procedures. Moreover, almost all commenters, as TyCom emphasizes its recent *ex parte* filing, have asked for a more deregulatory, simplified approach to submarine cable licensing than the procedures set forth in the Notice of Proposed Rulemaking. AT&T and Concert believe the Commission should proceed in response to these concerns by adopting streamlining rules for submarine cable licensing similar to those used for Section 214 applications.

The streamlining approach now used successfully by the Commission for Section 214 applications for more than three years would achieve the Commission's important goal in this proceeding of encouraging further new entry and capacity expansion by providing more predictable and expeditious cable licensing procedures. As described in AT&T and Concert's prior filings, the adoption of this approach would provide streamline approval for virtually all new submarine cables and would also address competitive concerns by requiring further review where submarine cable applicants are

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affiliated with dominant carriers from non-WTO Member countries, or where Commission staff identify extraordinary competitive issues requiring public comment.

**WTO Concerns:** AT&T and Concert share the additional concerns noted by TyCom regarding the proposed use of submarine cable licensing procedures to encourage liberalization in foreign markets and regarding the consistency of such proposals with the Commission's 1997 *Foreign Participation Order* and U.S. commitments under the WTO Basic Telecommunications Agreement. The Commission has recently reaffirmed that "[o]ur open entry policy does not distinguish among WTO Members, and is not premised . . . on an analysis of actual conditions of entry in a foreign market." (*Voicestream Wireless Corp.*, IB Docket No. 00-187, Memorandum Opinion and Order, (rel. Apr. 27, 2001), FCC 01-142, para. 51, n.154.) Similarly, concerns relating to foreign cable station access and the provision of foreign-end backhaul services should be addressed by trade negotiations or enforcement action with the relevant foreign country, rather than by more onerous licensing treatment at the U.S. end.

## **2. Global Crossing's Market Foreclosure Theories Are Belied by FCC Data Showing Huge Growth in Submarine Cable Capacity.**

Global Crossing, alone among the commenters in this proceeding, seeks to increase the complexity of the Commission's licensing procedures and to obtain preferred regulatory treatment for private (closed investment) cables over consortium (open investment) cables. Both here and in the Japan-US ("JUS") proceeding, Global Crossing has claimed that U.S. carriers use open investment cables to limit submarine cable capacity expansion, thus denying investment to closed investment cables. These claims are contrary to the facts and economic theory, as AT&T and Concert have shown in their initial, reply and *ex parte* comments, and as further demonstrated by the explosive growth in undersea cable capacity documented in recent FCC cable circuit status reports.

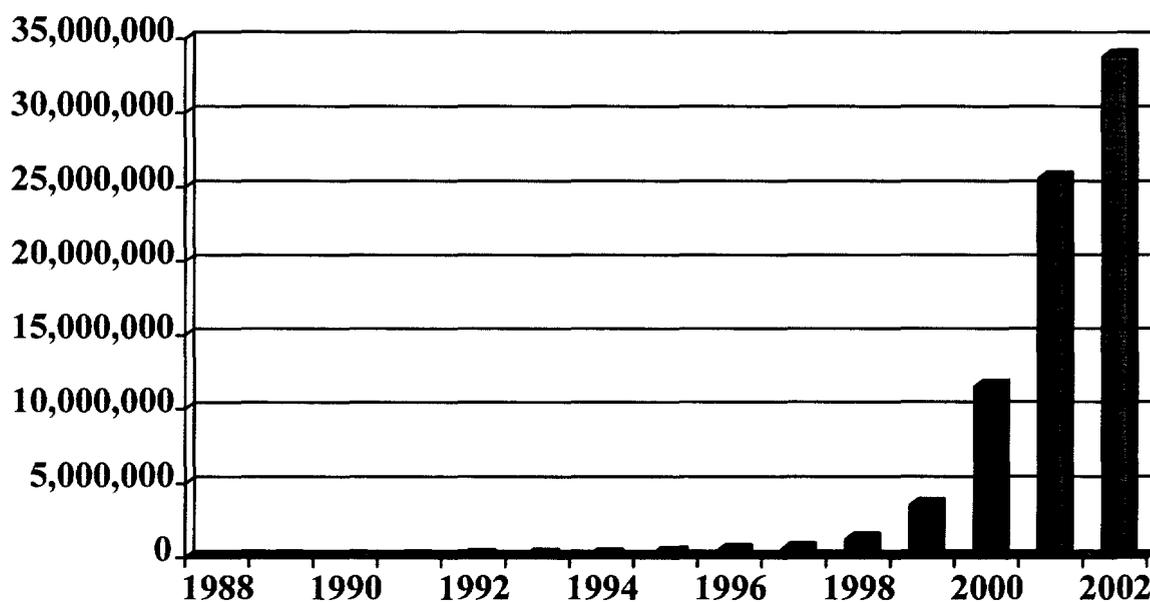
Global Crossing's response, as stated in its recent *ex parte* filing, is that "the great majority of the additional capacity is the result of the growth of private cables, without which undersea capacity would be severely restricted." However, Global Crossing makes no attempt to show how this substantial growth in closed investment cable capacity in recent years is consistent with its core argument here and in the JUS proceeding that open investment cables restrict the growth of submarine cable capacity and harm the development of closed investment cables. In fact, the very rapid growth of submarine cable capacity over the past two years, especially by closed investment cables, and particularly on the U.S.-Japan route, demonstrates the exact opposite of Global Crossing's assertions: that in fact *no* market foreclosure of closed investment cables has occurred.

The substantial growth of closed investment cable capacity, with each of the three major regions of the world now served by five or more closed investment cables, also demonstrates that it is highly unlikely that U.S. carriers could use open investment cables to restrict the growth of submarine cable capacity. As AT&T and Concert have

previously shown, any open investment cable that attempted to limit efficient capacity expansion would merely shift traffic to existing closed investment cables that account for the vast majority of new capacity in recent years.

**FCC Report:** The 1999 FCC Section 43.82 Circuit Status Data (Dec. 2000) reports that submarine cable capacity at year-end 1999 was almost three times the capacity at year-end 1998. It also forecasts that year-end 2000 capacity will be over three times year-end 1999 capacity, and that 2001 and 2002 will show similarly dramatic increases.<sup>1</sup>

**Total Available  
Trans-Oceanic Fiber Optic Cable Capacity**  
(Includes FCC estimates for 2000-2002)  
(64 kbps equivalent circuits, FCC 1999 Section 43.82 Circuit Status Data (Dec. 2000), Table 7.)

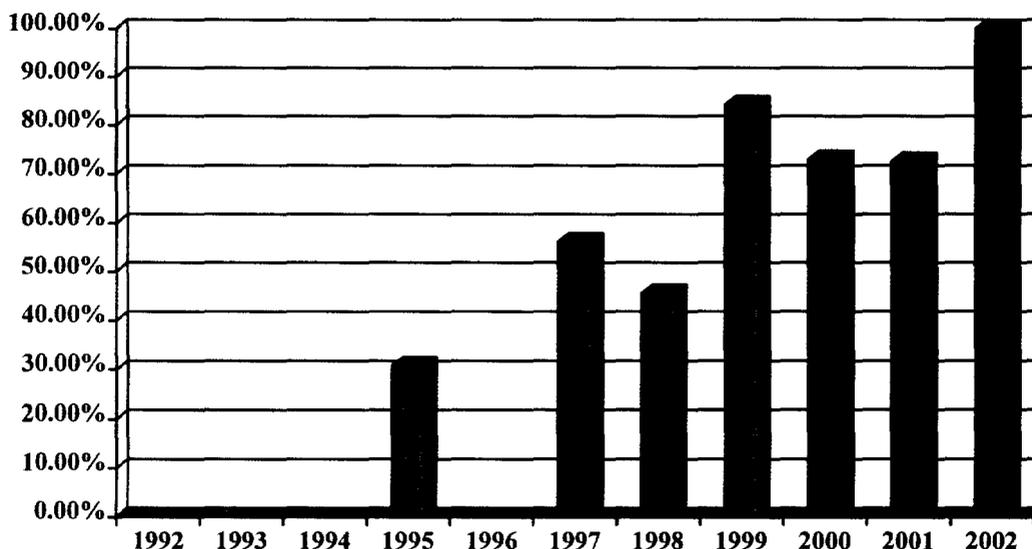


<sup>1</sup> The FCC report describes its capacity estimates for future cables as “conservative” because they take account of only the initial capacity of future cables rather than the full potential capacity. (See FCC Section 43.82 Circuit Status Data (Dec. 2000), Table 7, at 34.) The full potential capacity of these future cables is generally from three to ten or more times greater than their initial capacity. For example, the FLAG Atlantic-1 cable has an initial capacity of 160 gbps and a potential maximum capacity of 2,400 gbps, and the Tycom Pacific cable has an initial capacity of 360 gbps and a potential maximum capacity of 5,120 gbps. (*Id.*) Consequently, the FCC report greatly underestimates the full amount of new submarine cable capacity that will be provided by future cables.

**Closed investment capacity:** The FCC report also shows that closed investment cables represent the vast majority of new capacity for recent years and that open investment cables account for a rapidly decreasing share of total submarine cable capacity. It shows closed investment capacity rising from about 45 percent of new capacity at year-end 1998 (when the JUS application was filed) to *100 percent of new capacity forecasted for 2002*. Thus, capacity from closed investment cables, far from being foreclosed from the market, now represents the overwhelming majority of new capacity.

**Total Available**  
**Trans-Oceanic Fiber Optic Cable Capacity**  
 (FCC 1999 Section 43.82 Circuit Status Data (Dec. 2000), Table 7.)

**% of New Capacity on Closed Investment**  
**Cables**



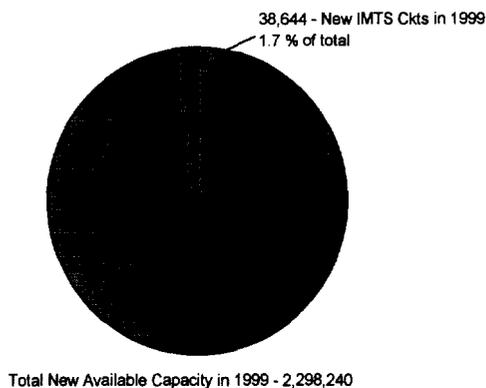
**U.S.-Japan route:** Most notably, the route that has seen the most dramatic increase in reported capacity is the trans-Pacific route. Three announced closed-investment cables are predicted by the FCC report to provide an additional 840 gbps initial capacity to the Pacific region (over ten times the initial 80 gbps capacity for JUS) and at their maximum potential capacity will provide over 20 times the capacity of JUS. These facts belie Global Crossing's March 15, 1999 claim that JUS was "a successful effort to limit the supply of cable capacity in the Pacific."

**3. Global Crossing's "Clustering" Theories Are Refuted by FCC Data Showing That Under 2 percent of New Circuits Are Used for IMTS Traffic.**

The FCC data also belie Global Crossing's claims that closed investment cables are disadvantaged because U.S. carriers must "cluster" on open investment cables to obtain necessary foreign-end arrangements and IMTS proportionate return traffic. In fact, as AT&T and Concert have shown, at least 95 percent of circuits on new cables are now used for private lines, which do not earn return traffic, do not need to be on the same cable as IMTS circuits, and may be terminated with any facilities-based carrier at the foreign end. Global Crossing's theories also have no application to IMTS traffic at the low settlement rates or ISR arrangements that now apply to virtually all the liberalized countries that are the landing points for most closed investment cables.

**IMTS traffic:** The 1999 FCC circuit status report shows that *less than 2 percent* of the 2,298,240 newly available 64 Kbps equivalent submarine cable circuits for 1999 were used for IMTS traffic. This data confirms the evidence submitted by AT&T and Concert in this proceeding that the new submarine cable capacity required to satisfy U.S. carriers' IMTS traffic requirements is now so insignificant compared to the capacity required for Internet, data and other private line traffic that IMTS traffic is generally ignored in planning new systems. There is therefore no basis for Global Crossing's continued assertion in its *ex parte* -- unsupported by any evidentiary showing -- that IMTS traffic remains "an important factor in the provision of undersea cable transport services."

**1999 New IMTS Circuits as a Percentage of Total  
New Available Capacity  
(FCC 1999 Section 43.82 Circuit Status Data (Dec. 2000), Tables 2 & 7.)**



Similarly, there is no basis for Global Crossing's "all the eggs in one basket" assertion that carriers "generally wish" to carry their voice and data traffic on the same cable. AT&T and Concert have provided unrebutted expert evidence that there are no planning, technical, economic or any other reasons why private line circuits need be on

the same cable as IMTS circuits, and that AT&T and Concert often chose to use multiple cables on a route to provide network security and redundancy.

AT&T and Concert accordingly urge the Commission to adopt a simplified, predictable approach similar to the Section 214 streamlining rules that will encourage continued capacity expansion by all types of submarine cables.

Respectfully submitted,

A handwritten signature in black ink that reads "James J. R. Talbot / ha". The signature is written in a cursive, slightly slanted style.

James J. R. Talbot  
Counsel for AT&T Corp. and its affiliates  
Concert Global Networks USA L.L.C. and  
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