

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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**GLOBAL CROSSING LTD.** )  
(Debtor-in-Possession), )  
)  
Transferor, )  
)  
and )  
**GC ACQUISITION LIMITED,** )  
)  
Transferee, )  
)  
Application for Consent to Transfer )  
Control and Petition for Declaratory Ruling )  
\_\_\_\_\_)

IB Docket No. 02-286

**RESPONSE OF GLOBAL CROSSING LTD.  
AND GC ACQUISITION LIMITED**

Andrew D. Lipman  
Jean L. Kiddoo  
Paul O. Gagnier  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5 116  
Tel: (202) 424-7500  
Fax: (202) 424-7645

Counsel for Global Crossing Ltd.  
and GC Acquisition Limited

November 5, 2002

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )

**GLOBAL CROSSING LTD.** )  
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**RESPONSE OF GLOBAL CROSSING LTD.  
AND GC ACQUISITION LIMITED**

Global Crossing Ltd. (Debtor-in-Possession) (“GCL”) and GC Acquisition Limited (“New GX” and, together with GCL, the “Applicants”), by their undersigned counsel, submit this Response in further support of their Application for Consent to Transfer Control and Petition for Declaratory Ruling (the “Application”), filed on August 22, 2002. In the Application, Applicants request that the Federal Communications Commission (the “Commission”) approve the transfer of control of GCL’s Commission-licensed subsidiaries to New GX and issue a declaratory ruling that the proposed indirect foreign investment in those subsidiaries by

Hutchison Telecommunications Limited (“Hutchison Telecom”) and Singapore Technologies Telemedia Pte Ltd (“ST Telemedia”) is in the public interest.’

For the reasons set forth in the Application and below, Applicants submit that the Proposed Transaction is in the public interest. Applicants request that the Commission be prepared to grant the Application promptly once it is notified that any national security, law enforcement, or public safety issues raised by the Department of Justice and other U.S. Government agencies have been addressed, so that GCL may consummate the Proposed Transaction and complete its restructuring.

## **I. THE LACK OF COMMENTS SHOWS THAT THERE IS NO IMPEDIMENT TO THE COMMISSION’S GRANT OF THE APPLICATION**

The comments filed in this proceeding make clear that, once any national security, law enforcement, and public safety issues are resolved, there is no impediment to the Commission approving the Proposed Transaction.’ The few comments that were timely filed make two principal claims: (1) that better offers were presented to and rejected by GCL or that other investors are currently available;’ and (2) that the proposed foreign ownership interests in New GX threaten the national security of the United States.<sup>4</sup>

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<sup>1</sup> The transfer of control and investments are part of a transaction by which Hutchison Telecom and ST Telemedia each will invest \$125 million in New GX in return for equity and voting stakes of 30.75% each (the “Proposed Transaction”). The Proposed Transaction is discussed in greater detail in the Application.

The comments of GlobalAxxess should be dismissed as those of an unsuccessful bidder for GCL’s assets. Many of the individual comments were not timely filed and, in any event, they do no more than repeat the misleading and irrelevant claims made by GlobalAxxess.

<sup>3</sup> Comments of GlobalAxxess (Oct. 19, 2002) (“GlobalAxxess Cmts.”); Comments of Lyle R. Little (Oct. 25, 2002); Comments of Anthony Maretta (Oct. 29, 2002).

<sup>4</sup> See, *infra*, note 9. Several commenters also assert that the Commission should deny the Application because of private litigation and governmental investigations involving GCL. Comments of Edward M. Killalea (Oct. 25, 2002); Comments of Communications Workers of America (Oct. 21, 2002) (“CWA Cmts.”). Those matters will be resolved in the appropriate fora and should not affect the Commission’s analysis of whether the Proposed Transaction is in the public interest.

The first claim is contradicted by the record in the Bankruptcy Court. GCL engaged in an extensive search for new investment following its Chapter 11 filings under the supervision of the Bankruptcy Court. The Proposed Transaction with Hutchison Telecom and ST Telemedia emerged as the “highest or otherwise best” offer made to GCL.<sup>5</sup> The Bankruptcy Court stated, based on its review of the record and oral testimony, that “the management of this company and its professionals engaged in all of the effort one hopes and expects that they would engage in to try and maximize the value on behalf of the stakeholders.”<sup>6</sup> The commenters offer no new facts to support their claims to the contrary. Therefore, their allegations should be rejected.’

The commenters also misunderstand the role of the Commission. The Commission is charged with determining whether the Proposed Transaction is in the public interest, not whether there are other transactions that may hypothetically be “better.” The commenters are in effect asking the Commission to second-guess the Bankruptcy Court’s conclusion that the Proposed Transaction represents the best option for GCL, its creditors, and the other stakeholders. The Commission has not been given, and should not assume, such a role.

Finally, it is unlikely that GCL will receive a better offer if the Proposed Transaction does not close. Conditions in the telecommunications sector have worsened since the Proposed Transaction was announced. Numerous other carriers have filed for protection from their creditors. Tellingly, GCL has received no interest from other potential investors since the

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<sup>5</sup> *In re Global Crossing Ltd., et al.*, Chapter 11 Case Nos. 0240187 (REG) *et al.*, Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure Approving Stock Purchase Agreement (Aug. 9, 2002), at ¶ W (“Sale Order”). A copy of the Sale Order was appended to the Application as Attachment A.

<sup>6</sup> *In re Global Crossing Ltd., et al.*, Chapter 11 Case Nos. 02-40187 (REG) *et al.*, Transcript of August 9, 2002, Hearing (“Hrg. Trans.”), at 58. A copy of the hearing transcript, which includes testimony regarding the efforts of GCL to find an investor, is appended hereto as Attachment A.

<sup>7</sup> Applicants note that interested parties had the opportunity to be heard at the August 9, 2002, Bankruptcy Court hearing that led to the entry of the Sale Order. Hrg. Trans., at 54-57. None of the commenters, including GlobalAxxess, took advantage of that opportunity.

Proposed Transaction was approved by the Bankruptcy Court.<sup>8</sup> While GCL would endeavor to arrange an alternative restructuring if the Proposed Transaction were not consummated, there is no assurance that it would be successful. There is a very real risk that if the Proposed Transaction is not consummated GCL would be forced to cease its operations, discontinue service to its 85,000 business and carrier customers, terminate its 5,000 remaining employees, and liquidate its assets. Such a result would not be in the public interest.

Several commenters contend, with only general allegations and arguments, that the Proposed Transaction, specifically the proposed foreign ownership interests in New GX, threatens the national security of the United States.’ As discussed in Section III, Applicants are engaged in discussions with the United States government regarding national security, law enforcement, and public safety issues. Commenters’ concerns thus will be addressed by the United States government agencies responsible for those matters.

## **II. APPLICANTS HAVE DEMONSTRATED THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST**

Applicants have shown that the Proposed Transaction is in the public interest. As stated in the Application, the Proposed Transaction is currently GCL’s only option. A likely alternative to the Proposed Transaction is the liquidation of GCL, with the resulting discontinuance of

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<sup>8</sup> GlobalAxxess claims in its comments that it recently made an offer to the United States Trustee and to counsel for the Official Unsecured Creditors Committee. GlobalAxxess Cmts., at 3. Applicants are not aware of any such offer. Moreover, as discussed above, the Bankruptcy Court concluded that the Proposed Transaction represents the best offer to GCL and issued a Sale Order approving the Proposed Transaction. Issues regarding other bids are properly directed to the Bankruptcy Court, not the Commission.

<sup>9</sup> See, e.g., Comments of Terri Lain (Oct. 25, 2002); Comments of Lloyd R. Little (Oct. 25, 2002); Comments of Curtis Braun (Oct. 29, 2002). The commenters make no attempt to rebut the presumption in the *Foreign Participation Order*, 12 FCC Rcd 23891 (1997), in favor of investment from World Trade Organization Members.

service and additional job losses.” The demise of competitive carriers serves only to strengthen the position of incumbent operators and harms competition and consumers. For that reason, the Commission has found that the public interest favors competitive carriers emerging from bankruptcy and continuing their operations.” The Proposed Transaction will allow GCL and its Commission-licensed subsidiaries to emerge from Chapter 11. Therefore, it should be approved by the Commission.

### **III. APPLICANTS ARE COMMITTED TO ADDRESSING ANY NATIONAL SECURITY, LAW ENFORCEMENT, AND PUBLIC SAFETY ISSUES**

In the Application, Applicants requested that the Commission defer dispositive action on the Application pending resolution of any national security, law enforcement, or public safety issues identified by the Department of Justice, Federal Bureau of Investigation, and Department of Defense (collectively, the “Executive Agencies”).” The Executive Agencies’ Motion for Continued Deferral simply reiterates that request. Applicants are continuing to work with the Executive Agencies and are confident that any issues that may be identified by the Executive Agencies will be satisfactorily resolved. Applicants will keep the Commission informed of the progress of their discussions with the Executive Agencies.

### **IV. CONCLUSION**

For the reasons set forth above and in the Application, Applicants urge the Commission to continue its examination of the Application and to be prepared to grant the Application

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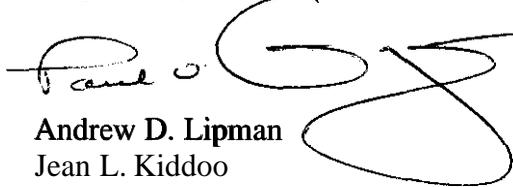
<sup>10</sup> While the Communications Workers of America claim to be incensed over prior layoffs at GCL and the effects of GCL’s bankruptcy on those employees, they show little concern about the effect on the remaining employees if GCL’s restructuring effort does not succeed “. . . Applicants fail to provide any evidence why the continued viability of these subsidiaries is necessary to competition.” CWA Cmts., at 3. Given that the CWA no longer represents GCL’s employees, its lack of concern is not surprising.

<sup>11</sup> *Applications of Space Station System Licensee, Inc. and Iridium Constellation LLC for Consent to Assignment of License Pursuant to Section 310(b)(4) of the Communications Act*, File No. SAT-ASG-20010319-00025, Memorandum Opinion, Order and Authorization, DA 02-307 (rel. Feb. 8, 2002), at ¶ 34.

<sup>12</sup> Application, at 20.

promptly once it is notified that any national security, law enforcement, or public safety issues raised by the Executive Agencies have been resolved.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul O. Gagnier". The signature is stylized with a large, looping "G" and a long horizontal stroke extending to the right.

**Andrew D. Lipman**  
Jean L. Kiddoo  
Paul O. Gagnier  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Tel: (202) 424-7500  
Fax: (202) 424-7645

Counsel for Global Crossing Ltd. and  
GC Acquisition Limited

Dated: November 5, 2002

## CERTIFICATE OF SERVICE

I, Ruth W. Moroz, hereby certify that on this 5<sup>th</sup> day of November 2002, I caused a true and correct copy of the foregoing Response Comments of Global Crossing Ltd. and GC Acquisition Limited to be served upon the following parties in the manner indicated:

Qualex International

By E-Mail: [&xint@aol.com](mailto:&xint@aol.com)

J. Breck Blalock

By E-Mail: [bblalock@fcc.gov](mailto:bblalock@fcc.gov)

Susan O'Connell

By E-Mail: [soconnell@ir.fcc.gov](mailto:soconnell@ir.fcc.gov)

Kathleen Collins

By E-Mail: [kcollins@fcc.gov](mailto:kcollins@fcc.gov)

Elizabeth Yockus

By E-Mail: [eyockus@fcc.gov](mailto:eyockus@fcc.gov)

Zenji Nakazawa

By E-Mail: [znakazaw@fcc.gov](mailto:znakazaw@fcc.gov)

Neil Dellar

By E-Mail: [ndellar@fcc.gov](mailto:ndellar@fcc.gov)

John G. Malcolm

Deputy Assistant Attorney General

Criminal Division

United States Department of Justice

10<sup>th</sup> Street & Constitution Avenue, N.W.

Washington, D.C. 20530

By First-class Mail

Patrick W. Kelley

Deputy General Counsel

Federal Bureau of Investigation

935 Pennsylvania Avenue, N.W.

Washington, D.C. 20535

By First-class Mail

Debbie Goldman

Louise Novotny

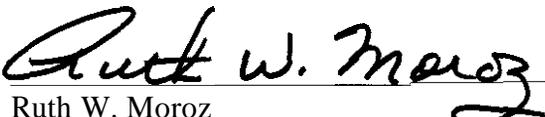
Communications Workers of America

By E-Mail: [debbie@cwa-union.org](mailto:debbie@cwa-union.org)

Karl W. B. Schwarz

GlobalAxxess

By E-Mail: [kw.schwarz@worldnet.att.net](mailto:kw.schwarz@worldnet.att.net)

  
Ruth W. Moroz

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**ATTACHMENT A**  
**TRANSCRIPT OF AUGUST 9,2002 HEARING**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

case No. :  
02-40188

of  
GLOBAL CROSSING, LTD., etc.,  
Debtors.

-----x

August 9, 2002  
8:30 a.m.

United States Custom House  
One Bowling Green  
New York, New York 10004

Motion by attorney for the debtor to approve  
procedure for letter of intent with Hutchison  
Whampoa, Ltd. and Singapore Technologies,  
procedures for the consideration of alternate  
investmen: proposal, etc.; auction hearing.

E E F O R E :

THE HONORABLE ROBERT E. GERBER, ESQ.,  
United States Bankruptcy Judge

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**A P P E A R A N C E S:**

**WEIL, GOTSHAL & MANGES, LLP**  
**Attorneys for Debtors**  
**767 Fifth Avenue**  
**New York, New York 10153-0119**

**BY: PAUL M. BASTA, ESQ.**  
**MICHAEL WALSH, ESQ.**  
**-and-**  
**SHAI WAISMAN, ESQ.**

**SHEARMAN & STERLING**  
**Attorneys for Joint Provisional Liquidators**  
**599 Lexington Avenue**  
**New York, New York 10022-6069**

**BY: JAMES L. GARRITY, JR., ESQ.**

**MILBANK, TWEED, HADLEY & McCLOY, LLP**  
**Attorneys for JP Morgan Chase Bank as**  
**Administrative Agent for Senior Secured**  
**Lenders**

**1 Chase Manhattan Plaza**  
**New York, New York 10005-1413**

**BY: DEIRDRE ANN SULLIVAN, ESQ.**  
**-and-**  
**ALLAN S. BRILLIANT, ESQ.**

**BROWN RUDNICK BERLACK ISRAELS, LLP**  
**Attorneys for Official Creditors Committee**  
**120 West 45th Street**  
**New York, New York 10036**

**BY: EDWARD WEISFELNER, ESQ.**

**UNITED STATES DEPARTMENT OF JUSTICE**  
**OFFICE OF THE UNITED STATES ATTORNEY**  
**Attorneys for United States Attorney**  
**100 Church Street**  
**New York, New York 10007**

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A P P E A R A N C E S: (continued)

CLEARY, GOTTLIEB, STEEN & HAMILTON  
Attorneys for Deutsche Telecom  
One Liberty Plaza  
New York, New York 10006

BY: JAMES L. BROMLEY, ESQ.

LAW OFFICES OF DECHERT PRICE & RHOADS  
Attorneys for One Equ 17 1/2 Partners  
30 Rockefeller Plaza  
New York, New York 10112-2200

BY: RAVE McGRAIL, ESQ.  
-and-  
JOEL H. LEVITIN, ESQ.

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1 Proceedings

2 JUDGE GERBER: Good morning. Please  
3 be seated.

4 Mr. Basta and Mr. Waish, we have a  
5 pretty full courtroom. I think that we have  
6 run out of seats. Anybody who can find a  
7 seat can try. Please use the main mike.

8 MR. BASTA: Good morning, Your Honor.  
9 Paul Basta from Weil Gotshal & Manges on  
10 behalf of Global Crossing. I am here today  
11 with my colleagues, Mr. Walsh and  
12 Mr. Waisman.

13 First, I would like to thank the Court  
14 for rescheduling this delayed hearing on the  
15 auction process on short notice. We very  
16 much appreciate it.

17 in court today, Your Honor, on behalf  
18 of the debtors we have Mr. John Legere, the  
19 Chief Executive Officer of Global Crossing.  
20 In addition, we have Mr. Arthur Newman. and  
21 Mr. Barry Korn of the Blackstone Group, the  
22 financial advisors to the company.

23 In court today we also have  
24 representatives of the Joint Provisional  
25 Liquidators, the Creditors' Committee, and

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Page 05

1 Proceedings

2 the agent for the Bank Group.

3 Your Honor, on major cases we often  
4 look back and pinpoint the moment in time  
5 where you start to realize khat the hard  
6 work is paying off and you are on the road  
7 towards a successful restructuring. Today  
8 is chat point with Global Crossing.

9 Mr. Legere's team, with the help of the  
10 Blackstone Group, in an exceptionally  
11 challenging telecommunication environment,  
12 have been working hard to solicit investment  
13 proposals and bids to help facilitate a  
14 reorganization of the company. That hard  
15 work has paid off and we are now in a  
16 position to seek approval of an agreement  
17 that forms the basis of a Chapter 11 plan  
18 for the debtors and for a scheme of  
19 arrangement under Bermuda law that the  
20 company intends to file in the very near  
21 future.

22 The agreement has two critical  
23 components. First, there is an agreement  
24 supported by both the banks and creditors'  
25 committee with Hutchison Telecommunications

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## Proceedings

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2 Limited and Singapore Technologies for a  
3 significant cash investment for a  
4 controlling stake in the company, an  
5 investment that will fuel the company's  
6 Chapter 11 reorganization.

7 Second, the banks and the creditors'  
8 committee, as between themselves, have  
9 reached an agreement on how the interests in  
10 the reorganized company will be allocated  
11 among themselves in a Chapter 11 plan that  
12 has the protections of Section 1129 of the  
13 Bankruptcy code.

14 So what are we here for and what would  
15 we like? In February we filed a motion with  
16 the Court that sought two orders. First,  
17 there was an order approving bidding  
18 procedures, which added substantial  
19 negotiations with both creditor groups, was  
20 entered by the Court on March 25th.

21 Pursuant to that motion, we also sought  
22 approval of the best investment or bid  
23 proposal that we obtained through the  
24 marketing process that the bidding  
25 procedures provided for us.

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1 Proceedings

2 At the end of this hearing, after the  
3 evidence has been presented and all parties  
4 have had a chance to be heard, we will be  
5 presenting an order for approval of the  
6 transaction with Hutchison  
7 Telecommunications and Singapore  
8 Technologies as the best proposal received  
9 pursuant to that process.

10 We are going to do four things today,  
11 Your Honor. I am going to start out by  
12 giving the Court an overview of the events  
13 that brought us here today. I will describe  
14 the agreement with the investors.

15 JUDGE GERBER: The investors being?

16 MR. BASTA: STT and Hutchison. I am  
17 using those terms interchangeably today.  
18 When we sent down a copy of the proposed  
19 order with the agreement attached, we did  
20 attach a summary term sheet to assist the  
21 Court in understanding the key terms of the  
22 agreement.

23 Third, I will describe the agreement  
24 between the two creditor groups that will be  
25 embodied in the Chapter 11 plan. and then I

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## Proceedings

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will turn Over to my colleague, Mr. Walsh,  
3 who will present the direct testimony of  
4 Mr. Newman regarding the marketing process  
5 that was performed by the Blackstone Group  
6 and the company, as well as the process for  
7 evaluating the different bids that were  
8 received pursuant to that process.

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How did we get here? These investors  
expressed an interest in Global Crossing  
well before the petition. But if you turn  
the clock back to the days immediately  
before the filing, Mr. Legere and his team  
and their advisors flew to Hong Kong and  
they negotiated with these investors a  
letter of intent for investment purposes.  
The debtors used that letter of intent as  
the basis for their original sale motion  
which sought to conduct an investment  
process with the original Hutchison proposal  
was a "stalking horse."

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Although that original letter of intent  
never did become a "stalking horse,"  
negotiations over that letter of intent  
brought the committee and the company

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## 1 Proceedings

2 together over a process in negotiating the  
3 bidding procedures order. which this Court  
4 entered on March 25th.

5 The bidding procedures order provided  
6 the debtors and their creditors with  
7 flexibility to develop a process that  
8 balanced a different kind of bids. While  
9 Mr. Newman will describe this in detail in  
10 his testimony, the bidding procedures  
11 allowed for bids for the global business as  
12 a whole or for any of the company's three  
13 primary core businesses: **Racal**, which owns  
14 the **Drexel network in the United Kingdom;**  
15 **Global Marine Systems**, which owns the ship  
16 fleet that lays cable and provides sub-sea  
17 maintenance: as well as the company's  
18 teleconferencing business.

19 The order and the bidding procedures  
20 gave the debtors flexibility to delay the  
21 bid deadlines, to delay the public auction  
22 date or time, and the timing of the hearing  
23 on the outcome of this process, and even to  
24 cancel the public portion of any auction.  
25 As events have shown, the company and its

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1 Proceedings

2 creditors very much needed that flexibility  
3 in its environment.

4 As Mr. Newman will make clear in his  
5 testimony, the debtors with the support of  
6 the committee and the banks have determined  
7 to cancel the public portion of the auction,  
8 primarily because we have been in auction  
9 mode for some time, ever since July 11th,  
10 and seek the approval of the agreement with  
11 Hutchison Telecommunications and Singapore  
12 Technologies.

13 Your Honor, let me turn to the terms of  
14 the agreement. Under the terms of the  
15 agreement, the investors will put in  
16 \$250 million in cash, 61 1/2 percent of the  
17 equities of the public restructured  
18 company. They did it for the entire  
19 company. The bids have not provided for the  
20 break-up of the company.

21 The creditors would receive \$300  
22 million in cash, plus the interest that is  
23 earned thereon in the segregated account.  
24 \$200 million of notes will be issued by the  
25 new enterprise creditor, and the creditors

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Page 11

## 1 Proceedings

2 will receive 38 1/2 percent of the equity.

3 One of the most attractive aspects of  
4 'chis agreement is its simplicity. The  
5 agreement and the transactions that will  
6 arise therefrom will significantly  
7 delcvcrage company, and it delivers to the  
8 company a strong sponsor chat is going to  
9 help grow and maintain the company's  
10 customer base.

11 The agreement is subject to regulatory  
12 approvals, and I know that Mr. Lane from the  
13 U.S. Attorney's office is here. He  
14 particularly would like me to say that it is  
15 subject to regulatory approval, which  
16 everybody hopes will be obtained in the  
17 first quarter of next year.

18 The agreement is also subject to the  
19 company's hitting performance targets  
20 through the end of the year. The agreement  
21 contains a liquidated damages provision of  
22 \$30 million. That liquidated damages  
23 provision would be triggered if the company  
24 breaches a covenant in the agreement or if  
25 they recklessly breach a representation of

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## Proceedings

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2 warranty. That agreement contains a  
3 customary fiduciary out where the fiduciary  
4 obligations of the company are preserved,  
5 and the agreement would provide that the  
6 liquidated damages be payable if the company  
7 did exercise that fiduciary out.

8           Very importantly, this agreement  
9 contains a very strict timeline that is  
10 going to cause everybody here to work very  
11 hard to get this company out of bankruptcy  
12 and, at least, have all of the conditions  
13 for getting out of bankruptcy, other than  
14 regulatory approval, done in a very short  
15 leash.

16           Specifically, the agreement provides  
17 that the parties will file a plan and  
18 disclosure statement with this Court before  
19 September 16th. September 16th happens to  
20 be the last day of the debtors' existing  
21 exclusionary period. So the intention is to  
22 get this plan and disclosure statement on  
23 file prior at that date. It provides for  
24 approval of a disclosure statement  
25 describing that plan by October 21st. It

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1 Proceedings

2 provides for confirmation hearings to  
3 commence by December 5th and a confirmation  
4 order to be entered by January 6th.

5 These are just not idle deadlines. The  
6 failure of the parties to comply with this  
7 time frame by more than seven business days,  
8 will result in the triggering of the  
9 \$30 million liquidated damages fee.

10 In certain instances, or at least I  
11 should say in one instance, the \$30 million  
12 liquidated damages fee bumps up to  
13 \$50 million. That is where one or more  
14 parties acquire 30 percent or more of the  
15 bank claims and, thereafter, this agreement  
16 is not able to be completed due to the  
17 direct or indirect action of that dissenting  
18 group.

19 The agreement also contains one issue,  
20 which could require determinations by this  
21 Court. The agreement contains a cap on the  
22 cure costs payable to the company's access  
23 providers. I know Mr. Walsh has described  
24 the access relationship earlier this week in  
25 connection with one of the prior hearings.

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1  
2 I know that the Court is familiar with it  
3 from the other cases that it has, and from  
4 the hearings that we have had before it.  
5 But while the company is comfortable that it  
6 will meet that cap, there may be a  
7 determination that needs to be required by  
8 this Court regarding the extent to which  
9 access relationships constitute executory  
10 contracts and whether pre-petition amounts  
11 owing to access providers are required to be  
12 cured under section 365 of the Bankruptcy  
13 code.

14 JUDGE GERBER: Determinations that  
15 would have to be made before confirmation?

16 MR. BASTA: We would seek to have those  
17 determinations made in connection with  
18 confirmation and demonstrating the  
19 feasibility of the plan.

20 If I could pause, Your Honor, and ask  
21 if Your Honor has any questions regarding  
22 the terms of the transaction?

23 JUDGE GERBER: No. Keep going,  
24 Mr. Basta. I am sure that with time, these  
25 will be things that I will wonder about, but

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2 JPLs .

3 The agreement also makes provisions for  
4 leaving money in the estate to handle the  
5 disputed claim process. Your Honor, this  
6 intercreditors' agreement was the product of  
7 extensive negotiations on a whole series of  
8 potential litigation issues between the  
9 parties. The debtors are very familiar with  
10 these issues, although they did not do the  
11 same level of analysis that the two creditor  
12 groups did themselves. The debtors believe,  
13 though, that they are sufficiently familiar  
14 with the risks and rewards on both sides of  
15 the potential litigation issues to conclude  
16 that a negotiated solution is well within  
17 its own reasonableness.

18 Moreover, the debtors are relying on  
19 this creditor allocation in its decision to  
20 select the Hutch-Sing proposal as being  
21 preferable to other alternatives, such as a  
22 stand-alone plan. In other words, the  
23 consensual nature of this transaction is a  
24 very important consideration for the  
25 debtors.

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1 Proceedings

2 It is important to note that we have  
3 committed to implementing the proposed  
4 transactions through a Chapter 11 plan of  
5 reorganization with the protections  
6 that come with Section 1129 of the  
7 Bankruptcy Code, not as a Section 363  
8 transaction.

9 We believe that the plan is the best  
10 mechanism to assure that creditors'  
11 treatments which are crucial for this deal  
12 occur at the same time that the transaction  
13 closes. That will complete my  
14 presentation.

15 If Your Honor doesn't have any  
16 questions, I will turn it over to  
17 Mr. Walsh.

18 JUDGE GERBER: Mr. Walsh?

19 MR. WALSH: Thank you, Your Honor.  
20 Michael Walsh from Weil, Gotshal &  
21 Manges on behalf of the debtors.

22 Your Honor, I would like to call  
23 Arthur B. Newman to the stand.

24 JUDGE GERBER: Mr. Newman, will you  
25 come up, please.

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