

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)
In the Matter of _____)
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

**REPLY 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, “Applicants”), by their undersigned counsel, submit this Reply to the Statement in Support of Objections to Applicants’ Petition for a Declaratory Ruling filed by American Communications Network, Inc. (“ACN”) on November 5, 2002.¹

The unstated purpose of the ACN Comments is clear: ACN seeks to use this proceeding to exert pressure on CCL with respect to a dispute over unrelated contractual agreements. While ACN wraps its arguments in the cloak of the “public interest,” its real goal is to further its private interests in that dispute. The Commission should not permit its process to be abused in this

¹ ACN’s submission is referred to herein as the “ACN Comments.”

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manner. Moreover, ACN offers no new arguments that would rebut the Applicants' public interest showing. Therefore, the Commission should disregard the ACN Comments and should be prepared to grant the Application for Consent to Transfer Control and Petition for Declaratory Ruling (the "Application") promptly once any national security, law enforcement, and public safety issues are addressed.

I. THE COMMISSION IS NOT THE PROPER FORUM FOR ACN'S CLAIMS

ACN asserts that its ability to compete is threatened by the Proposed Transaction and, therefore, that the transaction is not in the public interest.² A review of the ACN Comments makes clear that ACN is not concerned with preserving competition. Rather, ACN asks the Commission to interpret commercial contracts entered into by ACN and Global Crossing Bandwidth, Inc. ("GCB"). Even if ACN's claims had merit, the courts, not the Commission, are the proper fora for their resolution.³ Allegations involving a contractual dispute are not relevant to the Commission's analysis here,

ACN also mischaracterizes its agreements with GCB and the Proposed Transaction. ACN does have a right of first refusal if GCB sells its holdings in ACN.⁴ However, the Proposed Transaction will result in the transfer of control of GCB from GCL to New GX. GCB will continue to own its ACN shares after the consummation of the Proposed Transaction. Therefore, there is no sale that would trigger the right of first refusal.

The Commission should view the ACN Comments as nothing more than an attempt by ACN to escape what it belatedly views as a "bad deal." The Commission should decline to become involved in a contractual dispute that is properly directed elsewhere.

² ACN Comments, at 5.

³ *Application of XO Communications, Inc.*, Memorandum, Opinion, Order and Authorization, DA 02-2512 (rel. Oct. 3, 2002), at n. 31 ("*XO Communications*").

⁴ ACN Comments, at 7.

II. ACN HAS NOT REBUTTED THE STRONG EVIDENCE IN FAVOR OF THE PROPOSED TRANSACTION

Applicants have shown why the Proposed Transaction is in the public interest and do not repeat their arguments here.⁷ ACN does nothing to rebut Applicants' arguments. Instead, ACN relies on misstatements of fact and law in an attempt to distract the Commission from the fact that it seeks to have the Commission address a contractual dispute.

For example, ACN claims that New GX's proposed affiliations with carriers in Hong Kong and Singapore threaten competition.⁸ However, New GX will not become affiliated with any dominant carrier in Hong Kong as a result of the Proposed Transaction.⁹ With respect to the U.S-Singapore route, Applicants have agreed to accept dominant treatment,⁸ which the Commission has found adequate to remedy any potential harm to competition.⁹

ACN's reliance on 47 U.S.C. § 310(a) also is mistaken.¹⁰ Section 310(a) is limited; it prohibits radio licenses from being "granted to or held by any foreign government or the representative thereof." The radio licenses involved in the Proposed Transaction are held by Global Crossing North American Networks, Inc. ("GCNAN") and will be held by GCNAN after the transaction closes. GCNAN is a Delaware corporation that, after closing, will be an indirect

Application, at 16-19; Response of Global Crossing Ltd. (Debtor-in-Possession) and GC Acquisition Limited (filed Nov. 5, 2002), at 4 ("Response").

ACN Comments, at 17.

Several wholly-owned subsidiaries of Hutchison Telecommunications Limited provide telecommunications services in Hong Kong. None of them is dominant. Application, at 23-24.

⁸ Application, at 25.

⁹ See, e.g., *XO Communications*, at ¶¶ 31-33,

¹⁰ ACN Comments, at 20.

subsidiary of New GX. ACN's unsupported assertion that GCNAN's licenses will be held by a "foreign government or representative thereof" is therefore wrong."

Finally, ACN states that national security and related issues demand denial of the Application. ACN offers no support for this assertion. Applicants have advised the Commission that they are working with the U.S. Government to identify and resolve any such issues." The fact that those discussions are taking place does not require that the Application be denied.

111. THE PROPOSED TRANSACTION DOES NOT AFFECT ACN'S FCC LICENSES

ACN asks the Commission to make clear that ACN's FCC licenses are not involved in this proceeding and that ACN is not estopped from entering into future transactions involving its licenses.¹³ Applicants have not claimed, nor could they claim, that ACN's licenses are being transferred as a result of the Proposed Transaction, and the transfer of GCB (and its non-controlling interest in ACN) does not trigger the transfer of ACN.¹⁴ In short, Applicants agree that ACN's FCC licenses are not affected by the Proposed Transaction.

IV. CONCLUSION

For the reasons set forth above and in their previous submissions, Applicants urge the Commission to continue its examination of the Application and to be ready to grant promptly the

¹¹ The Commission has repeatedly permitted indirect ownership of radio licenses by foreign carriers that are affiliated with foreign governments. See, e.g., *XO Communications*, at ¶ 16 *et. seq.*; *In re Applications of VoiceStream Wireless Corp., et al.*, Memorandum Opinion and Order, 16 FCC Rcd. 9779, ¶¶ 38-51 (2001); *In re Intelsat, LLC*, Memorandum, Opinion, Order and Authorization, 15 FCC Rcd. 15460, ¶48 (2000).

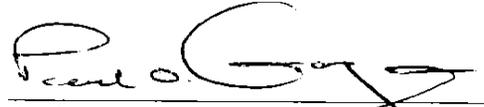
¹² Application, at 20; Response, at 5.

¹³ ACN Comments, at 21

¹⁴ GCB appoints one of ACN's directors and its investment is protected by the standard minority investor protections that the Commission has found do not constitute control. *Baker Creek Communications, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd. 18709, ¶ 9 (1998); *Intermountain Microwave*, 12 FCC 559 (1963).

Application once it is notified that any national security, law enforcement, and public safety issues raised by the U.S. Government 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 flourish at the end.

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Datcd: November 18, 2002

CERTIFICATE OF SERVICE

I, Ruth W. Moroz, hereby certify that on this 18th day of November 2002, I caused a true and correct copy of the foregoing Reply of Global Crossing Ltd. and GC Acquisition Limited to be served upon the following parties in the manner indicated:

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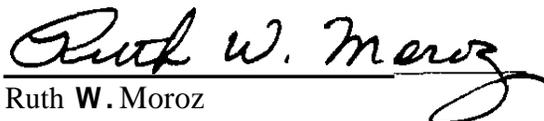
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