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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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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)
_____)

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JAN 28 2003

JAN 30 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Policy Division
International Bureau

Non-Streamlined ISP-PDR-20020822-00029

**MOTION TO ACCEPT LATE-FILED PLEADING
SUBMITTED BY NEWBRIDGE CAPITAL**

Newbridge Capital ("Newbridge"), by and through its attorneys, respectfully requests leave to submit its late-filed petition to deny in the above captioned proceeding. The International Bureau ("IB), for good cause shown, has accepted and considered a late-filed petition to deny. Swiftcall (USA) Inc., DA 97-2128, 13 FCC Rcd 7583, 7854 (Telcom.Div. 1997) (granting motion of AT&T Corp. to accept a late-filed petition to deny). As demonstrated below, good cause exists for the Commission to accept and fully consider the attached PETITION TO DENY WITH RESPECT TO PC LANDING CORP. SUBMITTED BY NEWBRIDGE CAPITAL ("Newbridge's Petition to Deny").

Background

In the above captioned proceeding, it is proposed that Global Crossing Ltd. (Debtor-in-Possession) (“GCL”) would transfer its assets and operations to GC Acquisition Limited (“New GX”), and that New GX would receive a capital infusion from subsidiaries of Hutchison Whampoa Limited (“Hutchison”) and Singapore Technologies Pte Ltd (“Singapore Technologies”) in exchange for substantial control over New GX by Hutchison and Singapore Technologies (the “Proposed Transaction”). The Global Crossing bankruptcy currently is before the FCC because GCL and New GX (the “Applicants”) have submitted an application (the “Application”) requesting FCC approval for the transfer of control, of the Global Crossing subsidiaries holding FCC licenses (“FCC Licensed Subsidiaries”), that purportedly would result from the Proposed Transaction.

On September 19, 2002, the Commission placed the Application on public notice. IB Dkt. No. 02-286, Public Notice, 17 FCC Rcd 17206 (2002) (the “Public Notice”). The Public Notice announced a pleading cycle, with October 21, 2002, as the date by which interested parties must submit comments or a petition to deny (the “Petition Date”). Id.

On October 24, 2002, the IB approved the pro-forma assignment of the cable landing license, for Pacific Crossing Cable, from PC Landing Corp., to PC Landing Corp. as Debtor-in-Possession. International Authorizations Granted, DA 02-2796, Public Notice, 2002 FCC LEXIS 5453 (2002).

On November 15, 2002, the IB granted the application of PC Landing Corp. (Debtor-in-Possession) to add the pro-forma condition in 47 C.F.R. 1.767(g)(7) as an amendment to para.

19(5) of the Cable Landing License for the Pacific Crossing cable. Actions Taken Under Cable Landing Licensing Act, DA 02-3177, Public Notice, 2002 FCC LEXIS 6121 (2002).

On November 17, 2002, Asia Global Crossing Ltd. and Asia Global Crossing Development Co. filed Chapter 11 bankruptcy petitions in the US. Bankruptcy Court for the Southern District of New York, lead case number 02-15749 (REG).

On December 3, 2002, the undersigned counsel to Newbridge submitted, on behalf of Newbridge, a request for the Commission to take administrative notice of the legal proceedings described therein.

On December 4, 2002, the IB required the Applicants to submit additional information supplementing the Application and answer certain questions (the "Data Request").

On December 18, 2002, Applicants supplemented the Application with Applicants' response (the "Supplement") to the Data Request. On January 16, 2003, the Applicants further supplemented the Application. On January 24, 2003, the IB again required the Applicants to submit additional information. The IB's most recent data request remains outstanding as of the filing of this Motion to Accept Late-Filed Pleading and Newbridge's Petition to Deny.

Good Cause Exists To Accept And Consider Newbridge's Petition To Deny.

Newbridge seeks to purchase the assets of PC Landing Corp., which holds a cable landing license and is one of Global Crossing's FCC Licensed Subsidiaries. Newbridge anticipates submitting a bid in the public auction of the PC Landing Corp. bankruptcy proceeding. Newbridge's Petition to Deny requests that the Commission deny the Application as it relates to PC Landing Corp. If it determines that the Proposed Transaction should proceed, the Commission should ensure that any action taken on the Application does not influence the bidding in the PC Landing Corp. bankruptcy proceeding or prejudice that the Applicants or

interested parties to the Application are qualified to hold or control the PC Landing Corp. cable landing license.

As of the Petition Date, Newbridge was not aware that it is a party in interest in the instant proceeding, or that it should submit a petition to deny. Subsequent to the Petition Date, Newbridge learned of a number of significant facts that cast the instant proceeding in a new light, including that: a party in interest to the Application (the “Party in Interest”) has or will bid for the PC Landing **Corp.** assets in competition with Newbridge; CXO, L.L.C., a crisis manager approved by the creditors and bankruptcy court has taken over management responsibilities and apparently has assumed de facto control of PC Landing Corp.; and the Applicants’ Supplement failed to disclose that the Party in Interest would be bidding on the PC Landing Corp. assets and that the Applicants no longer possessed de facto control of PC Landing Corp. Had Newbridge known all of this prior to the Petition Date, Newbridge undoubtedly would have timely submitted its Petition to Deny. The occurrence of these events subsequent to the Petition Date warrants FCC acceptance and consideration of Newbridge’s late-filed Petition to Deny.

That the Party in Interest will be bidding in competition with Newbridge makes Newbridge a party in interest to this proceeding. The Party in Interest could derive an unfair advantage in competing with Newbridge for the PC Landing Corp. assets, if the Commission were to issue a blanket grant of the Application.

Newbridge’s Petition to Deny alleges facts which are sufficient to show that grant of the Application would be inconsistent with the public interest. See Astroline Communications Company Limited Partnership v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988). Outright grant of the Application could prompt an abuse of FCC process when PC Landing Corp. emerges from


bankruptcy. If the Applicants, or parties in interest to the Application, were to claim to be the high bidder in the PC Landing Corp. bankruptcy, they also could claim that the sale of PC Landing Corp. assets out of bankruptcy should presumptively be accorded pro forma treatment under 47 C.F.R. §63.24(d) note 2. To bring the PC Landing Corp. assets out of bankruptcy on a pro forma basis would constitute an abuse of FCC process. Such action would change de facto control, which requires prior FCC approval.

These facts alleged by Newbridge's Petition to Deny are substantial and material. That the Applicants no longer possess de facto control is of decisional significance to the Commission's processing of the Application as it relates to PC Landing Corp. Applicants' lack of de facto control, combined with no **or** nominal de jure control resulting from intervening bankruptcies, makes it possible for the Commission to accord pro forma treatment to any transfer of PC Landing Corp., if the Commission determines the Proposed Transaction should proceed. Applicants' failure to inform the Commission of this information, when Applicants clearly were under a duty to do *so*, suggests that Applicants are requesting overly broad authorization in order to pave the way for Applicants to resume eventual ownership and control **of** PC Landing Corp. Such an outcome would go beyond the confines of the Proposed Transaction as approved by the bankruptcy court.

In the alternative, Newbridge requests that the Commission consider Newbridge's Petition to Deny as informal comments, under 47 C.F.R. §1.587, **or** as a written communication.

Respectfully submitted,

NEWBRIDGE CAPITAL

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Dated: January 28, 2003

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SUMMARY

Approximately 88 Global Crossing companies are in bankruptcy in the United States, as debtors-in-possession, with others in bankruptcy overseas. Of the 88 U.S. companies, approximately 81 are consolidated in a bankruptcy proceeding in New York which includes the Global Crossing parent entity. Another five companies comprise the PC Landing Corp. bankruptcy proceeding in Delaware court, while two Asia Global Crossing companies make up the third major Global Crossing bankruptcy proceeding in the United States. The Global Crossing companies holding FCC authorizations (the “FCC Licensed Subsidiaries”) that are in bankruptcy, except PC Landing Corp., are in the New York bankruptcy proceeding. PC Landing Corp., which holds a cable landing license, is in the Delaware proceeding. Newbridge Capital (“Newbridge”) intends to bid. in the Delaware proceeding, for the assets of PC Landing Corp. The Commission’s treatment of the Application could have significant repercussions on the PC Landing Corp. bankruptcy. Accordingly, Newbridge requests that the Commission move cautiously, including denying the Application as it relates to PC Landing Corp.

According to the Applicants, Global Crossing Ltd. (Debtor-in-Possession) (“GCL”) would transfer its assets and operations to GC Acquisition Limited (“New GX”), and New GX would receive a capital infusion from subsidiaries of Hutchison Whampoa Limited and Singapore Technologies Pte Ltd (“Singapore Technologies”) in exchange for substantial control over New GX by Hutchison and Singapore Technologies (the “Proposed Transaction”). Application, 1-3. GCL and New GX (the “Applicants”) have submitted an application (the “Application”) requesting FCC approval for the transfer of control, of the FCC Licensed Subsidiaries, that purportedly would result from the Proposed Transaction. However, even

though approval is sought with respect to PC Landing Corp., that company is not part of the Proposed Transaction that was approved by the New **York** bankruptcy court.

The Applicants have neglected to tell the Commission exactly how New GX would assume control over the FCC Licensed Subsidiaries. It appears that, upon consummation of the Proposed Transaction, the debts of the FCC Licensed Subsidiaries that are in the New **York** bankruptcy proceeding (this excludes PC Landing Corp.) will be substantially discharged and the FCC Licensed Subsidiaries will be majority owned, indirectly, by New GX. Based on this, prior FCC approval is necessary for the FCC Licensed Subsidiaries which are under jurisdiction of the New **York** court. This is so because New GX apparently would assume full control of these FCC Licensed Subsidiaries, and, consequently, consummation of the Proposed Transaction would constitute a substantial transfer of control of these licensees.

However, the Application is inappropriate as it relates to PC Landing Corp. No bankruptcy court has approved the Applicants to assume control over PC Landing Corp. **As** described herein, GCL does not control PC Landing Corp. now, and New GX will not control PC Landing Corp. upon consummation of the Proposed Transaction. The Applicants do not need the requested prior approval with respect to PC Landing Corp. in order to close the Proposed Transaction. The Applicants have been **less** than forthcoming with the Commission about PC Landing Corp. The Application incorrectly implied that PC Landing Corp. should be treated exactly the same as the other FCC Licensed Subsidiaries. Subsequently, the Applicants did not disclose, even when responding to the Commission's explicit inquiry, that the management of PC Landing Corp. has been replaced and the Applicants apparently no longer exercise de facto control over PC Landing Corp. Perhaps the explanation for the Applicants' conduct is that

Singapore Technologies, a party in interest to the Application, has **or** will bid for the assets of PC Landing Corp. in **the** Delaware bankruptcy proceeding. (The Applicants similarly failed to disclose the **role** of Singapore Technologies.) Apparently, the Applicants requested unnecessary authorization with respect to PC Landing Corp. and failed to fully inform **the** Commission in order to surreptitiously pave the way for eventual resumption of control of PC Landing Corp. by the Applicants or parties in interest to the Application. Applicants' conduct with respect to PC Landing Corp. prompts Newbridge to submit this Petition to Deny.

The Commission should not grant the unnecessary authorization requested by Applicants for PC Landing Corp. If it determines the Proposed Transaction should proceed, **the** Commission should grant the Application with respect to the other FCC Licensed Subsidiaries and deny the Application as it relates to PC Landing Corp. The Commission should explicitly clarify that any FCC action taken in this proceeding is not intended to influence the bidding in the PC Landing Corp. bankruptcy proceeding or prejudge that the Applicants, or parties to the Application, are qualified to hold the PC Landing Corp. cable landing license. The Commission also should clarify that the emergence of PC Landing Corp. or its assets from bankruptcy will constitute a substantial assignment requiring prior FCC approval.

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**PETITION TO DENY WITH RESPECT TO PC LANDING CORP.
SUBMITTED BY NEWBRIDGE CAPITAL**

I. INTRODUCTION

This Petition is about the control of the communications facilities licensed to PC Landing Corp. by the FCC. Global Crossing Ltd. (Debtor-in-Possession) (“GCL”) and GC Acquisition (“New GX”) intend that GCL would transfer, to New GX, GCL’s assets and operations, including GCL’s interests in GCL subsidiaries holding FCC authorizations (the “FCC Licensed Subsidiaries”), and that Hutchison Whampoa Limited (“Hutchison”) and Singapore Technologies Pte Ltd (“Singapore Technologies”), through subsidiaries, would invest \$125 million each in New GX in exchange for each obtaining **30.75%** (totaling **61.5%**) of New GX’s equity and voting power (the “Proposed Transaction”). Application, 1-3. Consequently, GCL

and New GX (the “Applicants”) have submitted an application (the “Application”) seeking FCC approval for the transfer of control **of** the FCC Licensed Subsidiaries that purportedly would result from the Proposed Transaction.

Upon consummation of the Proposed Transaction, New GX apparently would hold indirect majority equity interests in each of the FCC Licensed Subsidiaries. **For** all the FCC Licensed Subsidiaries in bankruptcy, except PC Landing Corp., consummation of the Proposed Transaction would substantially discharge the debt of the FCC Licensed Subsidiaries and would cause New GX’s majority ownership to continue intact. Debtors’ Joint Plan of Reorganization Under Chapter 11 **of** the Bankruptcy Code, In re Global Crossing Ltd., Case No. **02-40188** (~~Bankr.~~ S.D.N.Y. Oct. 17, 2003), §§ **5.6, 9.2**. However, the Proposed Transaction will not discharge the debts **of** PC Landing Corp. because that company is not a debtor in the above referenced bankruptcy proceeding. The Global Crossing bankruptcies in the United States are divided into three main proceedings. PC Landing Corp. is in the Delaware proceeding, while the other FCC Licensed Subsidiaries that are in bankruptcy are in the above referenced New York proceeding, which is subject of the Proposed Transaction. Letter from Julian P. Gehman of December **3, 2002** (attached as App. Tab 1) (transmitting bankruptcy petition of Asia Global Crossing Ltd, which summarizes the U.S. Global Crossing bankruptcy proceedings). The Applicants have informed the Commission that the Applicants’ indirect equity interest in Asia Global Crossing Ltd. is expected to be eliminated in that company’s bankruptcy proceeding and that the indirect equity interest in PC Landing Corp. that is held by Asia Global Crossing Ltd. is expected to be eliminated in the PC Landing Corp. bankruptcy proceeding. Supplement, **3**. In summary, the Proposed Transaction approved by the bankruptcy court does not include PC Landing Corp. No bankruptcy court has approved the Applicants to take control of PC Landing

Corp. or its assets and, as described herein, FCC grant of the Application is not necessary for the Applicants to close the Proposed Transaction.

A. Relief Reauested

For these and other reasons, Newbridge urges that the Commission deny the Application as it relates to PC Landing Corp. Specifically, Newbridge requests the following relief.

1. Deny the Application as it relates to PC Landing Corp.

The Applicants have failed to provide to the Commission critical information regarding the de facto control of PC Landing Corp. and the bidding activities of a party in interest to the Application. Further, the public interest benefits asserted by the Application will not materialize for PC Landing Corp. merely upon consummation of the Proposed Transaction. Clearly, if it were to disapprove of the Proposed Transaction, the Commission would deny the entire Application, which would include a denial of the Application as it relates to PC Landing Corp. Even if it were to approve of the Proposed Transaction, the Commission should grant the Application with respect to the other FCC Licensed Subsidiaries and deny the Application as it relates to PC Landing Corp. The Applicants do not control PC Landing Corp., and prior FCC approval with respect to PC Landing Corp. is not necessary for the Applicants to close the Proposed Transaction.

2. Clarify that any FCC approval in this proceeding does not prejudge that Applicants, or parties to the Application, are qualified to hold the PC Landing Corp. cable landing license.

The emergence of PC Landing Corp. out of bankruptcy, or even any further disposition of PC Landing Corp. or its assets after consummation of the Proposed Transaction, would constitute a substantial transfer of de facto control. The putative new owner of the PC Landing Corp. assets must obtain prior FCC approval after public notice and comment on the putative

new owner's application. If the Commission were to disapprove of the Proposed Transaction, the above-recited status of PC Landing Corp. would be obvious and no further FCC action would be necessary. If it were to approve of the Proposed Transaction, the Commission should explicitly clarify that any FCC action taken in this proceeding is not intended to influence the bidding in the PC Landing Corp. bankruptcy proceeding or prejudice that the Applicants, or parties to the Application, are qualified to hold the PC Landing Corp. cable landing license. The Commission should further clarify that the emergence of PC Landing Corp. or its assets from bankruptcy will constitute a substantial assignment or transfer requiring prior FCC approval.

B. Grant of the Application Essentially Would Approve New GX To Hold The PC Landing Coro. Cable Landing License.

FCC grant of the Application would result in a real and substantial grant of authority. FCC authorization is not merely a temporary expedient to accommodate the bankruptcy process. For this reason, the Applicants' request for authorization for PC Landing Corp. must be taken seriously and dealt with according to the parameters of the authorization requested. The Applicants had other options available that would have enabled the Applicants to seek FCC review and treatment that more appropriately reflects the posture of PC Landing Corp. At a minimum, the Applicants should have fully disclosed in the Application the dichotomy between PC Landing Corp. and the other FCC Licensed Subsidiaries and the fact that parties in interest to the Application would be bidding for the assets of PC Landing Corp. The Application already contains discrete applications for transfer of radio licenses, section 214 authorizations and cable landing licenses. The Applicants could have readily included in the Application a separate application or statement regarding PC Landing Corp., in order to highlight the special circumstances surrounding this particular cable landing license. The Applicants have not chosen

any of these alternatives. Instead, the Application requests that the Commission accord the same treatment to the purported transfer of PC Landing Corp. **as to** the other cable landing licenses. The Commission must respond to the Application as it was submitted.

The Application **seeks** FCC approval for the purported transfer of control of PC Landing Corp. to New GX. FCC grant of the Application would mean that New GX is approved to exercise control **over** PC Landing Corp. **An** entity that **owns or** controls a cable landing station in the United States must be approved as a cable landing licensee. Commission Consideration of Applications Under the Cable Landing License Act, IB **Dkt** No, 00-106, Report and Order, 16 FCC Rcd. 22167,22194 (2001). Strictly speaking, PC Landing Corp. is the licensee listed on the FCC's grant of cable landing authorization. Nevertheless, the foregoing cited policy with respect to cable landing licenses means that FCC grant of the Application would approve New GX as the licensee for PC Landing Corp., in addition to PC Landing Corp. itself as licensee. This is consistent with general FCC transfer policy that "there are no significant differences between assignments and transfers of control." Stephen F. Sewell, Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934, 43 Fed. Comm. L.J. 277, 286 (1991). As stated, the Application should be denied with respect to PC Landing Corp. because no bankruptcy court has approved the Applicants to hold or control PC Landing Corp. assets, including its cable landing license, and prior FCC approval with respect to PC Landing Corp. is not necessary for the Applicants to close the Proposed Transaction.

FCC grant of the Application would also mean that the Commission has approved Hutchison and Singapore Technologies to exercise very substantial control over New GX, an entity with the status of a cable landing licensee. According to the Application, Hutchison Telecommunications Limited (a wholly owned indirect subsidiary of Hutchison) and Singapore

Technologies Telemedia Pte Ltd (a wholly owned indirect subsidiary of Singapore Technologies) each would hold **30.75%** ~~of~~ the equity and voting power of New GX. Application, **2**. The combined 61.5% equity and voting power held by Hutchison and Singapore Technologies together constitute a controlling interest at the shareholder level.

This control would be magnified at the Board of Directors level. According **to** the Application, Hutchison and Singapore Technologies each would nominate four **of** the ten members ~~of~~ the board **of** directors ~~of~~ New GX, see Application, 8, *so* that, between them, Hutchison and Singapore Technologies would control eight of the ten members of the Board **of** Directors. The creditors would nominate the remaining two directors. Directors nominated **by** Hutchison and Singapore Technologies would chair the full Board of Directors of New **GX** and key Board committees. Board committees are expected to have the same proportional representation of the directors nominated by Hutchison and Singapore Technologies **as** the Board itself. The Board would make decisions by simple majority vote. Id. In summary, either of Hutchison or Singapore Technologies would hold blocking power (five of ten director votes) or outright control (six of ten director votes) upon obtaining the vote of one **or** two of the creditor-nominated directors. Between them, Hutchison and Singapore Technologies would hold overwhelming control of the Board of Directors of New GX. Through this control at both the shareholder and Board of Directors level, Hutchison and Singapore Technologies would dictate the policies and dominate the affairs of New GX, a company with the status of cable landing licensee.

In concept, the exercise of substantial control over the PC Landing Corp. cable landing license by Hutchison and Singapore Technologies is not inconsistent with the Commission's implementation of the World Trade Organization ("WTO) Basic Telecommunications

Agreement (“BTA”). See Foreign Participation in the U.S. Telecommunications Market, IB Dkt Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891 (1997). However, the Proposed Transaction that has been approved by the bankruptcy court would not constitute foreign carrier “entry” (as that term is used in the Commission’s Foreign Participation Order) with respect to PC Landing Corp. See *id.* at 23898. This is *so* because New GX will not control PC Landing Corp., see *infra.*, 18-25. Thus, the Commission’s open entry policy toward carriers from WTO Members does not apply to the Applicants’ request for approval to control PC Landing Corp. To the extent the Proposed Transaction would constitute foreign carrier entry, the Commission still must consider the public interest. *Id.* at 23911 (“we are statutorily obligated to evaluate all applications to ensure they are consistent with the public interest”). Public interest and qualification considerations are set out below, at 13-17.

C. Background Of PC Landing Corp. Cable Landing License.

The following sets out a chronology of key events relating to the PC Landing Corp. cable landing license.

On November 23, 1998, the International Bureau (“IB”) granted a cable landing license to PC Landing Corp.. PC Landing Corp. Application, File No. SCL-98-006, Cable Landing License, 13 FCC Rcd 23384 (1998).

On November 4, 1999, the IB approved the pro-forma transfer of control of PC Landing Corp., from Pacific Crossing Ltd. and GCL, to Asia Global Crossing Holdings Ltd.. International Authorizations Granted, DA 99-2423, Public Notice, 15 FCC Rcd 8421 (1999).

On January 28, 2002, GCL, *et al.* filed Chapter 11 bankruptcy petitions in the U.S. Bankruptcy Court for the Southern District of New York, lead case number 02-40188 (REG) (Jointly Administered).

On July 19, 2002, PC Landing Corp., et al. filed Chapter 11 petitions in the **U.S.** Bankruptcy Court of the District of Delaware, lead case number 02-12086 (PJW) (Jointly Administered).

On September 19, 2002, the Commission placed the Application on public notice. IB Dkt No. 02-286, Public Notice, 17 FCC Rcd 17206 (2002). The Application seeks approval for transfer of control **of** the FCC Licensed Subsidiaries, which hold cable landing licenses, wireless licenses and section 214 authorizations, and requests a declaratory ruling allowing indirect foreign ownership. The Application lists PC Landing Corp. as one of the FCC Licensed Subsidiaries **for** which approval is sought to transfer control. Application, 2 n.1.

On October 24, 2002, the IB approved the pro-forma assignment of the cable landing license, for Pacific Crossing Cable, from PC Landing Corp., to PC Landing Corp. **as** Debtor-in-Possession. International Authorizations Granted, DA 02-2796, Public Notice, 2002 FCC LEXIS 5453 (2002).

On November 15, 2002, the IB granted the application of PC Landing Corp. (Debtor-in-Possession) to add the pro-forma condition in 47 C.F.R. 1.767(g)(7) as an amendment to para. 19(5) of the Cable Landing License **for** the Pacific Crossing cable. Actions Taken Under Cable Landing Licensing Act, DA 02-3177, Public Notice, 2002 FCC LEXIS 6121 (2002).

On November 17, 2002, Asia Global Crossing Ltd. and Asia Global Crossing Development Co. filed Chapter 11 bankruptcy petitions in the **U.S.** Bankruptcy Court for the Southern District of New York, lead case number 02-15749 (REG). The Asia Global Crossing companies requested that their proceedings be consolidated **for** procedural purposes and jointly administered.

On December 3, 2002, the undersigned counsel to Newbridge submitted, on behalf of Newbridge, a request for the Commission to take administrative notice of the legal proceedings described herein. Letter from Julian P. Gehman of December 3, 2002. attached as App. Tab 1.

On December 4, 2002, the IB required the Applicants to submit additional information supplementing the Application and answer certain questions (the "Data Request"). On December 18, 2002, Applicants supplemented the Application with Applicants' response (the "Supplement") to the Data Request. On January 16, 2003, the Applicants further supplemented the Application. On January 24, 2003, the IB again required the Applicants to submit additional information. The IB's most recent data request remains outstanding as of the filing of this Petition to Deny.

II. INTEREST OF NEWBRIDGE CAPITAL

A. Newbridge Is An Interested Party.

Under Section 309(d) of the Communications Act, 47 U.S.C. § 309(d), any "party in interest" may file a petition to deny an FCC license application, except for those involving non-substantial changes. 47 U.S.C. § 309(c). A traditional basis for standing as a party in interest has been economic injury. See FCC v. Sanders Bros. Radio Station, 309 U.S. 470 (1940).

Newbridge is an interested party in the instant FCC proceeding because Newbridge will suffer economic injury if the Application is granted. In a filing with the bankruptcy court, PC Landing Corp. et al. indicated that the debtors therein intend to enter into an agreement with a stalking horse bidder and conduct an auction of assets by early 2003. Motion Of Debtors For An Order Pursuant to 11 U.S.C. § 1121(d) Extending Debtors' Exclusive Periods In Which To File A Chapter 11 Plan And Solicit Votes Thereon, In re PC Landing Corp., Chap. 11 Case No. 02-12086 (Bankr.D. Del. Nov. 14, 2002), para. 9. Newbridge intends to bid to acquire the assets of

PC Landing Corp. at such auction. Newbridge will suffer economic injury if the FCC grants the Application, because grant of the Application would unfairly advantage Singapore Technologies or Hutchison should they choose to compete with Newbridge at this public auction. As stated, Singapore Technologies has or will bid on the PC Landing Corp. assets. The next section describes in greater detail how grant of the Application would prejudice Newbridge.’

B. Grant of the Application Will Prejudice Newbridge And May Result In Abuse Of FCC Process.

The Applicants, or parties in interest to the Application, have an agenda that has not been disclosed. According to information available to Newbridge, Singapore Technologies has or will bid – in competition with Newbridge – for the PC Landing Corp. assets. As described above, Hutchison and Singapore Technologies are parties in interest to the Application and, upon FCC approval of the Application, would be authorized to exercise control over PC Landing Corp. A further indication of this agenda is that the Applicants’ public interest statement, Application, 21-22, makes sense, with respect to PC Landing Corp., only if the Applicants purchase that company’s assets out of bankruptcy. As described below, at **17-18**, mere consummation of the Proposed Transaction will not cause the public interest benefits asserted by the Applicants to materialize for PC Landing Corp., and the FCC’s authorization of a substantial transfer of control as requested by the Application is not necessary to realize these benefits for PC Landing Corp.

¹The following background is also relevant to Newbridge’s appearance in this proceeding. On November 17,2002, Asia Global Crossing Ltd. and a subsidiary filed for bankruptcy and announced an agreement to sell substantially all of its assets to Asia Netcom, a company that is expected to be owned directly or indirectly by China Netcom (Hong Kong), Newbridge Capital and Softbank Asia Infrastructure Fund. Asia Netcom will purchase certain assets of Asia Global Crossing, which exclude the equity interest in PC Landing Corp. indirectly held by Asia Global Crossing. In addition, on December 3,2002, the undersigned counsel to Newbridge submitted on behalf of Newbridge, counsel’s request that the Commission take administrative notice of certain legal proceedings discussed in greater detail in this Petition. Letter from Julian P. Gehman of December 3,2002 (attached as App. Tab 1).

Therefore, if one credits the Applicants' public interest statement, we must conclude that the Applicants intend to purchase assets **of** the PC Landing Corp., in addition to closing the Proposed Transaction.

If the FCC were to grant the Application immediately, New **GX** would be authorized **to** exercise substantial control over PC Landing **Corp.** before it is determined which bidders will prevail in that company's bankruptcy proceeding. In view **of** the Applicants' agenda, FCC grant of the Application with respect to PC Landing Corp. would prejudice Newbridge, and could result in an abuse of FCC process.

1. Grant of substantial authorization now could prompt an attempted pro forma assignment later.

The Applicants could attempt to take PC Landing Corp. out of bankruptcy on a pro forma basis with no prior FCC approval and no opportunity for Newbridge and other interested parties to oppose or comment **on** that transaction. If the Applicants were approved in the instant proceeding to control PC Landing Corp., and a substantially similar subset of the Applicants or parties in interest to the Application subsequently purchased the stock or assets of PC Landing Corp. out of bankruptcy, the Applicants could claim that the resulting transfer or assignment presumptively should be accorded pro forma treatment. **See 47 C.F.R. § 63.24n.2.**²

If this were to occur, it would prejudice the reasonable expectations of Newbridge, **or** other bidders in the public auction process, and could result in an abuse of process in the FCC

² For example, they could purchase the PC Landing Corp. assets with a new entity owned and controlled by substantially the same parties in interest to the Application and claim that because the FCC had approved the Applicants to control PC Landing **Corp.** the asset sale should be accorded pro forma treatment pursuant to **47 C.F.R. § 63.24(d) n. 2(5)** (presumption of pro forma treatment for assignment from a corporation to a corporation owned or controlled by the assignor stockholders without a substantial change in their interests).

proceeding where PC Landing Corp. or its assets emerge from bankruptcy. The emergence of PC Landing Corp. from bankruptcy constitutes a substantial transfer or assignment irrespective of which party wins the bankruptcy bidding. As described below, at 21-25, de facto control of PC Landing Corp. apparently resides with CXO, L.L.C. (“CXO”), a crisis manager appointed with the approval of creditors and the bankruptcy court. Any transfer or assignment out of bankruptcy, whether to the Applicants or otherwise, would result in a transfer of de facto control of PC Landing Corp. from CXO to the new owner(s)/licensee(s). **Thus**, the transaction that brings PC Landing Corp. out of bankruptcy will require prior FCC approval after public notice and opportunity to comment on the application of the new owner(s). 2000 Biennial Review, IB Dkt No. 00-231, Report and Order, 17 FCC Rcd 11416, at para. 6 (2002) (transfer of de facto control constitutes a substantial transfer). Newbridge and other bidders in the PC Landing Corp. bankruptcy have an expectation of being able to comment on any such transfer in the event that the Applicants **or** another party claims to be the winning bidder in the PC Landing Corp. bankruptcy proceeding. See 47 U.S.C. § 310(d); Sanders Bros. Radio Station, 309 U.S. 470. The emergence of PC Landing Corp. or its assets from bankruptcy on a pro forma basis would harm Newbridge or other disappointed bidders and would abuse FCC process by avoiding the requisite prior FCC approval **of** a substantial transfer

2. Grant of the Application could confer an unfair advantage on Newbridge’s competitors in the PC Landing Corp. bankruptcy.

As described above, at 4-5, blanket grant of the Application could be construed as the FCC passing on the qualifications of the Applicants as holding or controlling the PC Landing Corp. cable landing license. This could confer an unfair advantage on Singapore Technologies and/or Hutchison as they compete with Newbridge before the PC Landing Corp. bankruptcy

court and creditors. Application for and receipt of regulatory approval by the FCC and the Executive Branch is a daunting, time consuming, and expensive process, with no guarantee of success. This is particularly true **for** investment in a cable landing licensee such as PC Landing Corp. If Singapore Technologies and/or Hutchison can represent to the PC Landing Corp. bankruptcy court and creditors that the Applicants have successfully navigated these regulatory processes and have been approved to control PC Landing Corp., Singapore Technologies **and/or** Hutchison could cite this in claiming to have submitted the superior bid for PC Landing Corp. Newbridge would be prejudiced by grant of the Application because a competitor could have the benefit **of** FCC grant of a substantial authorization that should not have been issued.

Similarly, grant of the Application could be construed **as** FCC approval of the contents of the Application. As stated, the public interest statement appearing in the Application makes sense only where the Applicants have also purchased PC Landing Corp. out **of** bankruptcy. Blanket grant of the Application would prejudice Newbridge because it could suggest that the FCC approves of the Applicants winning the bidding for PC Landing Corp. or approves of the Applicants taking some other sort of action to “ensur[e] the continued viability” of PC Landing Corp. See Application, 21. Newbridge should not be disadvantaged because competing actions taken by the Applicants, or a party in interest to the Application, have the color of FCC approval.

111. THE APPLICANTS HAVE FAILED TO PROVIDE ALL RELEVANT INFORMATION.

A. Applicants’ Duty To Disclose.

It is well established that “the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.” **RKO**