

General, et al. v. FCC, 670 F.2d 215, 232 (D.C. Cir. 1981). For this reason, each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application and is subject to an ongoing duty to amend the application. Where there has been a “substantial change” as to a matter of “decisional significance” in a Commission proceeding involving the pending application, the applicant is required to furnish corrected information within 30 days. 47 C.F.R. § 1.65(a). The Application failed to explain that PC Landing Corp. is not part of the Proposed Transaction approved by the New York bankruptcy court. Further, as described below, Applicants breached their duty to furnish timely corrected information.

B. Applicants Withheld Information Of Decisional Significance.

1. Applicants withheld information on de facto control of PC Landing Corp.

The Application states, at 5, that “[t]here have been no significant changes in the management of GCL or the FCC-Licensed Subsidiaries as a result of the Chapter 11 petitions.” Applicants appear not to have informed the Commission of any change to this representation. However, as described in greater detail below, at 23-24, on November 12, 2002, the PC Landing Corp. bankruptcy court ruled that the previous management of PC Landing Corp. (the “Existing Management”) would no longer manage PC Landing Corp. Instead, management authority and apparent de facto control was given to CXO, a crisis management company that had been approved by the creditors and the bankruptcy court. Order Pursuant To Sections 363 and 105(a) Of The Bankruptcy Code Authorizing Debtors To Retain And Employ CXO, L.L.C. As Crisis Managers For Debtors, In re PC Landing Corp., Chap. 11 Case No. 02-12086 (PJW) (Bankr. D. Del. Nov. 12, 2002) (attached as App. Tab 2). Subsequently, on December 4, 2002, the Commission issued to the Applicants its Data Request which, at para. 1, inquired specifically

about the PC Landing Corp. bankruptcy and, at para. **4**, required the Applicants to “identify which, if any, of [the ownership interests] constitute a controlling interest in the company in the next lower tier.” Even after receiving this direct request, the Applicants still did not disclose the role of CXO. Instead, the Applicants presented information in their December **18**, 2002 Supplement (dated more than **30** days after the November 12, **2002** court order) suggesting that the Applicants then retained a controlling interest in PC Landing Corp.

The Applicants had a duty to inform the Commission of CXO’s assumption of management authority. First, as noted, the Commission’s Data Request inquired about the PC Landing Corp. bankruptcy and its effect in the instant proceeding, as well as which ownership interests are controlling. The Applicants had a duty to respond fully and accurately. The Applicants failed to do so, even while stating that the Applicants would “keep the Commission advised of the progress of the AGCL and PC Landing bankruptcy proceedings and of the effect, if any, of those proceedings upon the Commission’s consideration of the Application.” Supplement, **4**. Second, the change in management to CXO clearly caused the above quoted statement appearing in the Application to be outdated as it applies to PC Landing Corp., and Applicants had a duty to keep the Application current and accurate. 47 C.F.R. § 1.65(a).

The change to CXO is of “decisional significance,” thereby triggering separate duties of the Applicants to inform the Commission under 47 C.F.R. § 1.65(a), and under the Commission’s Data Request and Applicants’ above quoted response to the Data Request. As described below, at 21-27, with CXO apparently exercising de facto control, and the Applicants failing to retain de jure control, the consummation of the Proposed Transaction would not transfer control of PC Landing Corp., and Applicants’ request for prior FCC approval as it relates to PC Landing Corp. is unnecessary. See, e.g., Commission Consideration of

Applications Under the Cable Landing License Act, 16 FCC Rcd at 22168 (“entities that do not own or control a landing station in the United States or a five percent or greater interest in the proposed cable system generally will not be required to become licensees”).

2. Applicants withheld information that Singapore Technologies is bidding for PC Landing Corp.

The Commission’s Data Request of December 4, 2002, asked, at para. 1, “[w]hat is the status of the relevant bankruptcy proceedings in New York and Delaware?” The Commission proceeded to **make** detailed inquiry about the relative timing of the various bankruptcy proceedings and how the Applicants’ interest in PC Landing Corp. should be treated. In response, the Applicants gave answers that omitted to state whether one or more parties in interest to the Application is bidding or intends to bid for PC Landing Corp. or the other FCC Licensed Subsidiaries. As described above, at 9-13, that a party in interest to the Application is attempting to purchase some or all the FCC Licensed Subsidiaries is of decisional significance to the Commission’s processing of the Application. The Applicants are responsible for apprising the Commission of activities of Applicants’ significant shareholders, where such activities are of decisional significance to the Application. See Weyburn Broadcasting Limited Partnership v. FCC, 984 F.2d 1220, 1232 (D.C. Cir. 1993); RKO General. Inc. v. FCC, 670 F.2d 215, 230 (D.C. Cir. 1981); WADECO. Inc. v. FCC, 628 F.2d 122, 128 (D.C. Cir. 1980).³

¹ Further, the Applicants apparently disregarded the Commission’s reminder, appearing in the Data Request, that this is a restricted proceeding, see Data Request, 1, and apparently did not serve the Supplement on certain parties to the proceeding, see Supplement, 14, in apparent violation of the Commission’s ex parte rules, 47 C.F.R. §§ 1.1200-1.1216. Similarly, the Applicants apparently did not serve the Supplement on the Executive Branch agencies, see Supplement, 14, even though the Applicants had so served other pleadings and correspondence and even though the information presented in the Supplement undoubtedly is of decisional significance to the Executive Branch agencies.

C. The Asserted Public Interest Benefits Will Not Materialize.

The Applicants similarly have given inadequate disclosure about what public interest benefits would result from consummation of the Proposed Transaction as approved by the bankruptcy court. The Applicants claim that an FCC grant of the Application would serve the public interest. According to the Application, the Proposed Transaction would: “enhance competition by strengthening the financial and competitive position of the FCC-Licensed Subsidiaries,” Application, 14-15; ensure “the continued viability of the Global Crossing Network, including the operations of the FCC-Licensed Subsidiaries,” *id.* at 21; and “ensure that the FCC-Licensed Subsidiaries will continue to be effective competitors in the international telecommunications market” and “will continue to provide carrier services,” *id.* at 22.

In making these conclusory statements, the Applicants did not explain how the Proposed Transaction would ensure that PC Landing Corp. will continue to be an effective competitor. It is implausible that the Applicants would have the legal ability to “strengthen the financial and competitive position” and “ensure the competitive vitality” of PC Landing Corp. while that company is in bankruptcy and the Applicants’ equity interests are soon to be extinguished. Indeed, the Applicants’ public interest statement becomes plausible only if the Applicants were to purchase PC Landing Corp. out of bankruptcy. Mere consummation of the Proposed Transaction, without more, will not achieve the Applicants’ asserted public interest benefits.

To the extent that the Applicants rely on GCL’s role as sales agent or reseller of PC Landing Corp.’s services to support their public interest statement, an FCC grant of the Application simply is not necessary to deliver these benefits. GCL sells, and New GX could continue to sell, telecommunications services **through** ordinary commercial agreements, which require no FCC approval, or under authority of international Section 214 authorization to provide

common carrier services. Transfer of control of the PC Landing Corp. cable landing license is not necessary for New GX to serve as sales agent or reseller for PC Landing Corp. In summary, the Applicants have not stated, as to PC Landing Corp., any public interest benefits that will flow specifically from the Proposed Transaction and that an FCC grant of the Application is necessary to deliver

IV. ANY FCC AUTHORIZATION IN THIS PROCEEDING SHOULD NOT PREJUDICE THE PC LANDING CORP. PROCEEDINGS.

A. Introduction.

If it determines that the Proposed Transaction should proceed, the FCC should ensure its action in this proceeding does not give the Applicants or interested parties an advantage in bidding for PC Landing Corp. or prejudice that the Applicants or interested parties are qualified to hold the PC Landing Corp. cable landing license. Presuming it approves the Proposed Transaction, the Commission has a range of options available to accord the PC Landing Corp. license the proper treatment. One such approach would be to delay approval of the Application until the PC Landing Corp. bankruptcy has run its course and an application to assign that cable landing license also is before the Commission. If possible, however, the Commission should avoid further delay. The Commission should issue its authorization of the Proposed Transaction (if the Commission deems the same to further the public interest), while also according PC Landing Corp. the appropriate treatment. One way to accomplish this would be to simply deny the Application as it relates to PC Landing Corp. As described below, the Applicants lack de jure and de facto control of PC Landing Corp. Therefore, the Applicants simply do not need prior FCC approval with respect to PC Landing Corp. in order to close the Proposed Transaction. A more cautious approach would be to deny the Application as it relates to PC Landing Corp.

and require the parties to handle any transfer of PC Landing Corp. on a pro forma basis. The rationale for pro forma treatment is set out below.

Regardless of the action taken, the Commission should explicitly state that any FCC action taken in this proceeding is not intended to influence the bidding in the PC Landing Corp. bankruptcy proceeding and does not prejudge that the Applicants, or parties to the Application, are qualified to hold the PC Landing Corp. cable landing license. Finally, the Commission should 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. The Requested Relief Enables The Commission More Effectively to Discharge Its Duties.

The requested treatment (denial of the Application at the parent company level, and substantive adjudication at the operating company level for PC Landing Corp.) would enable the Commission more effectively to discharge its duties under the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, 3 U.S.C. § 301. By contrast, taking the action requested by Applicants (substantive approval at the parent company level and a vague “we will inform you” approach to the operating company level for PC Landing Corp.) could result in an abuse of Commission process.⁴ The Applicants have not provided the Commission with a roadmap of how to handle the PC Landing Corp. bankruptcy, while this Petition does.

⁴ The Commission’s Data Request of December 4, 2002, asked (at para. I): “If the Delaware bankruptcy court’s decision [with respect to PC Landing Corp.] is not contemporaneous with that in the New York proceeding [which approved the Proposed Transaction on December 17, 2002], how would the applicants seek to have the Commission treat the request to transfer control of Global Crossing’s approximately 49.77% interest in the cable landing license held by PC Landing?” The Applicants’ Supplement of December 18, 2002, responded (at page 4): “If the
(cont’d)

The purpose of the Commission’s prior approval procedure is to “screen out an unqualified party before it assumes control, instead of seeking to remove such a party after it has started operations.” Sewell, Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934, 43 Fed. Comm. L.J. at 282-83 (1991). This purpose is best served by not granting approval in the instant proceeding, where the Applicants will not assume control, and instead approving the qualifications of the applicant(s) in a subsequent proceeding, where control of the PC Landing Corp. cable landing license actually will be transferred. It would be premature for the Commission to find affirmatively that the Applicants are qualified to hold or control the PC Landing Corp. cable landing license. See e.g., Chavez v. Director. Office Of Workers Compensation Programs, 961 F.2d 1409, 1414 (9th Cir. 1992) (administrative adjudicators have an interest in avoiding many of the problems of prematurity and abstractness presented by unripe claims).

C. GCL Does Not Control PC Landing Corp.

1. GCL does not exercise de facto control over PC Landing Corp.

The FCC determines on a case-by-case basis whether a party has de facto control. Influence and control are not the same. In order to constitute de facto control, the influence must be to the degree that a shareholder is able to “determine” the licensee’s policies and operation, or

(... cont’d)

Commission’s order in this matter is issued prior to the completion of AGCL’s or PC Landing’s restructuring, GCL submits that the Commission should approve the transfer of PC Landing to New GX. Should subsequent events warrant the further transfer of PC Landing’s cable landing license, appropriate application would be made to the Commission. Applicants will keep the Commission advised of the progress of the AGCL and PC Landing bankruptcy proceedings and of the effect, if any, of those proceedings upon the Commission’s consideration of the Application.“

“dominate” corporate affairs. News International, PLC Petitions for Relief, FCC 84-79, Memorandum Opinion and Order, 97 FCC 2d 349, 356 (1984). The Commission has identified various indicia of de facto control, including: (1) power to constitute or appoint more than fifty percent of the board of directors; (2) authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) ability to play an integral role in major management decisions of the licensee; (4) authority to pay financial obligations, including expenses arising out of operations; (5) ability to receive monies and profits from the facility’s operations; and (6) unfettered use of all facilities and equipment. 2000 Biennial Regulatory Review, 17 FCC Rcd at n.18. As described below, GCL does not exercise de facto control over PC Landing Corp

On November 4, 2002, PC Landing Corp. and its Pacific Crossing affiliates (“Debtors”) moved the bankruptcy court to hire CXO as independent crisis managers and described to the court the status of control over Debtors’ operations. Motion Of Debtors For Entry Of Order Pursuant To 11 U.S.C. Sections 363 And 105 Authorizing Employment And Retention Of CXO, L.L.C. As Crisis Manager To Debtors, In re PC Landing Corp., Chap. 11 Case No. 02-12086 (PJW) (Bankr. D. Del. Nov. 4, 2002) (“Debtors’ Motion”). The full text of the Debtors’ Motion is attached as App. Tab 3, and relevant portions describing de facto control are extracted below:

6. The Debtors have no employees and have historically been managed by employees of their corporate parent – Asia Global Crossing (“AGC”) and pursuant to contracts with certain affiliates of their indirect corporate parent – Global Crossing, Ltd. (“GX”).
7. Since the Petition Date, under the guidance of their board, the Debtors have been operating as debtors in possession through the actions of their officers and consultants (“Existing Management”), a substantial portion of whom have been provided by AGC. . .

8. As is set forth more fully below, following October 31, **2002**, the Debtors will have no formal or informal agreement for management services from AGC, no employees, and no officers. . . .
- * * *
11. AGC provided management services, overhead and other support for the Debtors during the term of the Cash Collateral Stipulation, although it has not received any postpetition cash payments.
12. Subsequent to the entry of the Cash Collateral Stipulation, AGC advised both the Debtors and the Bank Group that it would not provide management services to PCL without payment following October 31, **2002**. Moreover, from and after October 31, **2002**, none of the individuals that previously provided services to the Debtors will be employed by AGC.
13. Inasmuch ~~as~~ there is no agreement for AGC to provide management services to PCL after October **31, 2002**, the Debtors consulted with the Bank Group regarding various alternatives. The Bank Group indicated that, under the circumstances, it believed that it was in the best interest of these estates to replace the Existing Management with professional management to see the Debtors through the Sale Process and the remainder of the Chapter 11 Cases.
14. In light of all of the relevant facts and circumstances including the contentious relationship between the Bank Group on the one hand and Existing Management and certain affiliates of the Debtors on the other, the Debtors agreed that engaging professional management was in the best interest of their estates as it would allow the Sale Process to continue as seamlessly as possible. . . .
15. As the Debtors' directors and officers have tendered their resignation effective upon Court approval of the retention of CXO as contemplated herein, it is imperative that the Debtors retain interim senior management and obtain related consulting services. . . .
- * * *
23. CXO will provide such crisis management services, including but not limited to the following:
- a. At least one of the following: Brian Kushner, Michael E. Katzenstein or Mark Steadman, will serve in executive officer positions for the Debtors, without further compensation, and all three of CXO's representatives can be elected to the Debtors' board;
 - b. Provide day-to-day management of the Debtors and direct oversight of any employees and officers;
 - c. Assistance and oversight over all regulatory and permitting matters
 - d. Assistance with operating, administrative and maintenance and billing agreements;

- e. Manage the sales and customer care processes and the pending Sale Process;
- f. Communicate and report to the **Bank** Group and other creditor constituents (as appropriate) and their respective professionals on matters related to financial reporting, contract compliance and asset dispositions; and
- g. Render such other interim management or consulting services as are necessary and appropriate.

Debtor's Motion, paras. **6-23**. CXO is independent **of** the Applicants. Id., paras. **19-21**.

On November **12, 2002**, the bankruptcy court substantially approved the Debtors' Motion. The court authorized the Debtors to employ CXO as crisis manager, upon the terms and conditions set forth in the Motion, effective as of October **28, 2002**, except that CXO officials are not permitted to become members **of** the Debtors' boards **of** directors. App. Tab **2**.

As described by the Debtors' Motion and the resulting court Order, CXO appears to exercise de facto control over PC Landing Corp. The Applicants may have a small degree of influence over PC Landing Corp., but the Applicants appear to lack the ability to determine PC Landing Corp.'s policies and operations or dominate the company's corporate affairs. Of the above-enumerated criteria identified by the Commission as evidencing de facto control, the Applicants apparently cannot perform any except possibly the first (power to appoint majority of board of directors). Even this one **is** suspect (i) because any attempt to exercise ordinary powers of the board (e.g., to fire CXO) would require approval of creditors and the court, and (ii) because the Board of Directors of PC Landing Corp. attempted to or actually did resign. See Debtors' Motion, para. 15. Otherwise, the Applicants apparently cannot: appoint, promote or demote senior executives that control the day-to-day activities of PC Landing Corp.; play an integral role in major management decisions of PC Landing Corp.; pay financial obligations of PC Landing Corp.; receive monies and profits from the operations of PC Landing Corp.; or have

unfettered use of all of the facilities and equipment of PC Landing Corp. These authorities and privileges are exercised by CXO, and any attempt by the Applicants to do so would require approval of CXO, the creditors, and/or the bankruptcy court.

Consummation of the Proposed Transaction would not transfer de facto control. Barring an unforeseen circumstance, CXO will continue to exercise de facto control until the PC Landing Corp. assets are disposed of in the PC Landing Corp. bankruptcy proceeding. Change of the ultimate parent entity, from GCL to New GX, will not affect the lack of de facto control exercised by the ultimate parent.

2. The Applicants' equity interests do not confer de jure control over PC Landing Corp.

The operative word in “de jure control” is “control.” The Commission inquires into whether a party possesses de jure control in order to *make* the statutorily relevant determination of whether the party has control. See 47 U.S.C. § 310(d). Where, as here, an equity interest fails to confer control by operation of law, the important consideration is the absence of control, not the existence of the equity interest. The Commission should reject the Applicants’ mechanical reliance on majority equity interests and instead determine which ownership links, if any, actually confer control.⁵

As the Applicants have acknowledged, their equity interest in Asia Global Crossing will be extinguished upon completion of the restructuring of Asia Global Crossing, and Asia Global

⁵ The Applicants’ ownership chart entitled “Post-Closing Ownership Structure of PC Landing Corp.” which is included in the Supplement, indicates that Pacific Crossing Ltd. (Bermuda) will hold, after the Proposed Transaction, just a **14.5%** interest in the direct parent of PC Landing Corp. Supplement, 18. If this is Applicants’ only ownership link to PC Landing Corp., as indicated by the chart, Applicants lack even the appearance of de jure control. If the chart is incorrect, Applicants still lack de jure control, as described herein.

Crossing's equity interest in PC Landing Corp. will be extinguished upon completion of the restructuring of PC Landing Corp. Supplement, 3. Because existing equity interests will be extinguished, at least three bankruptcy dynamics contradict the customary presumption that the Applicants currently control PC Landing Corp. as a matter of law.

First, the shareholders of Asia Global Crossing and PC Landing Corp. have been prevented from directing the operations of their respective companies. Instead, these companies were operated under the approval and supervision of the bankruptcy court, and any shareholder initiative has required court approval. It is self evident that, if a party needs to obtain approval, the party is not in control. Second, instead of owing a fiduciary duty to shareholders, the officers and directors of Asia Global Crossing and PC Landing Corp. have owed a fiduciary duty to creditors as well as shareholders. See, e.g., CFTC v. Weintraub, 471 U.S. 343, 358 (1985). Where, as here, the equity interests will be extinguished, the fiduciary duty to creditors takes precedence over any duty owed to shareholders. See id. Indeed, if GCL actually tried to assert de jure control of PC Landing Corp., it would have to reach through two layers of officers and directors – of Asia Global Crossing and PC Landing Corp. – each of which owes substantial fiduciary duties to different creditor groups. As debtors in possession, the fundamental role of Asia Global Crossing and PC Landing Corp. changed from maximizing shareholder value to maximizing recovery by creditors. Third, and relatedly, the provisions of the federal Bankruptcy Code, codified at 11 U.S.C. §§ 101, et seq., commonly known as the absolute priority rule, also work to place the interests of creditors over those of shareholders. See generally, Bank of Am. Nat'l Trust & Savings Ass'n v. 204 N. LaSalle St. L.P., 526 U.S. 434 (1999).

The Applicants' purported majority equity interest in PC Landing Corp. did not stop the Applicants' apparent loss of de facto control through replacement of then existing management

with CXO, a crisis manager suitable to creditors and the court. In other words, the Applicants' purported majority equity interest has not conferred control on the Applicants as a matter of law. Instead, the Applicants apparently have lost control by operation of bankruptcy law and practice.

3. If this is deemed to be a transfer, it should be accorded pro forma treatment.

As stated, consummation of the Proposed Transaction would not result in a transfer of control of PC Landing Corp. Therefore, no FCC approval is needed with respect to PC Landing Corp. for the Applicants to close the Proposed Transaction. However, if the Commission deems the Proposed Transaction to involve a transfer of PC Landing Corp. of some sort, such transfer would be non-substantial, at most. The Commission has ruled that “[a] change in de jure control is generally considered substantial, but if there is an indication that de facto control has not changed, the transfer may be considered pro forma, and if *so* prior approval is not required.” 2000 Biennial Regulatory Review, 17 FCC Rcd 11416 at para. 6, see also, 47 C.F.R. §§ 1.767(g)(7), 63.24. As described above, the Applicants do not possess de facto control now and will not have de facto control after the Proposed Transaction. Similarly, any de jure control that may be transferred by virtue of the transfer of ownership interests in PC Landing Corp., is nominal and technical. The Commission retains authority to determine that a transaction presented to the Commission as a substantial transfer should in fact be classified as pro forma. Federal Communications Bar Association’s Petition For Forbearance From Section 310(d), FCC 98-18, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6299 (1998). The Commission could exercise such authority if the agency determines the Proposed Transaction should proceed.

If it were to require pro forma treatment, the Commission should grant the Application with respect to the other FCC Licensed Subsidiaries, deny the Application as it relates to PC

Landing Corp. and remind the parties of their obligation to report any non-substantial transfer within **30** days of closing the Proposed Transaction. Further, the Commission should ensure that such action does not influence the bidding for PC Landing Corp. assets or prejudice the FCC review and approval of the assignment of the PC Landing Corp. cable landing license, which will occur in a subsequent FCC proceeding. The Commission should explicitly state that any FCC action taken in this proceeding **is** not intended to influence the bidding in the PC Landing Corp. bankruptcy proceeding and does not prejudice that the Applicants, or parties to the Application, are qualified to hold the PC Landing Corp. cable landing license. Finally, the Commission should clarify that the emergence of PC Landing **Corp.** or its assets from bankruptcy will constitute a substantial assignment requiring prior FCC approval.

CONCLUSION

The Commission should decline to grant the unnecessary prior approval requested by the Applicants as it relates to PC Landing Corp. Blanket grant of the Application would have repercussions in the PC Landing Corp. proceedings that are being conducted before the Delaware bankruptcy court and will be conducted before the FCC. If it decides the Proposed Transaction should proceed, the Commission should grant the Application **as** it relates to other FCC Licensed Subsidiaries and deny the Application ~~with~~ respect to PC Landing Corp. The Commission should explicitly state that any FCC action taken in this proceeding is not intended to influence the bidding in the PC Landing Corp. bankruptcy proceeding and does not prejudice that the Applicants, or parties to the Application, are qualified to hold the PC Landing Corp. cable landing license. Finally, the Commission should clarify that the emergence **of** PC Landing Corp. or its assets from bankruptcy will constitute a substantial assignment requiring prior FCC approval.

Respectfully submitted,

NEWBRIDGE CAPITAL

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Counsel for Newbridge Capital

Dated: January 28, 2003

AFFIDAVIT

I, **Daniel A.** Carroll. hereby declare the following **under** penalty of perjury of **the** laws of the United States.

1. I **am Managing** Director of Newbridge Capital, with offices located at **345** California Street, Suite 3300, San Francisco, CA **94104**.

2. I have reviewed the foregoing PETITION TO **DENY WITH RESPECT TO PC LANDING CORP.** **and** have caused it to be submitted in good faith.

3. To the best of **my** knowledge, information and belief, and except **for** those facts of which official notice may be **taken**, the facts set forth in the foregoing **PETITION TO DENY WITH RESPECT TO PC LANDING CORP.** are true **and** correct.


Signature

Daniel A. Carroll
Name

January 28, 2003
Date

CERTIFICATE OF SERVICE

I, Lydia Dean-Reese, hereby certify that on this 28 day of January, 2003, I caused a true and correct copy of the foregoing PETITION TO DENY WITH RESPECT TO PC LANDING CORP. to be served upon the following parties in the manner indicated:

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RECEIVED

December 3, 2002

DEC - 3 2002

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Secretary
Federal Communications Commission
Office of the Secretary
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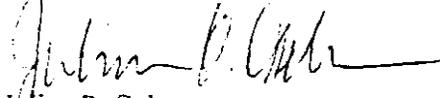
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Madame Secretary:

Attached please find the filing which was submitted yesterday, December 2, 2002. Everything is the same except that the attached contains a corrected Certificate of Service, which includes service to two parties that were mistakenly omitted from the Certificate of Service submitted yesterday. All parties listed on the attached Certificate of Service were served on December 2, 2002, in the manner indicated on the attached Certificate of Service.

Thank you for your attention to this. Should there be a question, please telephone me at (202) 263-3279.

Sincerely,


Julian P. Gehman

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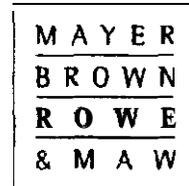
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OFFICE OF THE SECRETARY



December 2, 2002

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Re: Application of Global Crossing Ltd. and GC Acquisition Limited For FCC Consent to Transfer Control of Subsidiaries Holding Submarine Cable Landing Licenses, Wireless Licenses and Section 214 Authorizations, and Request for Declaratory Ruling Allowing Indirect Foreign Ownership, IB Docket No. 02-286, DA 02-2299, Released September 19, 2002, 2002 FCC LEXIS 4624

Dear FCC Staff:

This letter is to request that the Commission take administrative notice of the legal proceedings described herein and clarify any grant the FCC may issue in approval of the above referenced application of Global Crossing Ltd. and GC Acquisition Limited (the "Global Crossing Application"). The undersigned represents a party that is in the process of submitting a bid for certain of the assets of Pacific Crossing Ltd. in that company's bankruptcy proceeding. Except for the request for clarification, no comment is intended on the Global Crossing Application.

FCC Proceedings

On November 23, 1908, the International Bureau ("IB") granted a cable landing license to PC Landing Corp. (File No. SCL-98-006). 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 Global Crossing Ltd., to Asia Global Crossing Holdings Ltd. 15 FCC Rcd 8421 (1999).

On September 19, 2002, the Commission placed the Global Crossing Application on public notice (IB Dkt No. 02-286). 2002 FCC LEXIS 4624. The Global Crossing Application seeks approval for transfer of control of Global Crossing subsidiaries holding cable landing licenses, wireless licenses and section 214 authorizations, and requests a declaratory ruling allowing indirect foreign ownership. This application lists PC Landing Corp. as one of the

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“FCC-Licensed Subsidiaries” for which approval is sought to transfer control (App. **n2**). According to the applicants, the FCC should grant approval because the proposed transaction **will**: “enhance competition by strengthening the financial and competitive position of the FCC-Licensed Subsidiaries” (p14-15); ensure “the continued viability of the Global Crossing Network, including the operations of the FCC-Licensed Subsidiaries” (p21); and “ensure that the FCC-Licensed Subsidiaries will continue to be effective competitors in the international telecommunications market” and “will continue to provide carrier services” (p22).

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 (DA 02-2796). 2002 FCC LEXIS 5453.**

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. Section 1.767(g)(7)** as an amendment to para. **19(5)** of the Cable Landing License for the Pacific Crossing cable (**DA 02-3177**). **2002 FCC LEXIS 6121.**

Bankruptcy Court Proceedings

At least three separate bankruptcy proceedings, of (1) Global Crossing Ltd., the ultimate parent, (2) Asia Global Crossing Ltd., an intermediate parent, and (3) PC Landing Corp., the FCC licensee, are relevant. These proceedings are summarized below. For the Commission’s reference, I am also attaching the bankruptcy petition of Asia Global Crossing Ltd. which describes the bankruptcy proceedings in greater detail.

(1) On January **28, 2002**, Global Crossing Ltd. 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).

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

(3) 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.

Each of these is a separate and distinct bankruptcy proceeding. Each proceeding may result in one or more new owners of the assets that are covered by that particular proceeding. Consequently, pieces of the former Global Crossing network probably will be **split** among several new owners and Global Crossing may **no** longer control some *or* all of the network. In particular, disposition of PC Landing Corp. assets will be determined in the Delaware

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bankruptcy proceeding, which is separate and distinct from the New York bankruptcy proceeding that resulted in the above referenced transfer of control application to the Commission.

Request for Clarification

The transfer of control of PC Landing Corp. that would result from FCC grant of the Global Crossing Application is a non-substantive, pro forma transfer. Whether Global Crossing Ltd. could exercise "control" over PC Landing Corp., as defined by FCC rules,¹ depends on the postures of the separate bankruptcy proceedings of PC Landing Corp. and Asia Global Crossing Ltd. (an intermediate parent of PC Landing Corp.). I am informed that the "stalking horse" proposal in the Asia Global Crossing bankruptcy would extinguish Global Crossing's existing equity interest in Asia Global Crossing assets, and that the shares of PC Landing Corp. were pledged to and are in the possession of creditors. **PC Landing Corp.** appears to have acknowledged the pro-forma nature of the situation by seeking to modify its FCC Cable Landing License in order to facilitate a pro-forma transfer or assignment.

Notwithstanding Global Crossing's lack of control, the Global Crossing Application, at pages 21-22, seems to suggest that upon receiving FCC approval, Global Crossing may take action to ensure "the continued viability of the Global Crossing Network, including the operation of the FCC-Licensed Subsidiaries." Therefore, it should be clarified that FCC approval of the Global Crossing Application does not give Global Crossing any new control over PC Landing Corp. beyond the minimal or non-existent control that Global Crossing currently exercises through its equity interests in Asia Global Crossing and PC Landing Corp. If the FCC were to issue a summary approval of the Global Crossing Application, the casual reader could get the false impression that the FCC had approved everything in the Global Crossing Application and that Global Crossing had received FCC authorization to reform the FCC-Licensed Subsidiaries, including PC Landing Corp. It is respectfully requested that the Commission briefly clarify this point in its approval order.

Similarly, the U.S. Bankruptcy Court for the District of Delaware will approve the disposition of the Pacific Crossing assets, including PC Landing Corp. Consequently, any application to assign the Cable Landing License held by PC Landing Corp. should be accompanied by an order of that court approving of the sale of the PC Landing Corp. assets to the putative assignee. Any notification of a pro-forma assignment of this Cable Landing License similarly should be reviewed for consistency with the foregoing.

¹ See 47 C.F.R. Section 1.767(g)(7); 41 C.F.R. Section 63.24(d) note 1 ("power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.")

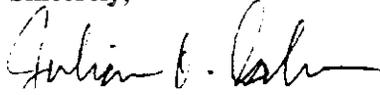
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Thank you for your attention to this. Should there be a question about **the** foregoing, please telephone me at (202) 263-3279. A copy of this letter is being sent to the individuals identified on **the** attached service list, in the manner indicated therein.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julian P. Gehman".

Julian P. Gehman

attachments: bankruptcy petition of Asia Global Crossing Ltd.
service list

FORM BI		United States Bankruptcy Court Southern District of New York		Voluntary Petition																
Name of Debtor (if individual enter Last, First, Middle): Asia Global Crossing Ltd.		Name of Joint Debtor (Spouse) (Last, First, Middle)																		
All Other Names used by this Debtor in the last 6 years (include married, maiden, and trade names): Asia Global Crossing		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names)																		
Soc. Sec./Tax I.D. No. (if more than one, state all): 98-0224159		Soc. Sec./Tax I.D. No. (if more than one, state all):																		
Street Address of Debtor (No. & Street, City, State & Zip Code): Mimiflower Place 11150 Santa Monica Blvd. Suite 400 2nd Floor, 8 Par-la-Ville Road Los Angeles, California, 90025 Hamilton 11M08, Bermuda		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):																		
County of Residence or of the Principal Place of Business: Los Angeles, California		County of Residence or of the Principal Place of Business:																		
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):																		
Location of Principal Assets of Business Debtor (if different from street address above): Los Angeles, California																				
Information Regarding the Debtor (Check the Applicable Boxes)																				
Venue (Check any applicable box) <input type="checkbox"/> Debtor has been domiciled or has had a residence, principle place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.																				
Type of Debtor (Check all boxes that apply) <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker			Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13																	
Nature of Debts (Check one box) <input type="checkbox"/> Consumer/Non-Business <input checked="" type="checkbox"/> Business			Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3																	
Chapter 11 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors																				
Statistical/Administrative Information (Estimates only) <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY															
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