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March 18, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Global Crossing Ltd., et al., IB Docket No. 02 - 286

Dear Madam Secretary:

ACN files this letter to bring to the Commission's attention what appear to be significant developments in the United States Bankruptcy Court and the Committee on Foreign Investment in the United States (CFIUS) affecting the pending application. We file this letter to inform the Commission of such reported developments and to suggest that the Commission inquire of the Applicants how these actions impact the processing of their application. Alternatively, the Commission should dismiss the application for failure to meet the standards of Section 1.65 (Substantial and significant changes in information furnished by applicants to the Commission) of the Commission's rules. Under the terms of subsection (a) "each applicant is responsible for the continuing accuracy and completeness of information furnished ..." and is to reflect such changes "as promptly as possible...."

Of the applicant's duty to keep the Commission informed on a timely basis of changes impacting its pending application, the Commission has said:

> The purpose of section 1.65 is to inform the Commission, the public, and concerned parties of material changes in the application. Moreover, section 1.65 imposes an affirmative obligation on regulated entities to inform the Commission of the facts needed to fulfill its duties. As one court has stated, ``[t]he Commission is not expected to `play procedural games with those who come before it in order to ascertain the truth.'"

SBC Communications, Notice of Apparent Liability for Forfeiture and Order, 16 F.C.C. Rcd 19091, ¶ 47, 24 P&F C.R. 1225, ¶ 47 (2001).

Denial/Withdrawal at CFIUS

In the instant matter it appears that the CFIUS has either rejected the Applicants' application or that the Applicants have voluntarily withdrawn their request for approval. According to the Wall Street Journal:

> Hutchison, along with co-investor Singapore Technologies Telemedia Pte. Ltd., withdrew a regulatory application early last week following a contentious meeting with officials from a secretive multiagency task force called the Committee on Foreign Investment in the U.S., said people familiar with the matter. At the meeting, officials told the company executives that they were set to launch a formal investigation into the deal over concerns about Hutchison's ties to China, these people said. The companies decided to withdraw the $250 million bid and restructure it instead of risking the possibility of a government block, these people said.

Dennis K. Berman, et al., *Hutchison Faces Passive Role In Revamp of Global Crossing,* WALL ST. J., Mar. 3, 2003 at B7, printed as Attachment 1 to this letter.

Reuters and Forbes both filed reports, which reflect the same facts:

> Global Crossing withdrew its application from the Committee on Foreign Investment in the United States (CFIUS), a panel made up of top U.S. national security and economic officials.
>
> CFIUS had concerns about a large U.S. telecommunications company being majority owned by a company with strong ties to China, sources familiar with the process previously told Reuters.
>
> The committee raised concerns about Hutchison's ownership, not about Singapore Technologies' part of the deal, the sources said. It is now up to Hutchison, Singapore Tech and Global Crossing lawyers, advisers and bankers to restructure the deal in such a way that it meets with CFIUS approval.[1]

> While the deal has been approved by a U.S. bankruptcy judge and antitrust regulators, the two Asian investors last week withdrew a regulatory application at the eleventh hour because a committee governing foreign investment in the United States said the transaction raised national security concerns.
>
> The Committee on Foreign Investment in the United States, or CFIUS, had concerns about a large U.S. telecommunications firm being majority owned by a company with strong ties to China, sources familiar with the process said.[2]

Because the CFIUS process is ostensibly confidential, ACN and the Commission are entitled to know at least that which the Applicants must share under Section 1.65. From a review of the on-line docket sheet in Docket No. 02-286, it appears that no such disclosures have been made. The press reports raise the question of whether the Commission staff is now reviewing the application of an acquisitions group that no longer exists or in the alternative is in existence,

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[1] *See* Attachment 2, Reuters, *Global Crossing creditors affirm support for plan* (Mar. 10, 2003), *available at* http://www.reuters.com/newArticle;html?type=topNews&storyID=2354504

[2] *See* Attachment 3, Siobhan Kennedy, *Hutchison may be silent partner in Global Crossing* (Mar. 3, 2003), *available at* http:www.forbes.com/work/newswire/2003/03/03/rtr895872.html.

but whose component parts and ownership structure have been, or are about to be, changed in material respects.

Changes in Deal Structure Have FCC Implications

The press reports that Applicants have developed an alternative structure to address the concerns of the CFIUS:

> One proposal currently under consideration is that Hutchison would retain its stake of Global Crossing but give up the right to have members on the board, sources said. Under the original plan, when Global Crossing emerged from bankruptcy, Hutchison and Singapore Tech would each get the right to appoint four new board members, in addition to a new co-chairman. But to allay CFIUS fears, Hutchison is now considering giving its four seats to four approved U.S. officials, effectively diminishing its role to that of a silent partner, the sources said.[3]

The Wall Street Journal explained the proposed team in the following way:

> What is being considered, these people said, is a plan that would make Hutchison only a passive investor. The company essentially would create a proxy group of four approved "distinguished Americans" on the 10-person Global Crossing board. A Hutchison director also would be prevented from serving as the reorganized company's chairman, as was planned by the companies' purchase agreement. "Instead of screening off the U.S. network from the parent, you'd be screening off Hutchison from the parent," said one person with knowledge of the plan, which hasn't yet been officially resubmitted for review.[4]

Implications of Such a Plan on Determining Foreign Ownership

The FCC must, pursuant to section 310(b)(4) of the Act, calculate the foreign equity and voting interests attributable to the transferee and, in turn, to the transferee's ultimate parent. The

[3] *See* Attachment 2 (Reuters).
[4] *See* Attachment 1 (WALL ST.J.).

Commission must also determine the Applicants' compliance with the Anti-Drug Abuse Act of 1988 and its own rules for transfers of domestic and international certificates.[5] In order for the Commission to make such findings, Applicants must provide the Commission with detailed and reliable information as to their owners, their nationality and Anti-Drug Act compliance.

1. Applicant Hutchison

In the instant matter, while the proposed changes in the structure of Applicants' management structure may insulate Applicant-Hutchison from CFIUS examination, it does not free them from compliance with the Commission's disclosure rules. Applicant Hutchison must still demonstrate to the Commission its compliance with specific Congressional and Commission directives.

Under the Commission multiplier rules,[6] Applicant Hutchison:

- must identify and certify compliance with the Anti-Drug Abuse Act of 1988;
- must identify by citizenship all thirty-percent owners of Hutchison to demonstrate compliance under Sections 63.04(a)(4) and 63.18(h) of the Commission's rules; and
- must demonstrate that the aggregate "non-WTO" foreign ownership of Hutchison does not exceed 75 percent or trigger 310(b)(4) of the Act and the Commission's Foreign Ownership Orders.

As to the pending application, ACN has previously shown that Applicants have failed to meet this burden.[7]

[5] *See* Sections 1.2002, 63.04(a)(4) and 63.18(h) of the Rules.

2. Applicant STT

While the levels of identification and certification have not changed for Applicant Hutchison, the new management structure outlined in the press will require a much more-detailed examination of STT's ownership, since it will no longer be entitled to a multiplier.

The Commission, in calculating alien voting interests in a parent company, does not employ a multiplier when the link in the vertical ownership chain constitutes a controlling interest in the company positioned in the next lower tier. Therefore if the press accounts are accurate the Applicants and Commission must reexamine in greater detail the ownership of STT. The threshold for instance for compliance with the Anti-Drug Abuse Act of 1988 is at 5 percent of STT ownership, not at 15 percent. The threshold for compliance with Sections 63.04(a)(4) and 63.18(h) is at 10 percent, not 30 percent. And the trigger for Section 310(b) analysis will be at 25 percent.

The numbers entail a more granular examination. The Applicants have not yet satisfied the new burden.[8]

Bankruptcy

The proposed structure of the new acquisitions group, as outlined in the press, is a significant departure from the reorganization plan approved by the Bankruptcy Court. The

[6] According to the FCC merger page, Hutchison Telecom and ST Telemedia each will hold a 30.75% interest in the Applicant. For purposes of this discussion we have used a rounded multiplier of 3.
[7] *See* Further Comments of ACN, filed herein March 6, 2003.
[8] *See* Further Comments of ACN, filed herein March 6, 2003.

Commission should not be forced to ask Applicants if they plan to re-file such a plan and or wait until such a plan would result in new applications being filed with the Commission.

As noted above, "the Commission is not expected to 'play procedural games with those who come before it in order to ascertain the truth'"[9] It is the Applicants who should report that under Section 1.65; neither interested parties such a ACN nor the Commission staff should be required to operate in the dark. The applications should be dismissed as hypothetical or inconsistent under Section 1.747[10] of the Commission's rules, or alternatively processing should be suspended until the dust settles at CFIUS and in the Bankruptcy Court.

Respectfully submitted,

AMERICAN COMMUNICATIONS NETWORK, INC.

by William Malone
William Malone
Gerard Lavery Lederer
James R. Hobson

Its Attorneys

Attachments

1 - Wall Street Journal
2 - Reuters Newswire
3 - Forbes.com

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[9] *RKO General v. FCC*, 216 U.S.App.D.C. 57, 71, 670 F.2d 215, 229 (1981) (internal citations omitted).
[10] The rule reads: "When an application is pending or undecided, no inconsistent or conflicting application filed by the same applicant, his successor, or assignee, will be considered by the Commission."

Exhibit 1

The Wall Street Journal

Monday, March 3, 2003

Technology

Hutchison Faces Passive Role In Revamp of Global Crossing

U.S. Security Officials Fret China May Access Network To Spy, Steal Trade Secrets

By Dennis K. Berman in New York, Yochi J. Dreazen in Washington and Matt Pottinger in Shanghai

U.S. security agencies' concerns about Hutchison Whampoa Ltd.'s links to China could leave the Hong Kong conglomerate with only a passive role in the revamping of telecommunications operator Global Crossing Ltd., said people familiar with the matter.

Hutchison, along with co-investor Singapore Technologies Telemedia Pte. Ltd., withdrew a regulatory application early last week following a contentious meeting with officials from a secretive multiagency task force called the Committee on Foreign Investment in the U.S., said people familiar with the matter. At the meeting, officials told the company executives that they were set to launch a formal investigation into the deal over concerns about Hutchison's ties to China, these people said. The companies decided to withdraw the $250 million bid and restructure it instead of risking the possibility of a government block, these people said.

The situation highlights the government's tricky job of balancing national security while trying not to stifle foreign investment into a beleaguered industry.

Global Crossing, which filed for U.S. bankruptcy-court protection in January 2002, maintains a world-wide 100,000-mile fiber-optic network, including 20,000 miles of U.S.-based fiber optics linking 14 cities. Though Global Crossing carries only a small amount of U.S. government traffic, military and security officials are concerned about the ability of the Chinese government or related companies to tap into those lines for spying or stealing U.S. corporate trade secrets, people close to the matter said. U.S. officials also worry that foreign ownership could impair the U.S. government's ability to lay wiretaps and other electronic surveillance.

A plan once under consideration would have walled off a separate U.S. subsidiary, staffed with a board of U.S. citizens, to oversee the company's domestic assets. It was an imperfect solution, people close to the matter said, because the nature of Global Crossing's network means telecom traffic can be routed thousands of ways.

What is being considered, these people said, is a plan that would make Hutchison only a passive investor. The company essentially would create a proxy group of four approved "distinguished Americans" on the 10-person Global Crossing board. A

Hutchison director also would be prevented from serving as the reorganized company's chairman, as was planned by the companies' purchase agreement. "Instead of screening off the U.S. network from the parent, you'd be screening off Hutchison from the parent," said one person with knowledge of the plan, which hasn't yet been officially resubmitted for review.

Hutchison spokeswoman Laura Cheung said she couldn't comment on the confidential CFIUS process, but she rejected suggestions Hutchison, or its Hong Kong-based Chairman Li Ka-shing, was an instrument of Beijing or that its Global Crossing investment could threaten U.S. security.

"The Chinese government doesn't have any officials on our board, and therefore has no influence at all over our business," she said. Hutchison has operated some assets of the Panama Canal since 1999 with little fanfare, despite similar U.S. security concerns raised by Congress at the time.

A Global Crossing spokeswoman said the company continues to cooperate with the U.S. government. A Treasury spokesman declined to comment.

Phillip Day in Singapore contributed to this article.

---- INDEX REFERENCES ----

COMPANY (TICKER): GBLXQ; Hutchison Whampoa Ltd. (GBLXQ H.HUW)

NEWS SUBJECT: Bankruptcy; Bankruptcy; Corporate Actions; Corporate/Industrial News; Information Technology Policy and Issues; Public Policy & Regulatory Issues; Regulation/Government Policy; Dow Jones Total Market Index; Wall Street Journal; English language content; Armed Forces; Political/General News (BCY C16 CAC CCAT ITP PBP C13 WEI WSJ ENGL GDEF GCAT)

MARKET SECTOR: Industrial; Utilities; Newswire End Code (IDU UTI NND)

INDUSTRY: Diversified Industrial; Long Distance Telephone Providers; Telecommunications, All; Telephone Systems; Dow Jones Asian Titans Index components (IDD LDS TEL TLS XATI)

PRODUCT: Asian/Pacific News/Features; Telecommunications (DAA DTE)

GOVERNMENT: Governments of Non-U.S. Countries (IGV)

REGION: Bermuda; Bermuda; China; China; Far East; Far East Other; Hong Kong; Hong Kong; North America; Pacific Rim; Singapore; Singapore; Southeast Asia; United States; United States; Asian Countries; Asia; Eastern Asian Countries; North American Countries; Emerging Market Countries; Southeast Asian Countries (BD BERM CH CHINA FE FEO HK HKONG NME PRM SN SINGP SSA US USA ASIAZ ASI EASIAZ NAMZ DEVGCOZ SEASIAZ)

LAYOUT CODES: Large Majors; Technology; Business and Finance Column Stories (LMJ TCH TPT)

Word Count: 512

3/3/03 WSJ B7

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Exhibit 2

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UPDATE 1-Global Crossing creditors affirm support for plan

Mon March 10, 2003 10:24 AM ET

(Adds background)

NEW YORK, March 10 (Reuters) - Bankrupt telecommunications company Global Crossing Ltd 's GBLXQ.PK creditors' committee on Monday affirmed its support for the sale of a majority of the company to two Asian companies and said an alternative deal proposed by IDT Corp IDTc.N is not credible

The creditors' committee said the existing deal, which calls for Hutchison Telecommunications 0013.HK and government-run Singapore Technologies Telemedia to buy a 65 percent stake in high-speed network operator Global Crossing, gives the company's unsecured creditors the best means to recoup some of their losses.

The deal has been confirmed by the bankruptcy court but awaits regulatory approval by the Committee on Foreign Investment in the United States.

The creditors' committee said it is hopeful the deal will be approved and that it will do its best to ensure that the review process runs its course without interference.

Last month, telephone services company IDT said it would launch a rival $255 million bid to acquire Global Crossing, and said U.S. national security concerns would scuttle the existing deal with the Asian companies. IDT is not permitted to submit a formal bid until the sale to the Hutchison group is finalized or rejected.

"These parties had a full and fair opportunity to submit a bid during the bankruptcy auction process that extended over many months. Expressions of interest from parties that failed to bid in that process are not now credible," Global Crossing creditors' committee said in a statement

Global Crossing withdrew its application from the Committee on Foreign Investment in the United States (CFIUS), a panel made up of top U.S. national security and economic officials.

CFIUS had concerns about a large U.S. telecommunications company being majority owned by a company with strong ties to China, sources familiar with the process previously told Reuters

The committee raised concerns about Hutchison's ownership, not about Singapore Technologies' part of the deal, the sources said. It is now up to Hutchison, Singapore Tech and Global Crossing lawyers, advisers and bankers to restructure the deal in such a way that it meets with CFIUS approval

One proposal currently under consideration is that Hutchison would retain its stake of Global Crossing but give up the right to have members on the board, sources said.

Under the original plan, when Global Crossing emerged from bankruptcy, Hutchison and Singapore Tech would each get the right to appoint four new board members, in addition to a new co-chairman.

But to allay CFIUS fears, Hutchison is now considering giving its four seats to four approved U.S. officials, effectively diminishing its role to that of a silent partner, the sources said.

REUTERS

Close This Window

Exhibit 3

CORRECTED - Hutchison may be silent partner in Global Crossing

http://www.forbes.com/work/newswire/2003/03/03/rtr895872.html
A corrected version follows.

By Siobhan Kennedy

NEW YORK, March 3 (Reuters) - Hutchinson Whampoa Ltd. <0013.HK> may have to become a silent partner in the reorganization of bankrupt Global Crossing Ltd. <GBLXQ.PK> to pacify U.S. security agencies' fears about the conglomerate's links to China, sources familiar with the process said on Monday.

Hutchinson, which is owned by Li Ka-shing, Hong Kong's richest man, and state-owned Singapore Technologies Telemedia Pte have agreed to buy a 65 percent stake in Global Crossing, which filed one of the largest U.S. bankruptcies last year.

While the deal has been approved by a U.S. bankruptcy judge and antitrust regulators, the two Asian investors last week withdrew a regulatory application at the eleventh hour because a committee governing foreign investment in the United States said the transaction raised national security concerns.

The Committee on Foreign Investment in the United States, or CFIUS, had concerns about a large U.S. telecommunications firm being majority owned by a company with strong ties to China, sources familiar with the process said.

The committee -- which is made up of top national security and economic officials from the Department of Defense and the Treasury and other agencies -- is only worried about Hutchison's ownership, not about Singapore Technologies' part of the deal, the sources said.

It is now up to Hutchison, Singapore Tech and Global Crossing lawyers, advisers and bankers to restructure the deal in such a way that it meets with CFIUS approval.

One proposal currently under consideration is that Hutchison retains its stake of Global Crossing, but that it gives up the right to have members on the board, sources said.

Under the original plan, when Global Crossing emerged from bankruptcy, Hutchison and Singapore Tech would each get the right to appoint four new board members, in addition to a new co-chairman.

'SUPERMAN'

But in order to allay CFIUS fears, Hutchison is now considering giving its four seats to four approved U.S. officials, effectively diminishing its role to that of a silent partner, the sources said.

Hutchison Whampoa is based in Hong Kong, where the rule of law and certain democratic and civil rights were guaranteed after its control reverted to China from former colonial power Britain in 1997. The company, the world's biggest operator of container ports, is also one of the top investors in third generation or 3G telecommunications.

Li Ka-shing, Asia's richest man, is known in Hong Kong as "superman" for his deft investing touch.

Global Crossing said it would not comment on the CFIUS process other than to say it "continued to cooperate with regulatory authorities in completing the approval requirements to consummate the transaction with Hutchison Telecommunications and Singapore Technologies Telemedia."

Steve Lipin, a spokesman for Hutchison in the United States, said: "The CFIUS process is highly confidential and therefore we cannot comment. What we can confirm is that we continue to cooperate with the U.S. government to address any concerns."

A Treasury spokesman also declined to comment.

Since its inception, CFIUS has only blocked one transaction of the roughly 1,500 cases it has reviewed, said Monty Graham, a senior fellow with the Institute for International Economics, a Washington, D.C.-based nonprofit organization.

That case involved the purchase of Mamco Manufacturing Inc., a company located in Seattle, Washington, by the China National Aero-Technology Import and Export Corporation.

Roughly a dozen other cases have been abandoned or restructured following CFIUS review.

"CFIUS tries not to be obtrusive," Graham said. "It will not block a transaction unless there really is a rather specific national security concern that is raised by it."

In Global Crossing's case, he said it was likely that the telecoms provider had specific contracts with certain government agencies that had raised flags within CFIUS.

Global Crossing said it would not comment on government work but said it did have certain contracts.

Certificate of Service

I hereby certify that I have caused to be mailed (and also e-mailed where indicated) this day copies of the foregoing letter to the following:

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March 18, 2003

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