

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

In the Matter of)	
)	
GLOBAL CROSSING LTD.)	
(Debtor-in-Possession),)	
)	
Transferor,)	IB Docket No. 02-286
)	
and)	
)	
GC ACQUISITION LIMITED,)	
)	
Transferee,)	
)	
Application for Consent to Transfer)	
Control and Petition for Declaratory Ruling)	
)	

**SECOND AMENDMENT TO
APPLICATION FOR CONSENT TO TRANSFER CONTROL AND
PETITION FOR DECLARATORY RULING**

Global Crossing Limited (“GCL”) and GC Acquisition Limited (“New GX” and, together with GCL, “Applicants”), by their undersigned counsel, submit this Second Amendment to their Application for Consent to Transfer Control and Petition for Declaratory Ruling (the “Application”). This Second Amendment provides updated information regarding the proposed investment by Hutchison Telecommunications Limited (“Hutchison Telecom”) in New GX.¹ The updated information results from ongoing discussions with the Committee on Foreign Investment in the United States (“CFIUS”) with respect to national security and law enforcement issues raised by the transaction described in the Application (the “Proposed Transaction”).

¹ The updated information provided in this Second Amendment relates only to Hutchison Telecom’s proposed investment in New GX. The proposed investment in New GX by Singapore Technologies Telemedia Pte Ltd (“ST Telemedia”) would remain unchanged. As discussed below, certain corporate governance rights of ST Telemedia and Hutchison Telecom (in the latter case, to be exercised through the Proxy Holders (as defined below)) would be set forth in New GX’s revised charter documents, rather than in the Shareholders’ Agreement previously submitted to the Federal Communications Commission (the “Commission” or “FCC”).

Although the discussions with CFIUS have not been completed and the CFIUS agencies have not concluded their analysis, should CFIUS approve the Proposed Transaction, Applicants expect that approval would be conditioned upon the modifications to Hutchison Telecom's investment as described herein. Applicants are advising the Commission of the details of those potential changes now because of the need to satisfy all closing conditions to the consummation of the Proposed Transaction by April 30, 2003.² Applicants will promptly advise the Commission if the terms of the proposed arrangement as described in this Second Amendment change materially as a result of ongoing discussions with the CFIUS agencies. Applicants also will advise the Commission in the event they do not reach a final agreement with the CFIUS agencies. Applicants emphasize that the description of the proposed arrangement contained herein is attributable solely to themselves, and it has not been endorsed by the CFIUS agencies.

For purposes of the Commission's examination of the Proposed Transaction, the updated information provided in this Second Amendment would not change the ownership structure of New GX as described in the Application. Hutchison Telecom's legal and beneficial ownership of New GX would not be diminished, and Hutchison Telecom would not be deprived of the economic benefit of its investment. Rather, Hutchison Telecom would appoint United States resident citizen proxy holders (the "Proxy Holders") who would exercise Hutchison Telecom's voting and corporate governance rights in accordance with prescribed standards relating to national security and Hutchison Telecom's economic interests.³

² GCL, Hutchison Telecom, and ST Telemedia each has the right to terminate the Purchase Agreement if all closing conditions for the Proposed Transaction, including required regulatory approvals, have not been satisfied by April 30, 2003. There is no assurance that any party to the Purchase Agreement will refrain from exercising its termination right. (The recent filing in the United States bankruptcy court extending the exclusivity period has no effect on the April 30 date or the rights of the parties pursuant to the Purchase Agreement.) With the exceptions of the CFIUS and FCC approvals, all required regulatory approvals have been obtained. Applicants do not anticipate that bankruptcy court approval would be required in connection with the proposed proxy arrangement.

³ Because Hutchison Telecom would retain its legal and beneficial ownership interest in New GX, Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), remains applicable to the Proposed Transaction and Applicants' Petition for Declaratory Ruling remains necessary.

Applicants request that this Second Amendment be treated as a minor amendment that does not require public notice and comment. Were Hutchison Telecom to enter into the proposed proxy arrangement after consummation of the Proposed Transaction, public notice and Commission approval would not be required. In the event the Commission determines that public notice is required, Applicants respectfully suggest that a comment period of seven days, with three days for reply comments, would be adequate. In any event, Applicants request that the Commission complete any comment cycle as far in advance of April 30, 2003 as possible.

I. BACKGROUND REGARDING NATIONAL SECURITY AND LAW ENFORCEMENT ISSUES

Applicants filed for approval of the Proposed Transaction on August 22, 2002, and the Application was placed on Public Notice on September 19, 2002.⁴ In the Application, Applicants asked the Commission to begin its review but to defer dispositive action on the Application until the Commission received notice that any national security or law enforcement issues raised by agencies of the Executive Branch of the United States Government (the “Executive Agencies”) were resolved.⁵ On October 21, 2002, the Department of Justice and the Federal Bureau of Investigation (together, the “DOJ”) filed a Motion for Continued Deferral that also asked the Commission to defer final action on the Application pending resolution of any national security and law enforcement issues.⁶

Applicants began discussions with CFIUS and the Executive Agencies regarding the Proposed Transaction shortly after the Application was filed. Ongoing negotiations have resulted in discussions regarding a possible framework involving a Proxy Agreement with

⁴ *In re Global Crossing Ltd. and GC Acquisition Limited*, IB Docket No. 02-286, Public Notice, DA 02-2299 (Sept. 19, 2002).

⁵ Application, at 20-21.

⁶ *In re Global Crossing Ltd. and GC Acquisition Limited*, IB Docket No. 02-286, Motion for Continued Deferral (Oct. 21, 2002).

respect to Hutchison Telecom's shares of New GX (the "Proposed Proxy Agreement").⁷ Applicants also are negotiating a Network Security Agreement with the DOJ (the "Proposed Network Security Agreement" and, together with the Proposed Proxy Agreement, the "Proposed Agreements").⁸ The discussions with CFIUS are ongoing, and neither of the Proposed Agreements has been concluded.

If the discussions with CFIUS are concluded satisfactorily and the Proposed Agreements are executed, Applicants anticipate that the DOJ would withdraw its Motion for Continued Deferral and request that the Commission condition any grant of the Application on compliance with the executed versions of the Proposed Agreements.⁹

II. DESCRIPTION OF THE PROPOSED PROXY AGREEMENT

The terms of the Proposed Proxy Agreement would be intended to address the concerns of the Executive Agencies with respect to Hutchison Telecom's proposed investment in New GX. Those terms, and the resulting changes to the Application, should not affect the Commission's analysis of the Proposed Transaction. The Proposed Proxy Agreement would be structured such that Hutchison Telecom would retain its legal and beneficial ownership of New GX and would obtain the full economic benefit of its investment in New GX. Hutchison Telecom would hold title to its New GX shares and receive any dividends or other distributions paid upon those shares. Hutchison Telecom would be free to sell, convert, transfer, or otherwise

⁷ Because the Proposed Proxy Agreement is not yet in final form, Applicants summarize it below but do not include a copy with this Second Amendment. Applicants anticipate that the parties to the Proposed Proxy Agreement would be New GX, Hutchison Telecom, ST Telemedia, the four initial Proxy Holders, and one or more agencies of the United States Government (such agency or agencies, the "USG").

⁸ Applicants anticipate that the terms of the Network Security Agreement would be substantially similar to the terms of past network security agreements approved by the Commission with certain other provisions intended to address the Executive Agencies' views with respect to the Proposed Transaction. See, e.g., *In re XO Communications Inc.*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, DA 02-2512 (rel. Oct. 3, 2002).

⁹ Applicants anticipate that the DOJ would submit copies of the Proposed Agreements with its filing.

dispose of some or all of its shares in New GX or to pledge or otherwise encumber those shares.¹⁰

While preserving Hutchison Telecom's economic interest in New GX, the Proposed Proxy Agreement would be intended to isolate Hutchison Telecom from involvement with New GX's business and management and restrict its access to information and facilities of New GX. To that end, the Proposed Proxy Agreement would provide that Hutchison Telecom would initially appoint four Proxy Holders who must be resident citizens of the United States and meet certain other qualifications, including approval by the USG.¹¹ Each of the Proxy Holders would independently exercise voting rights with respect to a *pro rata* portion of Hutchison Telecom's shares of New GX (*i.e.*, if there are four Proxy Holders, each would exercise voting power, for matters subject to a shareholder vote, with respect to one-fourth of Hutchison Telecom's New GX shares). Thus, Hutchison Telecom would not vote its New GX shares, as those rights would be exercised by the Proxy Holders subject to the terms of the Proposed Proxy Agreement. In addition, each of the Proxy Holders would become a director of New GX.¹²

The Proposed Proxy Agreement would give each of the Proxy Holders autonomy in exercising the voting rights that would accompany his *pro rata* portion of Hutchison Telecom's New GX shares. All decisions and actions by the Proxy Holders would be made according to

¹⁰ Conversely, the Proxy Holders would have no power to convert, dispose of, or encumber Hutchison Telecom's New GX shares.

¹¹ In addition to being United States citizens, the Proxy Holders would be required to have no prior contractual, financial, or employment relationship with Hutchison Telecom or New GX and to certify their willingness to accept the security responsibilities set forth in the Proposed Proxy Agreement.

¹² The Purchase Agreement provides that Hutchison Telecom initially would have the right to nominate four directors to New GX's board of directors (the "Board"). Application, at 8. Pursuant to the Proposed Proxy Agreement, Hutchison Telecom would name a number of Proxy Holders equal to the number of directors nominated by Hutchison Telecom. If in the future Hutchison Telecom has the right to nominate less than four directors, it would remove one or more Proxy Holders. The Proxy Holders would be entitled to (i) exercise the right of Hutchison Telecom to determine which Hutchison Telecom-appointed directors would serve as Chairman of the Executive Committee and Chairman of the Nominating Committee and (ii) serve on the other committees of the Board. Application, at 8 and n. 13. In addition, the Proposed Proxy Agreement would result in the creation of a

their own independent business judgment based on the standards set forth in the Proposed Proxy Agreement. Subject to their responsibility to ensure compliance with U.S. national security requirements, the Proxy Holders would be obligated to act in good faith as reasonably prudent persons to protect the legitimate economic interests of Hutchison Telecom in New GX. A Proxy Holder would be removable by Hutchison Telecom if the Proxy Holder failed to meet this obligation (subject to non-opposition from the USG), and Hutchison Telecom could remove a Proxy Holder for any reason with the approval of the USG.

Other than as discussed above, Hutchison Telecom's rights and obligations with respect to New GX would remain essentially unchanged from the description in the Application. The Proposed Proxy Agreement would not result in any changes to the Purchase Agreement.¹³ The Shareholders' Agreement between Hutchison Telecom and ST Telemedia relating to New GX would be terminated; however, the principal terms of the Shareholders' Agreement with respect to the governance of New GX would be embodied in New GX's charter documents (*i.e.*, in the Bye-Laws and the Certificate of Designations). The Bye-Laws and Certificate of Designations of New GX are being revised to incorporate those terms.¹⁴

III. DISCUSSION

A. The Proposed Transaction Would Be Materially the Same as Described in the Application

The Proposed Proxy Agreement would be significant in terms of addressing any national security and law enforcement issues raised by the Executive Agencies; however, it would result

Government Security Committee (the "GSC") of the Board. The GSC would be comprised solely of the Proxy Holders and would be responsible for ensuring New GX's compliance with the Proposed Agreements.

¹³ Certain provisions of the Purchase Agreement, such as Hutchison Telecom's obligation to cooperate with ST Telemedia on various matters (for example, its obligation to use reasonable efforts to cause a public listing of New GX's shares), would be affected by the limitations imposed on Hutchison Telecom by the Proposed Proxy Agreement.

¹⁴ Applicants would file the Bye-Laws and Certificate of Designations with the Commission when they are finalized.

in only minor changes to the Application for purposes of the FCC's analysis. Most important, it would not materially alter the ownership structure of New GX as described in the Application.

The Proposed Proxy Agreement would not change the equity ownership interests of New GX's future shareholders or the future ownership structure of New GX. Hutchison Telecom and ST Telemedia each would continue to hold a 30.75% equity interest in New GX and the creditors of GCL and its debtor subsidiaries (the "Creditors") would continue to hold a 38.5% equity interest.¹⁵ Thus, the Proposed Proxy Agreement would affect only a minority interest in New GX, while leaving unchanged the 69.25% of New GX's equity and voting that would be held by ST Telemedia and the Creditors.¹⁶

The modifications to Hutchison Telecom's rights as a New GX shareholder that would result from the Proposed Proxy Agreement also should not affect the Commission's analysis of the Proposed Transaction. Hutchison Telecom would not lose the voting rights that attach to its New GX shares (including the rights accompanying Hutchison Telecom's preferred stock); rather, those rights would be exercised by the Proxy Holders. As noted above, Hutchison Telecom would continue to have the right to sell, convert, transfer, or otherwise dispose of its New GX shares and to pledge or otherwise encumber those shares. Hutchison Telecom would have the right to nominate the same number of directors as was described in the Application. The Proxy Holders would be bound, subject to their national security obligations, to act in good faith to protect Hutchison Telecom's legitimate economic interest in New GX and could be

¹⁵ As Applicants have previously advised, the interests of Hutchison Telecom, ST Telemedia, and the Creditors would be subject to dilution as the result of the issuance and exercise of stock options to the future management of New GX in an amount up to 8% of the equity of New GX. Application, at 5. This remains unchanged.

¹⁶ As noted in the Application, other than with respect to the election of each other's director nominees, there is no agreement between Hutchison Telecom and ST Telemedia to vote their shares together or otherwise to act in concert with respect to the operations of New GX. Application, at 9. As a result of the termination of the Shareholders' Agreement, Hutchison Telecom and ST Telemedia would no longer vote for each other's director nominees, and ST Telemedia's and Hutchison Telecom's respective Board appointees would be assured through the amendments to certain of New GX's charter documents.

removed by Hutchison Telecom if they failed to do so (subject to the non-opposition of the USG). Thus, the effect of the Proposed Proxy Agreement on Hutchison Telecom's rights as a shareholder, for purposes of the FCC's analysis of the Application, would be minimal.

Finally, the Proposed Proxy Agreement should not change the Commission's foreign ownership analysis. The information regarding the direct and indirect ownership of Hutchison Telecom, as described in the Application and Applicants' subsequent correspondence with the Commission, would not be affected by the Proposed Proxy Agreement.

B. The Proposed Changes to the Application Would Be the Result of the CFIUS Process

The Commission has repeatedly stated that in evaluating proposed foreign ownership of U.S. common carriers it will accord deference to the Executive Branch with respect to national security and law enforcement issues.¹⁷ As the Commission has recognized, those issues are "uniquely within the expertise of the Executive Branch."¹⁸ In this case, the proposed changes to Hutchison Telecom's investment in New GX would be made solely to satisfy the requirements of the Executive Agencies with respect to national security and law enforcement issues. The Proposed Proxy Agreement would be narrowly tailored to address those issues. Therefore, in finishing its examination of whether the Proposed Transaction is in the public interest, the

¹⁷ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891 (1997) ("Foreign Participation Order"), at ¶¶ 59, 63; *In re Applications of Space Station System Licensee, Inc.*, et al., File No. SAT-ASG-20010319-00025, Memorandum Opinion, Order and Authorization, DA 02-307 (rel. Feb. 8, 2002), at ¶¶ 35-39; *In re Merger of MCI Communications Corporation and British Telecommunications plc*, Memorandum Opinion and Order, 12 FCC Rcd 15,351, ¶¶ 271-77 (1997); *Application of VoiceStream Wireless Corporation, et al.*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001), at ¶¶ 73-77.

¹⁸ *In re Lockheed Martin Global Telecommunications, et al.*, File No. SES-ASG-20010504-00896, Order and Authorization, FCC 01-369 (rel. Dec. 18, 2001) ("Telenor Order"), at ¶ 47; *In re General Electric Capital Corporation and SES Global, S.A.*, File No. SAT-T/C-20010402-00030, Order and Authorization, DA 01-2100 (rel. Oct. 2, 2001), at ¶ 50.

Commission should defer to the expertise of the Executive Agencies and their conclusions regarding resolution of the national security and law enforcement issues.¹⁹

IV. CONCLUSION

Applicants respectfully request that the Commission, upon receiving appropriate notification from the DOJ, promptly grant the Application and condition its grant upon Applicants' compliance with the executed versions of the Proposed Agreements.

Respectfully submitted,

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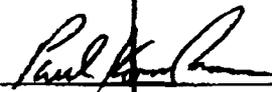
Counsel to Global Crossing Ltd. and
GC Acquisition Limited

Dated: April 7, 2003

¹⁹ The Proposed Network Security Agreement and the Proposed Proxy Agreement would satisfy the concerns expressed by various commenters regarding the effect of the Proposed Transaction on national security. *Telenor Order*, at ¶ 50 (finding that applicants' network security agreement addressed commenters' concerns regarding national security).

CERTIFICATION

On behalf of Global Crossing Ltd., I hereby certify under penalty of perjury that the statements in the foregoing are true, complete, and correct to the best of my knowledge, information and belief.

SIGNATURE:  _____

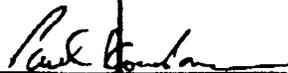
NAME: Paul Kouroupas

TITLE: Vice President and Senior Counsel

DATE: April 7, 2003

CERTIFICATION

On behalf of GC Acquisition Limited, I hereby certify under penalty of perjury that the statements in the foregoing are true, complete and correct to the best of my knowledge, information and belief.

SIGNATURE:  _____

NAME: Paul Kouropas

TITLE: Vice President and Senior Counsel

DATE: April 7, 2003

CERTIFICATE OF SERVICE

I, Jean L. Kiddoo, hereby certify that on this 7th day of April 2003, I caused a true and correct copy of the foregoing letter to be served upon the following parties in the manner indicated:

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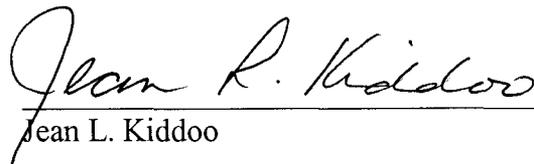
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