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April 16, 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 in response to the Applicants' filing of April 7, 2003,¹ captioned as an amendment to their application. Applicants seek to classify their amendment as minor and to foreclose comment by other interest parties thereon. However it may properly be characterized, Applicants' filing merely provides the Commission with a hypothetical corporate governance

¹ See Applicant's Second Amendment to Application for Consent to Transfer Control and Petition for Declaratory Ruling filed April 7, 2003 ("Filing"). See Comments of Edward M. Killilea, filed April 9, 2003, in response thereto.

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model that may or may not be instituted by Applicants.² Further, the filing suggests at 6 that existing shareholders' agreements, corporate bylaws, and Certificates of Designation previously filed with the Commission in support of the application will subsequently be revised but the Applicants provide no precise language for such amendments. Thus, the Commission is being asked to act on what are, by Applicants' own admissions, essential documents, the operative versions of which are not before it. The Commission should not, and cannot, be expected to make determinations on controverted issues of corporate control, foreign ownership interest, and the public interest under either Section 214 or 310(b) from such a tentative and incomplete offering.³ Nor should such a vague and hypothetical submission be used to cut off public notice and comment on the revised proposal, when and if it is fully disclosed.⁴

Should the Commission not reject Applicants' self-characterization of the filing, then ACN files this letter to insist that the proposal, as outlined by the Applicants, constitutes a major

² According to the filing, "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." (emphasis added). Applicants must surely be aware that the installation of an American oversight panel does prevent the Commission from rejecting the grant of a common carrier license. See *Cellwave Telephone Services v. F.C.C.*, 30 F.3d 1533, 308 U.S.App.D.C. 166 (D.C. Cir. 1994) (Alien general partners alleged insulation of themselves by contract from managerial positions within general partnerships did not preclude FCC from rejecting grant of common carrier license. See also *Moving Phones Partnership v. FCC*, 998 F. 2d 1051, 302 U.S. App 416 1993, cert. denied 511 U.S. 1004.)

³ ACN would point out that others share its feelings that this transaction requires additional review. The same day Applicants' were making their filing, the Honorable Conrad Burns, the Chair of the Senate Communications Subcommittee announced he planned to hold hearings into the suggested transaction. See, *US Senate panel plans look at Global Crossing sale*, Reuters, April 7, 2003 at reuters.com/financeNewsArticle.jhtml?type=mergersNews&storyID=2522797.

⁴ See 47 C.F.R. Sec. 1.65 -- Substantial and significant changes in information furnished by applicants to the Commission.

(a) ... Whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, *which shall be served upon parties of record in accordance with Sec. 1.47* (emphasis added).

amendment to their application. In any event, due process, the APA, and the Commission's own rules require that Applicants' new proposal be subjected to public review and comment.

It would also appear that at least four new officers/proxy holders are to be introduced or added to the transfer application.⁵ ACN would suggest that such additions must be accompanied by certifications of compliance with the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, and the Commission's rules implementing the Act.⁶

ACN would also assert that Applicants' reliance at 4 on the Commission recent *XO Order*⁷ is misplaced. In *XO* the corporate governance of the applicant was clearly established in the application and the foreign ownership interests were equally clearly revealed and established as WTO members. That is not the case in the instant matter.

Further, *XO* addresses a transfer in which the parties have satisfied the CFIUS' requirements, while this case presents what appears to be the more intricate problem of Applicants' compliance with the requirements of the Communications Act and the Commission's application processes.

If the Commission's *XO*'s order is to provide guidance in the instant matter, it is that a clear and detailed showing that an application is in the public interest is required, even where the non-controlling foreign interest was the national telephone company of Mexico, our NAFTA partner. The Commission took three additional weeks, after receiving guidance from the CFIUS'

⁵ A recent blurb in the April 7 edition of the Legal Times, the same day Applicants made their filing reveals that James Schlessinger, David Komansky, Daniel Evans, and Jeremiah Lambert have agreed to serve as Proxy holders. See Otis Bilodeau, *Board Games*, LEGAL TIMES, April 4, 2003, at 4.

⁶ See Sections 1.2002, 63.04(a)(5) and 63.18(o) of the Commission's rules, where the standard is "party to the application" and 21 U.S.C. § 862 (b)(1), where the standard is "any individual..."

⁷ Re *XO Communications*, 17 F.C.C. Rcd. 19212 (October 3, 2002).

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agencies in *XO*, to satisfied itself that the application met the public interest test before providing the requested declaratory order.

Applicants, by their “Second Amendment,” have not met ACN’s prior objections⁸ to their application as hypothetical or inconsistent but have only exacerbated their situation by seeking Commission approval “on-the-come,” as it were.

Finally, the Applicants in seeking to make their burden that the transfer was in the public’s interest relied on the proposition that absent approval of the requested transfer the Global network and its competitive offering would disappear.⁹ ACN would call to the Commission’s attention the interest expressed not only by IDT¹⁰ but also Cerberus Partners LP and Gores Technology Group (with Platinum Equity LLC).¹¹

Respectfully submitted,

AMERICAN COMMUNICATIONS NETWORK, INC.

by _____

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⁸ Ltr. to FCC in Docket No. 02-286, filed March 18, 2003.

⁹ See Application at p. 21 et seq.

¹⁰ See IDT Comments filed March 13, 2003.

¹¹ See *Cerberus mulls Global Crossing bid*, The Deal.Com, April 10, 2003.

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

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