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

In the Matter of	)	
	)	
Global Crossing Ltd.	)	IB Docket No. 02-286
(Debtor-in-Possession)	)	

COMMENTS OF THE ORGANIZATION FOR INTERNATIONAL INVESTMENT

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SUMMARY

The Organization for International Investment ("OFII") submits these comments with respect to the proposed investment in GC Acquisition Limited ("New GX") by Singapore Technologies Telemedia Pte Ltd ("ST Telemedia") because it is critically important that the Commission uphold the United States' commitments made in the WTO Basic Telecommunications Agreement and the Singapore Free Trade Agreement. At stake is the United States' credibility as a good faith trade negotiator, and its ability to negotiate future agreements, including upcoming services agreements. Trade agreements like the Basic Telecom Agreement and the Singapore Free Trade Agreement create a hospitable climate for foreign investment, which produces enormous benefits for U.S. consumers.

When the United States made its WTO offer, it expressly stated that there would be "no limits on indirect ownership of such licenses by foreign corporations (including government-owned corporations)." After the conclusion of the Basic Telecom Agreement, the Commission adopted rules to implement the U.S. WTO commitments in its *Foreign Participation Order*, which established a strong presumption of entry for companies, such as ST Telemedia, that are from WTO-member countries.

The FCC has correctly and repeatedly held that Section 310 of the Communications Act permits up to 100 percent indirect foreign ownership by firms from WTO-member countries of companies that hold Title III licenses. In the context of the New GX/ST Telemedia merger, which involves Title II common carrier and cable landing authorizations, but also some Title III licenses, the Commission must affirm the basic principle of unlimited indirect foreign ownership and thereby fulfill U.S. trade

commitments under the WTO and Singapore Free Trade Agreement. Failure to maintain a hospitable climate for foreign investment in the U.S. telecom market will harm U.S. consumers and undermine U.S. leadership in trade liberalization. The Commission thus should implement the binding trade commitments that the United States – along with approximately seventy-five other WTO Members – has undertaken. The proposed investment in New GX by ST Telemedia is precisely the kind of transaction the Basic Telecom Agreement was intended to permit as it promises significant benefits to U.S. consumers. Accordingly, the FCC should uphold the U.S. Government's trade commitments and deliver to U.S. consumers the benefit of increased competition.

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The Organization for International Investment ("OFII") submits these comments with respect to the proposed investment by ST Telemedia in New GX.

I. STATEMENT OF INTEREST

OFII is a membership association representing U.S. subsidiaries of foreign parent companies. OFII's constituents range from medium-sized enterprises to some of the largest firms in the United States, and they are involved in industry and services ranging from telecommunications, biotechnology, and financial services to a multitude of consumer products. OFII's members employ millions of Americans throughout the nation. OFII's mandate is to educate the public about its members' essential role in the U.S. economy and to ensure that U.S. subsidiaries receive nondiscriminatory treatment under U.S. law.

OFII's members have a strong interest in U.S. trade policies, and in market access conditions in the United States. OFII's members would be adversely affected by Commission action that would unilaterally abrogate U.S. WTO commitments.

II. ANALYSIS

A. The Commission Should Affirm its Established Interpretation that the Communications Act Allows Unlimited Indirect Foreign Investment.

The FCC has interpreted Section 310 of the Communications Act to allow unlimited indirect foreign ownership by firms from WTO-member countries of companies holding common carrier radio licenses.[1] The interpretation of Section 310 is not only clearly correct as a matter of law, it was also crucial to the successful conclusion of the WTO Basic Telecom Agreement. Based on this settled understanding of the law, the United States made binding commitments in the WTO to allow foreign companies to own indirectly up to 100 percent of a U.S. company that holds common carrier radio licenses. As the Commission is well aware, the United States did not schedule any limitations on this commitment of market access.

In the present case, which involves the transfer of Title II common carrier and cable landing authorizations as well as some relatively minor common carrier radio licenses, the FCC must honor the commitment made by the United States in the Basic Telecom Agreement and the Singapore Free Trade Agreement.[2] When the United States makes commitments in international trade agreements, it puts its national credibility on the line. Any breaches of U.S. commitments therefore affect not just present agreements,

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[1] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, 23940 (1997) ("*Foreign Participation Order*"); *see also In re Applications of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, 16 FCC Rcd 9779 (2001) (approving the transfer of licenses to Deutsche Telekom under Sections 214 and 310); *see also In re Applications of XO Communications, Inc.*, 17 FCC Rcd 19212 (2002) (same).

[2] On May 6, 2003, President Bush and Singaporean Prime Minister Goh signed the U.S.-Singapore Free Trade Agreement, the first such agreement between the United States and an Asian country. As part of the agreement, the Singapore Government executed a side letter stating that it will establish a plan to divest its majority share in ST Telemedia.

but the potential for reaching favorable resolutions to future trade issues. If the Commission were to interpret the Communications Act in a manner inconsistent with the U.S. WTO commitments, it could in a single stroke cripple U.S. trade policy. Such devastating consequences would clearly not be consistent with the Communications Act's public interest standard.

During the negotiation of the Basic Telecom Agreement, the United States made clear to its negotiating partners that it would commit to allow up to 100 percent indirect foreign ownership of companies holding common carrier licenses. In an official communication from the United States to the Negotiating Group on Basic Telecommunications dated February 26, 1996, the United States specifically stated that: "There will be no limits on indirect foreign ownership of such licenses by foreign corporations (including government-owned corporations) . . . ."[3]

Moreover, the Administration has consistently and publicly taken the position that U.S. WTO commitments are fully consistent with U.S. law.[4] The Trade Representative also made clear, however, that the Commission would be able "to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of

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[3] *See* WTO, Negotiating Group on Basic Telecommunications, Communication from the United States, Conditional Offer on Basic Telecommunications (Revision), S/NGBT/W/12/Add.3/Rev.1 (Feb. 26, 1996).

[4] Before the Basic Telecom Agreement was finalized, in response to a written question from Sen. Bob Kerrey, the United States Trade Representative stated that:

> Section 310(b)(4) explicitly allows indirect ownership by all three – a foreign government or its representative, an alien or its representative or a foreign corporation, unless the FCC determines that such ownership is not in the public interest. This is also reflected in the U.S. offer . . . .

105 *Cong. Rec.* S1963 (1997).

nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services."[5]

The repeated assurances of the U.S. Government that U.S. law allowed up to 100 percent indirect foreign ownership and that the United States would honor this commitment were critical to the successful conclusion of the Basic Telecom Agreement. Other Members of the WTO relied on these assurances in agreeing to open their markets to U.S. companies and to other foreign companies. If other Members of the WTO had not been assured that the world's largest telecom market would be open to foreign investment, they most assuredly would not have opened their markets to U.S. and other foreign investment. Of course, as the Commission has stated:

> An efficient and cost-effective global telecommunications marketplace is essential to an emerging information economy. The substantial resources required to build a global infrastructure are unlikely to come from regulated monopolies or multilateral international organizations. . . . we find that it serves the public interest to adopt rules . . . to complete our goal of opening the U.S. market to competition from foreign companies, in parallel with our major trading partners.[6]

The Commission clearly understood both the benefits of liberalization and the imperatives of U.S. trade obligations when it adopted new rules governing foreign participation in the U.S. market in the wake of the WTO Agreement. The *Foreign Participation Order* and recent decisions interpreting and applying the Communications Act[7] are based on a sound reading, and the Commission must not now adopt a contrary interpretation that would vitiate the clear terms of U.S. WTO commitments. Such an

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5 *Id.*

6 *Foreign Participation Order* 12 FCC Rcd at 23893-'94.

7 *See In re Applications of XO Communications, Inc.*, 17 FCC Rcd 19212; *In re Application of General Electric Capital Corp., Transferors, SES Global, S.A. Transferees*, 16 FCC Rcd 18878 (2001); *In re Applications of VoiceStream*, 16 FCC Rcd 9779.

action would have ramifications far beyond telecommunications, and hurt the United States' ability to negotiate trade agreements for years to come.

B. The Commission's *Foreign Participation Order*, Consistent With U.S. WTO Commitments, Precludes Examination of Foreign Market Conditions in the Absence of a Very High Risk to U.S. Competition.

OFII also strongly supports the Commission's legal framework for reviewing foreign ownership and investment in U.S. telecommunications firms, as enunciated in the Commission's *Foreign Participation Order* and decisions applying that Order.[8] That order implements, and is consistent with, U.S. international obligations. It provides a clear path for the Commission's review of the pending applications.

To implement the U.S. WTO commitment that there would be no limitation on indirect foreign ownership, the Commission in the *Foreign Participation Order* removed its previous Effective Competitive Opportunities ("ECO") test for foreign carrier entry for carriers from WTO Member countries and replaced it with a "strong presumption that no competitive concerns are raised by . . . indirect foreign investment from WTO Member countries."[9] The presumption may be rebutted, and entry conditioned or denied, only in the "exceptional case" that an unrestricted grant of an application would pose "a very high risk" to competition in the U.S. market.[10] The Commission further observed that it is "highly unlikely that a carrier from a WTO Member country . . . could pose a

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[8] *See id.*

[9] *VoiceStream Wireless Corp. or Omnipoint Corp.*, FCC 00-53 at ¶ 19 (rel. Feb. 15, 2000) ("*VoiceStream/Omnipoint Order*"). It should also be recognized that Singapore implemented its WTO commitments under the Basic Telecommunications Agreement two years ahead of schedule.

[10] *Foreign Participation Order*, 12 FCC Rcd. at 23913. The *Order* also allows the Commission to deny foreign entry based on national security concerns. *See id.* at 23918-19. Singapore and the United States have an extremely strong history of close military and economic cooperation, which includes joint

very high risk to competition."[11] Thus, those wishing to challenge this transaction based upon market conditions outside the United States must, under the *Foreign Participation Order*, demonstrate that this transaction presents an extremely high danger to U.S. competition – not competition in a foreign market.

Abandonment of the *Foreign Participation Order* would be harmful to U.S. trade interests. As the Commission has recognized, the United States derives substantial benefits from being seen as an "example" with respect to trade matters in the telecom industry. Indeed, in implementing the foreign-entry presumption, the Commission noted:

> The success of the WTO Basic Telecom Agreement depends on implementation of the market-opening commitments of our trading partners. The United States must lead the way in prompt, effective implementation of our commitments. *If the United States is perceived as failing to implement its commitments, other countries would likely limit implementation of their own commitments. We find such a result would deny the benefits of open global markets and increased competition to U.S. carriers and consumers, and is not in the public interest.*[12]

The United States should not allow it to be perceived around the world as backing away from its trade commitments.

C. The Proposed Investment Will Produce Strong Public Interest Benefits.

The proposed investment, rather than provoking actions that could harm U.S. trade interests, should serve as an example of the many benefits that foreign investment

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military exchanges and exercises, Singaporean investment in the United States that is the second largest in Asia, and Singapore is the largest export market for American electronics, machinery, and equipment.

[11] *Foreign Participation Order*, 12 FCC Rcd. at 23914.

[12] *Foreign Participation Order*, 12 FCC Rcd. at 23908.

brings to the United States. Foreign companies, through their U.S. subsidiaries, play a tremendous role in the stability and growth of the U.S. economy. In 2001 international companies invested $157.9 billion in new and existing American companies. Much of this investment comes from new global investment – like that proposed by ST Telemedia in New GX – which have been made possible by the pro-competitive and market-opening commitments of trade agreements such as the Basic Telecom Agreement.

This huge influx in international investment is essential to our continued economic growth. It carries with it substantial benefits to American consumers and American companies. The U.S. subsidiaries of international companies support 6.4 million American jobs – jobs that are high-skill and high-pay. These workers, in turn, produce goods accounting for more than 21% of U.S. exports. The investments of their parent corporations allow these U.S. subsidiaries access to new markets internationally, while providing additional sources of capital for expansion and innovation domestically.

These are precisely the public interest benefits to be gained by ST Telemedia's investment in New GX. A reinvigorated New GX will be well-positioned to continue to build out its networks and deploy new services, adding thousands of new jobs. Of course these are jobs -- from network engineer, to customer service representative, to management – that will remain on American soil.

As has happened in other industries when international companies enter and compete in the United States, this merger will also benefit American consumers. As ST Telemedia's investment in New GX helps the company to prosper, New GX will push all other U.S. companies to compete. This merger, like other foreign investment in the United States, thus directly benefits American workers and American consumers.

III. CONCLUSION

The Commission's actions as it considers this merger will be a direct test of the United States' credibility in implementing trade agreements. The Commission must do everything it can to ensure that the United States honors its word and keeps its commitments. Now, of all times, is not the occasion for the Commission to consider actions that would risk placing the United States in violation of its trade commitments. The merger should be expeditiously approved without any conditions that would violate U.S. WTO commitments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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