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

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| In the Matter of | IB Docket No. 02-286 |
| | File Nos. ISP-PDR-20020822-0029, |
| GLOBAL CROSSING, LTD. | ITC-T/C-20020822-00406 |
| (Debtor-in-Possession), Transferor, | ITC-T/C-20020822-00443 |
| | ITC-T/C-20020822-00444 |
| and | ITC-T/C-20020822-00445 |
| | ITC-T/C-20020822-00446 |
| GC ACQUISITION LIMITED, | ITC-T/C-20020822-00447 |
| Transferee | ITC-T/C-20020822-00449 |
| | ITC-T/C-20020822-00448 |
| Application for Consent to Transfer | SLC-T/C-20020822-00068 |
| Control and Petition for Declaratory | SLC-T/C-20020822-00070 |
| Ruling | SLC-T/C-20020822-00071 |
| | SLC-T/C-20020822-00072 |
| | SLC-T/C-20020822-00077 |
| | SLC-T/C-20020822-00073 |
| | SLC-T/C-20020822-00074 |
| | SLC-T/C-20020822-00075 |
| | 0001001014 |

# OPPOSITION TO AMENDED APPLICATIONS AND PETITION FOR DECLARATORY RULING

Recent pleadings[1] in the United States Bankruptcy Court for the Southern District of New York put into question whether the Commission has only a hypothetical proposal before it. ACN, therefore supplements its previous objections[2] to Applicants' Third Amendment.[3]

[1] (1) Objection of IDT Corporation to Debtors' Motion for Authorization to, Among Other Things, Amend the Purchase Agreement and Extend the Exclusivity Periods, dated June 3, 2003; (2)(I) Objection of XO Communications to the Debtors' Motion Pursuant to Sections 105(A), 363(B)(1), and 1121 of the Bankruptcy Code for Authorization to Hold (i) Amend The Purchase Agreement, (ii) Grant Certain Releases to Hutchison Communications Limited, and (iii) Extend Exclusive Periods During Which Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof; and (II) Request by XO for a Declaratory Judgment, dated June 20, 2003; and (3) Objection of JPMorgan Chase Bank, as Administrative Agent for the Senior Secured Lenders, to Debtors' Motion Pursuant to Sections 105(A), 363(B)(1) and 1121 of the Bankruptcy Code for Authorization to (I) Amend the Purchase Agreement (II) Grant Certain Releases to Hutchison Telecommunications Limited, and (III) Extend Exclusive Periods During Which Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof, dated June 20, 2003

2. *See*: Objections to Amended Applications and Petition for Declaratory Ruling, filed June 16, 2003; Statement in Support of Objections To Applicants' Petition For Declaratory Ruling, filed November 5, 2002; Further Comments

Respectfully submitted,

AMERICAN COMMUNICATIONS NETWORK, INC

by *William Malone /s/*
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June 26, 2003

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in Opposition to Applicants' Petition to Declaratory Ruling, filed March 6, 2003; Supplemental Filing to March 18th Objections, filed March 24, 2003; Response to Applicants' filing of April 7, 2003, filed April 9, 2003; Letter from William Malone, filed April 18, 2003 In these filings ACN documented:

- Applicants have failed to document they are eligible for the transfer under Section 5301 of the Anti Drug Abuse Act of 1988 and 47 C F R § 1 2002
- Applicants are not entitled to the transfer of the various certificates, as the requested transfers do not meet the public interest test set forth in Sections 214(a) and 310(d) of the Communications Act
- The requested transfers are prohibited by Section § 310; and Applicants are not entitled to an unqualified declaratory ruling that the indirect ownership interests in New GX would be in the public interest

[3] Third Amendment to Application for Consent to Transfer Control and Petition For a Declaratory Ruling and Request for Expedited Treatment filed by Global Crossing Ltd and GC Acquisition Limited on May 13, 2003 ("3rd Amendment or "Application")

Hearing Date: June 9, 2003, at 9:45 a.m.
Objections Due: June 3, 2003, at 4:00 p.m.

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Attorneys for IDT Corporation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re:<br><br>GLOBAL CROSSING LTD., *et al.*,<br><br>Debtors. | Chapter 11<br><br>Case No. 02-40188 (REG)<br><br>(Jointly Administered) |

**OBJECTION OF IDT CORPORATION
TO DEBTORS' MOTION FOR AUTHORIZATION TO,
AMONG OTHER THINGS, AMEND THE PURCHASE AGREEMENT
AND EXTEND THE EXCLUSIVITY PERIODS**

IDT Corporation, on behalf of itself and certain of its affiliates that are creditors, parties to certain agreements with certain of the debtors, and parties-in-interest in these cases (collectively "IDT"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Motion Pursuant to Sections 105(a), 363(b)(1), and 1121 of the Bankruptcy Code for Authorization to (i) Amend the Purchase Agreement, (ii) Grant Certain Releases to Hutchison Communications Limited, and (iii) Extend Exclusive Periods During which Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof* (the "Motion"). In support of its Objection, IDT states as follows:

## Procedural Background

1. On January 28, 2002 (the "Petition Date"), Global Crossing Ltd. ("GCL") and certain of its debtor subsidiaries (such entities, together with their affiliates that commenced cases on April 24, 2002, August 4, 2002, and August 30, 2002, the "Debtors") each commenced a case for voluntary relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of New York (the "Court") Pursuant to sections 1107 and 1108 of the Bankruptcy Code. the Debtors have retained possession of their respective assets and are authorized, as debtors-in-possession, to continue the operation and management of their respective businesses.

2. No Trustee has been appointed in these cases On February 7, 2002, the United States Trustee (the "US Trustee") appointed an official committee of unsecured creditors. On November 21, 2002, the Court entered an order directing the appointment of an examiner (the "Examiner") to review certain financial and accounting records of the Debtors. On November 25, 2002, the US Trustee appointed Martin E. Cooperman as the Examiner.

3. On August 9, 2002, the Court approved that certain purchase agreement (the "Purchase Agreement") among GCL, Global Crossing Holdings Ltd. ("GC Holdings"), the Joint Provisional Liquidators appointed by the Supreme Court of Bermuda in joint provisional liquidation cases commenced by certain of the Debtors in Bermuda, Singapore Technologies Telemedia Pte Ltd. ("ST Telemedia"), a Singapore company, and Hutchison Telecommunications Limited ("Hutchison," and together with ST Telemedia, the "Investors"), a Hong Kong company, by which the Investors agreed to pay the Debtors a combined $250 million for 61.5% of the equity in a newly-formed company ("New GX"), to which GCL and GC Holdings shall transfer substantially all of their assets (the "Transaction"). Section 2(f) of the

Purchase Agreement authorizes any of the parties to terminate the Purchase Agreement if the Investors do not receive all necessary governmental approvals by April 30, 2003 (the "Regulatory Approval Deadline").

4. On August 22, 2002, GCL and New GX filed an *Application for Consent to Transfer Control and Petition for Declaratory Ruling* (the "FCC Application") with the Federal Communications Commission (the "FCC") seeking consent to transfer control of GCL's FCC-licensed subsidiaries from GCL to New GX, and requesting a declaratory ruling that the proposed indirect ownership interests in Global Crossing North American Networks, Inc. by Hutchison and ST Telemedia are in the public interest under section 310(b)(4) of the Communications Act.

5. On September 16, 2002, the Debtors filed with the Court the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan") and Disclosure Statement with respect to the Plan (as such disclosure statement has been amended from time to time, the "Disclosure Statement"). The Purchase Agreement is the basis for the Plan.

6. On October 21, 2002, the Court entered an order approving the Disclosure Statement. Commencing on December 4, 2002, hearings were held with respect to confirmation of the Plan. On December 26, 2002, the Court entered an order confirming the Plan (the "Confirmation Order").

7. By mid-February 2003, it became obvious to IDT that because of serious national security concerns related to Hutchison's ties to the Chinese government and ST Telemedia's ties to the Singapore government, the Investors would never be able to obtain the necessary regulatory approvals to consummate the Transaction. Accordingly, on February 26, 2003, IDT appeared at a hearing before the Court and announced to the Debtors, the Court, and other

parties-in-interest that it was ready, willing, and able to step into the shoes of the Investors for $255 million The Court declined to entertain IDT's request to be heard at that time because there was no application on the Court's docket, but encouraged the parties-in-interest to speak with one another. The Debtors refused to speak with IDT at that time, telling IDT that they were committed to the deal with the Investors, they were confident that the Transaction would obtain the necessary regulatory approvals by the Regulatory Approval Deadline, and any termination of the Purchase Agreement by the Debtors before the Regulatory Approval Deadline would trigger the payment of a $30 million break-up fee.

**Recent Developments**

8. As IDT predicted in February, the Investors failed to obtain the necessary government approvals for the Transaction by the Regulatory Approval Deadline.

9. Pursuant to a letter dated April 30, 2003, Hutchison terminated its rights and sought to terminate its obligations under the Purchase Agreement. In a separate letter dated April 30, 2003, ST Telemedia sought to assume the rights and ongoing obligations of Hutchison under the Purchase Agreement.

10. On May 13, 2003, GCL and New GX filed a *Third Amendment to Application for Consent to Transfer Control and Petition for Declaratory Ruling and Request for Expedited Treatment, Global Crossing Ltd. et al., IB Docket No. 02-286* (the "Third Amended Application") with the FCC. The Third Amended Application reflects Hutchison's withdrawal as an investor in New GX and ST Telemedia's assumption of Hutchison's rights and obligations under the Purchase Agreement.

11. On May 14, 2003, the Debtors filed the Motion seeking, among other things, (i) to amend the Regulatory Approval Deadline from April 30, 2003 to October 14, 2003, and (ii) to

extend the exclusive periods during which the Debtors may file a plan of reorganization and solicit acceptances thereof (collectively the "Exclusivity Periods") from May 15, 2003 and July 14, 2003, respectively, to October 28, 2003 and December 27, 2003, respectively. In addition, the Court entered an *ex parte* bridge order dated May 14. 2003, which, among other things, extended the Exclusivity Periods until such time as the Court has entered an order determining the relief requested in the Motion.

**Basis for Objection**

12. IDT has made no secret of the fact that it has always believed the initial Transaction was doomed to fail from the outset because of serious and varied national security concerns held by key governmental personnel and government agencies, including several Senators and Congressmen, members of the Committee on Foreign Investment in the United States ("CFIUS"), the FBI, the Department of Justice, and certain staff and commissioners of the FCC. We now know that IDT was correct because Hutchison was forced to withdraw from the Transaction amid a storm of national security concerns. Unfortunately, the Debtors ignored all of the signposts clearly pointing to this demise. Even now, the Debtors continue to ignore these concerns by seeking to pursue the Transaction with ST Telemedia alone without even speaking to other bidders, such as XO Communications[1] and IDT, that have publicly stated that they are ready, willing, and able to step into ST Telemedia's position and that do not interpose any national security and other concerns

The Motion Should Be Denied Because the Transaction with ST Telemedia Is Doomed to Fail

13. As the Court is very much aware, this is the Debtors' motion and, therefore, they bear the burden of proof. See, e.g., 11 U.S.C. § 1121(d) (requiring a debtor to show "cause" for

[1] On May 30, 2003, XO Communications offered to pay $700 million for New GX (Wall St. J. Online May 30, 2003).

an extension of the exclusivity periods). Almost one year has passed since the Court approved the Purchase Agreement and, despite repeated and wildly optimistic statements from the Debtors, the prognosis for obtaining governmental approval is no better today than before.

14. Although the Debtors state in the Motion that they are "confident that they will obtain [the requisite regulatory] approvals," the Debtors previously expressed this level of confidence with regard to the Transaction when it involved Hutchison.[2] For example, in a filing made with the FCC in November 2002, the Debtors stated that they were "confident that any issues that may be identified by the Executive Agencies will be satisfactorily resolved."[3] That confidence was evidently misplaced because the Transaction as it existed at that time was not approved, even after a last-minute attempt to recast the nature of Hutchison's involvement. The Court should not now credit Debtors' similar optimism over the outcome of new regulatory efforts concerning the Transaction in its current form.

15. The Debtors' arguments in favor of the Motion are based on a seriously flawed premise -- that terminating the Purchase Agreement now would significantly delay the Debtors' emergence from chapter 11. In fact, just the opposite is true. Switching to a purchaser that is devoid of national security and competitive concerns would accelerate – not delay – the process of obtaining the necessary regulatory approvals and the Debtors' emergence from chapter 11. Therefore, amending the Purchase Agreement and extending the Regulatory Approval Deadline would only delay the inevitable, *i.e.*, the demise of the Transaction and substitution of a transaction with a buyer devoid of national security and other concerns, such as XO Communications or IDT.

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[2] Motion ¶ 44.

[3] Response of Global Crossing Ltd. and GC Acquisition Limited; IB Docket No. 02-286 at 5 (November 5, 2002).

Regulatory Obstacles to Approval of the Transaction with ST Telemedia

16. In addition to the ongoing investigations by CFIUS, the Department of Justice, and other government bodies regarding the national security concerns raised by the proposed transaction with ST Telemedia, federal regulators will now have to consider additional important issues raised by the Third Amended Application. The result will be substantial further delay, if not outright denial of the Third Amended Application. Such issues include: (i) the level of control the Singapore government has over ST Telemedia and the extent of the foreign ownership of the Debtors' highly sensitive network, (ii) ST Telemedia's ability to control New GX to accomplish anti-competitive objectives, and (iii) ST Telemedia's continuing relationship with Hutchison.

(1) Singapore Government's Control over ST Telemedia and Extent of the Foreign Ownership of the Debtors' Highly Sensitive Network

17. Despite promises by the Singapore government to divest itself of ownership of ST Telemedia, the Singapore government has not done so.[4] Additionally, the Singapore government has not provided any timetable as to when such divestiture might occur.[5] Moreover, even if ST Telemedia were, at some point privatized, there would continue to remain serious national security concerns based on the foreign ownership of the Debtors' highly sensitive network. The Debtors' clients purportedly include the U.S. military, the Department of Defense, and other government agencies,[6] and, by one estimate, the Debtors' network constitutes 25% of the "total fiber optic capacity into and out of the United States."[7] In contrast to the former structure, the

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[4] Shu-Ching Jean Chen & Jaret Seiberg, *Singapore Confirms Telecom Privatization Plan*, The Deal.com (May 9, 2003).
[5] Id.
[6] Rebecca Byrne, *Global Crossing, Hutchison Back Together*, TheStreet.com, (August 9, 2002).
[7] GlobalAxxess' Response to ST Telemedia Proposal to Submit a Modified Application for Change of Control and Declaratory Ruling Separate from Hutchison Whampoa and Notice of Intent of GlobalAxxess; ID Docket No. 02-286 at 2 (May 9, 2003) ("GlobalAxxess Response").

new structure would place outright majority control over the Debtors' network in the hands of a single foreign entity, which is itself government owned and controlled

(2) ST Telemedia's Ability to Control New GX to Accomplish Anti-Competitive Objectives

18. The new structure would, for example, apparently give the Singapore government complete control over all of the cable landing stations in Singapore, an extraordinary factor in terms of market control.[8] Furthermore, as reported in the Asian Wall Street Journal, citing international carriers and U.S. trade officials, Singapore Telecommunications Ltd. ("SingTel"), ST Telemedia's parent company, has been accused of overcharging other carriers for leased-line circuits, which are fiber-optic cables that connect office buildings to vast global data networks.[9] For example, SingTel is accused of charging other carriers rates that are five or six times higher than those in cities such as New York.[10] Singapore's telecom regulator recently announced that it was launching an investigation into SingTel's pricing practices.[11]

(3) ST Telemedia's continuing relationship with Hutchison

19. Hutchison would be a significant, if not the largest, customer of ST Telemedia following ST Telemedia's acquisition of a majority interest in New GX.[12] In this role, Hutchison would have significant access to and control over the Debtors' network, raising essentially the same issues of national security as Hutchison's direct ownership of New GX shares.

20. Government regulators would not be required to address any of the national security or anti-competitive concerns intrinsic to a transaction involving ST Telemedia if control of the Debtors' highly sensitive network resided in a domestic company, such as IDT.

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[8] Responses to FCC Data Requests of December 4, 2002 of Global Crossing Ltd. and GC Acquisition Limited, IB Docket No. 02-286 at 11 (December 18, 2002)
[9] Phillip Day, *Telecom Battle Heats Up in Asia as Carriers Say Prices Not Fair*, Asian Wall St. J. (May 22, 2003)
[10] *Id.*
[11] *Id.*, Sai Man, *DJO Singapore's IDA to Seek Views on Last-Mile Telecom Links*, Hoovers Online (May 30, 2003)

Consideration of these national security and anti-competition issues will severely delay the regulatory approval process and ST Telemedia's failure to satisfactorily address each of these concerns would be fatal to regulatory approval.

21. The Debtors argue in their Motion that the requested relief should be granted because "there is no guaranty that an acceptable purchaser or transaction" other than ST Telemedia would be available.[13] True, life has no guaranties. But, IDT has been for the better part of this past year knocking – and knocking hard – at the Debtors door, and not once have they answered the door, let alone invited IDT in. The only way that the Debtors could find out whether a transaction with another purchaser, such as IDT or XO Communications, would in the best interest of the Debtors' estates, would be for the Debtors to talk to other interested parties. It is incomprehensible for the Debtors to proclaim that there are "no guaranties" when they have not even engaged IDT in negotiations.

22. By interposing its Objection, IDT is merely asking the Court to preserve the *status quo* by requiring the Debtors to test their faulty premise that ST Telemedia is the only game in town. IDT requests that any extension of the Exclusivity Periods be limited to 30 days from the return date of the Motion so that interested parties, such as IDT, may have an opportunity to discuss an alternative transaction with the Debtors. If at the end of this period, the Debtors have spoken with all interested parties and concluded that ST Telemedia is still the best positioned investor, then at least the Court, creditors, and other parties-in-interest will know that the Debtors' exercise of their business judgment was a reasonably informed one.

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[12] Chris Nolter and Ron Orol, *Hutchison Abandons Global Crossing*, Daily Deal (May 1, 2003).
[13] Motion ¶ 21.

The Proposed Break-Up Fee is Unreasonable

23. The original Purchase Agreement provides for liquidated damages in the amount of $30 million in the event of a termination of the Purchase Agreement without cause prior to expiration of the Regulatory Approval Deadline. The proposed amendment to the Purchase Agreement would revive the $30 million termination fee provision, which has since expired.

24. The idea of granting ST Telemedia a break-up fee for extending the Regulatory Approval Deadline simply does not make any sense. First, such a break-up fee provision is ordinarily designed to compensate bidders that act as a stalking horse for the additional expenses associated with that role if through no fault of their own the Debtors sell the assets to another bidder. Such a fee has no purpose, where as here, the failure to close the Transaction was not due to any fault of the Debtors and ST Telemedia is already being reimbursed for its ongoing out of pocket expenses. In fact, buyers such as ST Telemedia, who fail to consummate a transaction by a contractually agreed upon deadline, are often required to pay a premium for the option of extending the closing deadline. If anything, a provision should be added to the Purchase Agreement requiring ST Telemedia to reimburse the Debtors for the added cost of extending the deadline, as opposed to the other way around.

25. Second, the Debtors' fear that ST Telemedia, which the Debtors believe is the only game in town, will walk away from the Transaction is unfounded. First, more than thirty days have already expired since the Regulatory Approval Deadline passed. ST Telemedia has not had the protection of a break-up fee during this time and it has expressed no intention of withdrawing from the Transaction. In fact, the opposite has occurred. ST Telemedia has announced its intention to expand its role in the Transaction by assuming the rights and ongoing obligations of Hutchison under the Purchase Agreement. It would be nonsensical for ST

Telemedia to have taken this action if it were planning to withdraw from the Transaction absent additional protections. Accordingly, it is inconceivable that ST Telemedia would walk away if the Court preserved the *status quo* for an additional thirty days, during which time the Debtors were given the opportunity to explore alternative transactions with other purchasers. Additionally, the strong interest from other potential investors, such as XO Communications and IDT, which have expressed their willingness to pay more than ST Telemedia, demonstrates not only that ST Telemedia's game is not the only one in town but is not even the best game in town.

26 Finally, the imposition of a break-up fee would only serve to chill interest by other interested bidders, such as XO Communications and IDT, which were quietly sitting by the sidelines waiting for the Regulatory Approval Deadline to expire. The imposition of a break-up fee would unnecessarily increase the cost of any such bid by $30 million and reduce the expected payout to creditors. Accordingly, no benefit would accrue to the Debtors' estate by granting ST Telemedia this unnecessary and detrimental benefit.

WHEREFORE IDT respectfully requests that this Court enter an Order: (a) denying the Motion, (b) limiting any extension of the Regulatory Approval Deadline and Exclusivity Periods to thirty days from the return date of the Motion, (c) conditioning any such extension upon the Debtors' agreement to speak with qualified bidders, including IDT, about an alternative transaction and allowing such bidders to conduct any necessary due diligence, (d) denying the proposed amendment to the Purchase Agreement to the extent that it seeks to grant ST Telemedia a break-up or other fee upon termination of the Transaction, and (e) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 3, 2003

/s/ David C. Albalah
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7/20/7-03

Hearing Date: June 25, 2003, at 9:45 a.m.
Objection Deadline: June 20, 2003, at 5:00 p.m.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| **In re:**<br><br>**GLOBAL CROSSING LTD.,** ***et al.,***<br><br>**Debtors.** | **Chapter 11**<br><br>**Case No. 02-40188 (REG)**<br><br>**(Jointly Administered)** |

**(I) OBJECTION OF XO COMMUNICATIONS, INC. TO THE DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363(b)(1), AND 1121 OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO (i) AMEND THE PURCHASE AGREEMENT, (ii) GRANT CERTAIN RELEASES TO HUTCHISON COMMUNICATIONS LIMITED, AND (iii) EXTEND EXCLUSIVE PERIODS DURING WHICH DEBTORS MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF; AND (II) REQUEST BY XO FOR A DECLARATORY JUDGMENT**

XO Communications, Inc. ("**XO**"), by and through its undersigned counsel, hereby files this objection (the "**Objection**") to the Motion Pursuant to Sections 105(a), 363(b)(1), and 1121 of the Bankruptcy Code for Authorization to (i) Amend the Purchase Agreement, (ii) Grant Certain Releases to Hutchison Communications Limited, and (iii) Extend Exclusive Periods

During which Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof (the "**Motion**") and also requests that the Court issue a declaratory judgment.

WHEREFORE, for the reasons stated in the accompanying Memorandum in Support of XO's Objection (the "**Memorandum**", which is being filed along with the Objection or shortly thereafter), XO requests that the Court deny the Motion and grant XO the relief requested in the Memorandum.

Dated: June 20, 2003

/s/ Thomas J. Catliota
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**Hearing Date: June 25, 2003, at 9:45 a.m.**
**Objection Deadline: June 20, 2003, at 7:00 p.m.**

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**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

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| **In re:**<br><br>**GLOBAL CROSSING LTD.,** ***et al.*,**<br><br>**Debtors.** | **Chapter 11**<br><br>**Case No. 02-40188 (REG)**<br><br>**(Jointly Administered)** |

**MEMORANDUM IN SUPPORT OF THE (I) OBJECTION OF XO COMMUNICATIONS, INC. TO THE DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363(b)(1), AND 1121 OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO (i) AMEND THE PURCHASE AGREEMENT, (ii) GRANT CERTAIN RELEASES TO HUTCHISON COMMUNICATIONS LIMITED, AND (iii) EXTEND EXCLUSIVE PERIODS DURING WHICH DEBTORS MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF; AND (II) REQUEST BY XO FOR A DECLARATORY JUDGMENT**

XO Communications, Inc. ("**XO**"), by and through its undersigned counsel, hereby files this Memorandum in Support of XO's Objection (the "**Objection**") to the Debtors' Motion Pursuant to Sections 105(a), 363(b)(1), and 1121 of the Bankruptcy Code for Authorization to (i) Amend the Purchase Agreement, (ii) Grant Certain Releases to Hutchison Communications Limited, and (iii) Extend Exclusive Periods During which Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof (the "**Motion**"). XO, which holds $300 million of the Debtors' bank notes under that certain amended and restated credit agreement dated August 10, 2000, requests that the Court deny the Motion and issue a declaratory judgment as requested herein.

## Preliminary Statement

Nearly a year after this Court approved the Purchase Agreement on August 9, 2002,[1] it is now clear that the proposed ST Telemedia Transaction is seriously, if not irreparably, impaired by national security concerns held by the governmental agencies that must approve the Transaction and which have long-standing concerns regarding the Debtors' proposed foreign-ownership structures. Having failed to gain approval for the Initial Transaction, the Debtors now present for regulatory approval the ST Telemedia Transaction – arguably a far riskier proposition than the failed Hutchison bid, as the ST Telemedia Transaction proposes the purchase of the Debtors' telecommunications network and associated national security assets by a suitor that is not merely foreign-owned, but is a company wholly-owned by a foreign government (<u>i.e.</u>, the government of Singapore). In the face of growing opposition from Congress, with the prospect of more valuable offers from domestic bidders, and responsive to their fiduciary duties, the Debtors should immediately free themselves of the ST Telemedia Transaction. As their reserves of unrestricted cash continue to decrease and customer confidence continues to erode, the time for the Debtors to consummate the ST Telemedia Transaction is running out. Fortunately, the

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1 On January 28, 2002 (the "**Petition Date**"), Global Crossing Ltd. ("**GCL**") and certain of its debtor subsidiaries (such entities, together with their affiliates that commenced chapter 11 cases on April 24, 2002, August 4, 2002, and August 30, 2002, the "**Debtors**") each commenced a case for voluntary relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the Southern District of New York (the "**Court**"). On August 9, 2002, the Court approved the Purchase Agreement (the "**Purchase Agreement**") among certain parties, including GCL, Global Crossing Holdings Ltd. ("**GC Holdings**"), Singapore Technologies Telemedia Pte Ltd. ("**ST Telemedia**"), a Singapore company, and Hutchison Telecommunications Limited ("**Hutchison**," and together with ST Telemedia, the "**Investors**"), a Hong Kong company, by which the Investors agreed to acquire 61.5% of the equity in a newly-formed company ("**New GX**"), to which GCL and GC Holdings shall transfer substantially all of their assets (the "**Initial Transaction**"). On September 16, 2002, the Debtors filed with the Court the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "**Plan**") and Disclosure Statement. The Purchase Agreement is the basis for the Plan. On December 26, 2002, the Court entered an order confirming the Plan (the "**Confirmation Order**"). On April 30, 2003, Hutchison withdrew from the Initial Transaction. On that same date, ST Telemedia assumed

Debtors appear to have alternatives that are financially secure and with better prospects of receiving prompt U.S. governmental approval.

Since the Debtors filed their Motion, there have been expressions of interest in the Debtors' assets by two potential buyers - XO and (upon information and belief) IDT Corporation ("**IDT**") - both of which would be free of the regulatory complications associated with foreign ownership and consistent with the U.S. government's policies of encouraging the emergence of domestic competition and discouraging continued government monopoly ownership of telecommunications companies and assets abroad. It is also possible that other potential bidders, aside from XO and IDT, exist.

In the face of the ill-fated ST Telemedia Transaction and the Debtors' growing financial woes, the Debtors, through their Motion, seek to foreclose any other offers that represents the Debtors' best hope for survival while seeking to maximize the potential distributions to their creditors. More disturbing is the Debtors' further request to reinstate the already expired liquidated damages provision – a potential $30 million windfall to ST Telemedia. Perhaps worse, reinstating the liquidated damages provision could provide adequate financial cover (even under the terms of the Purchase Agreement) for ST Telemedia to conduct its own private auction for direct or indirect interests in the New GX outside the ambit of this Court (with all value in excess of the consideration paid to the bankruptcy estates by ST Telemedia going to ST Telemedia rather than the Debtors and their creditors). For these reasons, and for the reasons stated below, the Court should deny the Motion.

## Procedural Background

The procedural background of this case is well known by the Court, as well as the larger creditors, investors, and other parties-in-interest. Other than the brief discussion contained in

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Hutchison's rights and obligations under the Initial Transaction and, thus, proposed to acquire 61.5% of New GX footnote 1 above (and the discussions of prior exclusivity extensions below), XO will therefore focus instead on the material concerns related to the Debtors' immediate requests for relief and XO's substantive objections.

## Argument

### I. Without Access to the Pool of Restricted Cash, the Debtors' Financial Position is Perilous and Administrative Insolvency May be Imminent

A review of the monthly operating reports filed by the Debtors during the pendency of this case reveals that, despite numerous layoffs and a wholesale effort to reduce expenses through the rejection of agreements ranging from real estate leases to vendor contracts, the Debtors continue to operate their business at a multimillion dollar monthly loss. Further, it appears that reserves of unrestricted cash continue to dwindle at an alarming rate. Monthly operating reports, including those most recently filed, reveal:

| Monthly Operating Report - Balance Date | Unrestricted Cash on Hand |
|---|---|
| 1/27/02 | \$1.1 billion[2] |
| 7/31/02 | \$677 million[3] |
| 1/31/03 | \$287 million[4] |
| 2/28/03 | \$226 million[5] |
| 3/31/03 | \$257 million[6] |
| 4/30/03 | \$180 million[7] |

(the "**ST Telemedia Transaction**" or the "**Transaction**").

2 See Monthly Operating Report for the Period from January 28, 2002 to February 28, 2002 (Docket Item # 791), filed on April 9, 2002.

3 See Monthly Operating Report for the Period from July 1, 2002 to July 31, 2003 (Docket Item # 1678), filed on August 30, 2002.

4 See Monthly Operating Report for the Period from January 1, 2003 to January 31, 2003 (Docket Item # 2950), filed on March 28, 2003.

5 See Monthly Operating Report for the Period from February 1, 2003 to February 28, 2003 (Docket Item # 3021), filed on April 18, 2003.

6 See Monthly Operating Report for the Period from March 1, 2003 to March 31, 2003 (Docket Item # 3105), filed on May 7, 2003.

7 See Monthly Operating Report for the Period April 1, 2003 to April 30, 2003 (Docket Item # 3161), filed on May 30, 2003.

The numbers speak for themselves – the Debtors' operating capital is rapidly declining. By their own account, they have reduced their unrestricted cash position by $400 million in the time period between the Court approval of the Purchase Agreement and April 30, 2003 (i.e., the time it took to get to the Regulatory Approval Deadline[8] under the Purchase Agreement) and by nearly $1 billion since the Petition Date. Based on these trends, and admittedly without complete knowledge as to whether the deterioration of the Debtors' financial position has accelerated since the time period covered by their April 2003 operating report, XO estimates that the Debtors' available unrestricted cash reserve will be close to depleted by the end of the year[9] – the earliest time frame in which the Debtors' Motion contemplates they will receive the necessary regulatory approvals to consummate the Transaction with ST Telemedia.[10]

In short, it appears that time and money may soon run out on the ST Telemedia Transaction.[11] Without an alternative plan that provides sufficient financial backing and a

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8 Capitalized terms that are not instantly defined shall have the same meaning as that set forth where such term is defined in the Objection.

9 XO acknowledges that there may be extraordinary expenditures or uncollected receivables to account for the recent dramatic drop in unrestricted reserves, however, the net effect of the Debtors' cash position since the Petition Date indisputably reflects a downward trend, with no demonstrable reversal of fortune in sight. Further, while the Debtors may have access to approximately $330 million in restricted cash, the basis for availability of those funds and whether they could be obtained without explicit Court approval is uncertain. See Monthly Operating Report for the Period April 1, 2003 to April 30, 2003 (Docket Item # 3161), filed on May 30, 2003. Regardless of the availability of such funds, their use to support the Debtors' enterprises during the bankruptcy would ultimately undercut the value of any proposed deal between the Debtors and a potential suitor.

10 See Debtors' Motion ("The typical timeline for FCC approval is approximately six months or more" (page 9); "the regulatory approval process will take several months to complete. With respect to certain regulatory authorities, the Debtors are required to submit amended applications for regulatory approval, and in at least several instances, the Debtors must submit a new application." (page 13); ("The Debtors estimate that the extended regulatory process may take three or more months to complete") (page 3)..

11 In addition, what is not demonstrated by the Debtors' operating reports are further liabilities that may be growing and could consume the Debtors' remaining assets earlier than demonstrated above – unreported potential administrative expenses and claims that likely are not included on the Debtors' balance sheet. For example, XO presently holds a $5 million administrative claim that continues to grow on a monthly basis. While XO and the Debtors mutually agreed on a settlement of the disputes between their companies, including liabilities in this bankruptcy, the effective date of the settlement does not occur until the Effective Date of the Plan. The Docket contains similar deals with other parties that, in effect, also seem to accrue charges pending the Effective Date of the Plan. (See, e.g., Motion for Approval of Settlement Agreement Between Global Crossing North America, Inc. and Centillion Data Systems, Inc., filed October 24, 2002 (Docket Entry # 2057); Motion for Approval of Settlement

substantial likelihood of receiving the requisite regulatory approvals on an expedited basis, the Debtors may be forced to close their doors before the approval process for its proposed Transaction with ST Telemedia is ever completed.

## II. Foreign Ownership of the Debtors by a Foreign Government Has Been, and Will Continue to be, Subject to an Unavoidably Lengthy Regulatory Approval Process and a Diminished Likelihood of Success

### A. Before the Debtors' Plan May Become Effective, They Must First Receive the Approval of the Federal Communications Commission and the Committee on Foreign Investment in the United States

#### 1. The FCC Review Process

In accordance with Federal Communications Commission ("**FCC**") rules, the Debtors must obtain FCC approval to transfer control of both the international and domestic Section 214 authorizations currently held by the Debtors' FCC-licensed subsidiaries.[12] When a transaction would result in an indirect foreign ownership of common carrier radio licenses in excess of 25 percent of the licensee, the applicants also must obtain an FCC ruling that the transfer is in the public interest.[13] In conducting its Section 310(b)(4) public interest review, the FCC frequently defers to the national security, law enforcement, foreign policy, and trade concerns raised by Executive Branch agencies and oversight authorities. This is due, in part, to the Exon-Florio Amendment to the Defense Production Act of 1950, which authorizes the President or his designee, the Committee on Foreign Investment in the U.S. ("**CFIUS**"), to prohibit a foreign acquisition when there is credible evidence that it will result in foreign control of the U.S.

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Agreement and Releases Between the Debtors, Alcatel USA, Inc. and Alcatel USA Marketing, Inc., filed January 16, 2003 (Docket Entry # 2666)). These unquantified liabilities could cause the Debtors' estates to become administratively insolvent if, at the end of the day, the ST Telemedia Transaction is not consummated and at that point, no one remains to bid on the Debtors' assets.

12 See 47 U.S.C. § 214; 47 C.F.R. §§ 63.18 (international), 63.04 (domestic).

13 See 47 U.S.C. § 310(b)(4).

business and the foreign interest exercising that control might take action that threatens to impair the national security.[14]

The length of the FCC review process depends on various factors, including eligibility for "streamlined" processing. Under FCC rules, if an application involving international authorizations qualifies for streamlined processing, it "shall be" approved 14 days after the FCC issues its Public Notice; if the application involves domestic authorizations, it will be deemed granted on the 31st day after release of the FCC's Public Notice.[15] Applications that do not qualify for streamlined processing are subject to much lengthier review periods. The FCC's rules provide for an initial 90-day review period for applications involving international authorizations that do not qualify for streamlined processing; this review period may be extended for one or more additional 90-day periods, as necessary.[16] FCC review of an application involving domestic authorizations that is either ineligible for, or has been removed from, the streamlined process, "should be expected" to conclude "no later than 180 days" from the date of the FCC's Public Notice.[17]

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14 See 50 U.S.C. App. § 2710; see also http://www.ustreas.gov/offices/international-affairs/exon-florio. The multi-agency CFIUS, chaired by the Secretary of the Treasury, investigates transactions involving foreign ownership and makes recommendations to the President of the United States. The President's decision is not subject to judicial review. 50 U.S.C. App. § 2170(e). CFIUS membership includes the heads of the Departments of Defense, Justice, State and Commerce, the National Security Council, the National Economics Council, the U.S. Trade Representative, the Homeland Security Agency and other executive branch agencies. CFIUS enjoys broad discretion and may evaluate numerous factors during its investigation. Factors of particular relevance to the telecommunications industry include:

- the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security; and
- the potential effects of the transaction on U.S. international technological leadership in areas affecting U.S. national security.

50 U.S.C. App. § 2170(f)(3), (5).

15 See 47 C.F.R. §§ 63.12(a), 63.03(a).

16 See 47 C.F.R. §63.12(a). Further, an application involving international authorization that is ineligible for streamlined processing "shall not be deemed granted" until the FCC "affirmatively acts upon the application." 47 C.F.R. § 63.12(d).

17 See 47 C.F.R. §§ 63.03(a), (c)(2).

In March 2000, in an attempt to make the review process more predictable and transparent, the FCC established an informal, non-binding timeline applicable to complex applications that do not qualify for streamlined processing.[18] The FCC explained that its plan was intended to "permit resolution within 180 days if applicants file complete applications and *do not make major revisions late in the process*. . . . [But] we do not promise to reach a decision within 180 days if information is not provided in timely fashion [sic] or if the application is significantly revised at a late date."[19] In keeping with its warnings, the FCC has, in its past review of transfer applications, stopped the timeline clock in response to various events, including notice of major modifications to pending applications.

**2. The Debtors' Initial FCC Application**

The Debtors' Initial Transaction involved the transfer of both international and domestic Section 214 authorizations and would have resulted in the indirect foreign ownership of more than 25 percent of a licensee that holds common carrier radio licenses, Global Crossing North American Networks, Inc. Consequently, on August 22, 2002, the Debtors and New GX (the "**Applicants**") filed with the FCC an Application for Consent to Transfer Control and Petition for Declaratory Ruling (the "**Initial FCC Application**") seeking FCC approval to transfer control of the Debtors' FCC licensed subsidiaries to New GX, and requesting a declaratory

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18 The non-binding 180-day timeline begins with the release of the application for public comment, followed by a "Completeness Review" by day 75 to determine if the record is sufficient for the FCC to make a determination based on the merits of the application. For a period of 35 days following the Completeness Review, the FCC staff analyzes the record and engages in discussions with interested parties. On the 110th day following the filing of an application, applicants advise the Commission whether major revisions may occur. If major revisions are contemplated, the clock stops until revisions are submitted and the opportunity for public comment is completed, at which point the clock restarts at day 110. If the applicants submit such major revisions before day 110, the clock restarts at that date in the timeline. On day 130, the Commission holds en banc or public forums on the revised applications or on the impact of Department of Justice/Federal Trade Commission action, if appropriate. The record is then closed. On the 180th day following submission of an application, the FCC issues an Order (a) granting the applications; (b) granting the applications with conditions; or (c) designating the applications for hearing. Though possible, denials without a hearing occur in only very limited circumstances. See www.fcc.gov/transaction/.

ruling that the proposed indirect foreign ownership interests in Global Crossing North American Networks, Inc. by Hutchison and ST Telemedia were in the public interest under section 310(b)(4) of the Communications Act. In the Initial FCC Application,[20] the Debtors requested that the FCC "commence its review and processing . . . but that dispositive action by the [FCC] concerning this Application be deferred pending notification" to the FCC that the "law enforcement, national security and public safety issues that the Executive Agencies want to review in connection with this Application" either have or have not been resolved.[21] Around the same time they filed the Initial FCC Application, the Debtors also submitted a voluntary filing to CFIUS seeking approval of the Initial Transaction.[22]

In releasing the Initial FCC Application for public comment in September 2002, the FCC determined that it was most appropriate to undertake a consolidated review of the international and domestic authorizations requested by the Debtors and New GX.[23] The FCC also contemplated that it would process the Initial FCC Application pursuant to the 180-day timeline generally applicable to complex applications.[24]

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19 See Comments of General Counsel Christopher J. Wright Introducing the Transactions Team Presentation on Timely Consideration of the Applications Accompanying Mergers (March 1, 2000), available at http://www.fcc.gov/Speeches/misc/statements/wright030100.html

20 IB Docket No. 02-286.

21 See Application of Global Crossing Ltd. (Debtor-in-Possession) and GC Acquisition Limited for Authority to Transfer Control of Subsidiaries Holding International Section 214 Authority (filed Aug. 22, 2002) at 20 (attached as **Exhibit 1**). On October 21, 2002 the Department of Justice and Federal Bureau of Investigation ("DOJ/FBI") filed a motion with the FCC, in which the Department of Defense concurred, for continued deferral of consideration of the FCC Application. See Motion for Continued Deferral, IB Docket No. 02-286 (attached as **Exhibit 2**).

22 See 11 C.F.R. § 800.402, for CFIUS filing procedures and requirements.

23 See, Public Notice, Global Crossing Ltd. And C Acquisition Limited Seek FCC Consent to Transfer Control, DA 02-2299, IB Docket No. 02-286 (Sept. 19, 2002).

24 The FCC established a webpage that discusses the Initial and the ST Telemedia Transaction, contains links to selected filings and notices, and includes a graphic timeline. See http://www.fcc.gov/transaction/globalcrossing-gx.html.

## B. The Debtors Have Sought Several Court Extensions in Order to Attempt to Obtain FCC and CFIUS Approval

On January 8, 2003, the Debtors filed their third motion with this Court for the extension of the exclusivity periods.[25] Among the important reasons for requesting this additional relief, was the Debtors' acknowledgement that *"several key regulatory approvals are still needed, and the Debtors anticipate that the process of obtaining such consents will take* ***several more weeks****."*[26] Presumably based, in part, on these statements, and in the absence of any objections, the Court granted the requested relief.

Notwithstanding the Debtors' articulated hope for swift regulatory approval, weeks turned into months and the Debtors' controversial plan for purchase by foreign-owned entities still failed to receive their hoped-for speedy approval from these "key" regulatory bodies. Pressed by the imminent expiration of their third extension of exclusivity and amid indications that their CFIUS review was growing more tenuous by the day,[27] the Debtors once again sought relief from the Court.

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25 The Debtors original exclusive period to file a plan was originally set to expire on May 28, 2002, and the exclusive period to solicit acceptances was originally set to expire on July 27, 2002. On May 14, 2002, the Debtors filed their first request to extend the periods of exclusivity; and, on June 3, 2002, the Court entered its Order granting their first exclusivity motion. Pursuant to said Order, the Debtors' exclusive period to file a plan was extended to September 16, 2002 and their exclusive solicitation period was extended to November 15, 2002. On September 13, 2002, the Debtors filed their second motion seeking to extend the periods of exclusivity. On October 21, 2002, the Court entered its Order granting their second exclusivity motion. In granting said Motion, the exclusive period for filing a plan was extended to the earlier of (i) January 21, 2003, or (ii) two (2) weeks from the day that the Debtors, or either of the Investors, terminated the Purchase Agreement. In addition, the Court extended the exclusive solicitation period until sixty (60) days after expiration of the exclusive filing period.

26 See [Third] Motion Pursuant to Section 1121(d) of the Bankruptcy Code to Extend the Exclusivity Periods During Which Debtors May File A Chapter 11 Plan and Solicit Acceptances Thereof, filed on January 8, 2003, at 3. (emphasis added). The Court granted such motion and extended the exclusive filing period to the earlier of (i) March 31, 2003, or (ii) in the event the Purchase Agreement was terminated in accordance with its terms by any of the parties thereto, two (2) weeks from the date of such termination. In addition, the Court extended the exclusive solicitation period until sixty (60) days after the expiration of the exclusive filing period.

27 See Letter from William Malone, American Communications Network, Inc to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (March 18, 2003). Attached as **Exhibit 3**.

On March 20, 2003, nearly fourteen months after filing bankruptcy, the Debtors filed their fourth motion to extend the exclusivity periods.[28] Five days later, the Debtors acknowledged continuing resistance from the Executive Branch to the Initial Transaction in a letter to the FCC.[29] Two days thereafter, the FCC announced that it had indefinitely suspended its review of the FCC Application.[30] Despite the ongoing entanglement with the FCC and CFIUS, the Fourth Exclusivity Motion made scant reference of the increasing resistance from the U.S. government to the purchase of the Debtors' sensitive national security communications infrastructure by foreign corporations with ownership interests potentially held by foreign governments. Without a clear explanation from the Debtors of the apparent Executive Branch stalemate, and again in the absence of any objections, the Court granted the Fourth Exclusivity Motion on April 20, 2003.[31]

### C. The FCC Suspends Review Pending CFIUS Approval and Hutchison is Forced to Withdraw

Although the Court had granted the Fourth Exclusivity Motion, by April 2003 the Debtors were virtually no closer to obtaining regulatory approval than they were when the Initial FCC Application was filed in August 2002. Indeed, on April 22, 2003, the FCC made it

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28 See Debtors' [Fourth] Motion Pursuant to Section 1121(d) of the Bankruptcy Code to Extend Exclusive Period During Which Debtors May file a Chapter 11 Plan and Solicit Acceptances Thereof, filed on March 20, 2003 (the "**Fourth Exclusivity Motion**").

29 See Letter from Paul Gagnier, Swidler Berlin Shereff Friedman, LLP, to Ms. Marlene Dortch, Secretary, Federal Communications Commission (March 25, 2003), attached hereto as **Exhibit 4**.

30 See Letter from James Ball, Chief, Policy Division, Federal Communications Commission, to Jean L. Kiddoo, Swidler Berlin Shereff Friedman, LLP (March 27, 2003), attached hereto as **Exhibit 5**. On February 14, 2003, the FCC suspended the timeline applicable to the Debtors' FCC Application as the agency sought clarification of certain elements of the Debtors' FCC Application. At no time since the Debtors' March 25, 2003, request to the FCC to suspend review of its FCC Application does it appear that the FCC restarted its review. Indeed, for the reasons set forth below in Section II.D. the agency may be required to begin this process anew with a completely new application review and a new "180-day clock" in light of the Debtors' revised proposal to sell solely to ST Telemedia.

31 Pursuant to the Order, the exclusive filing period was extended to the earlier of (i) May 15, 2003, or (ii) in the event the Purchase Agreement is terminated in accordance with its terms by any of the parties thereto, two (2) weeks from the date of such termination. In addition, the Court extended the exclusive solicitation period until sixty (60) days after expiration of the exclusive filing period.

explicitly clear that it "would not restart the clock ... during the pendency of applicants' discussion with the Executive Branch on national security, law enforcement and public safety issues. ...[W]e will not be able to finalize our review of the applications prior to April 30, 2003 unless we receive Executive Branch notification withdrawing the request to defer Commission action...."[32] The refusal of CFIUS and the FCC to approve the Initial Transaction prior to the April 30, 2003 deadline in the Purchase Agreement for obtaining regulatory approvals (the "**Regulatory Approval Deadline**"), coupled with the inability of the Court-approved Plan to achieve its Effective Date in the absence of such approvals, ultimately prevented consummation of the Initial Transaction. Meanwhile, based on their own monthly operating reports, the Debtors had burned through nearly a billion dollars of their unrestricted cash reserves since the Petition Date; they had $180 million in unrestricted cash left in the bank as of April 30, 2003.

Despite eight months of wrangling with government regulators that included front page controversy[33] as well as marathon closed-door negotiations, the Investors failed to obtain the necessary governmental approvals for the Initial Transaction by the Regulatory Approval Deadline. Pursuant to a letter dated April 30, 2003, Hutchison terminated its rights and sought to terminate its obligations under the Purchase Agreement.[34] In a statement withdrawing from the Initial Transaction, Hutchison said that "*[d]espite working closely with the relevant authorities in the U.S. to address regulatory concerns, it has not been possible to reach agreement on an appropriate structure that is fully satisfactory to all parties concerned within a reasonable*

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32 See Letter from James Ball, Chief, Policy Division, Federal Communications Commission, to Andrew Lippman, Counsel for the Applicants, Swidler, Berlin, Shereff Friedman LLP (April 22, 2003), attached as **Exhibit 6**.

33 See Stephen Labaton, Pentagon Advisor Is Also Advising Global Crossing, N.Y. Times, March 21, 2003 at Section C The article describes how Richard N. Perle, chairman of the influential Defense Policy Board, was retained by Global Crossing, including a $600,000 success fee as part of an overall $725,000 compensation package, to help overcome Defense Department resistance to its proposed sale to a foreign firm, according to Mr. Perle.

34 See Letter dated April 30, 2003 from Hutchison, attached as **Exhibit 7**.

*investment timeframe*."[35] In a separate letter to the FCC dated April 30, 2003, ST Telemedia announced that it had exercised its option to assume the rights and ongoing obligations of Hutchison under the Purchase Agreement.[36]

From an asset disposition standpoint, the net effect of Hutchison's withdrawal and the failure of the Debtors, Hutchison and ST Telemedia to receive the necessary regulatory approvals by the April 30, 2003 Regulatory Approval Deadline was to return the Debtors virtually to the status quo ante on the date the Purchase Agreement was signed – free (or the right to become free) from the lion's share of restrictive covenants to which the Debtors had been bound in the Purchase Agreement. As set forth in further detail below, the parties are now free to terminate the Purchase Agreement without penalty, and ST Telemedia could no longer claim the $30 million in liquidated damages to which it would otherwise had been entitled.

### D. ST Telemedia Assumes Hutchison's Stake, But the Revised Plan Will Also Require Lengthy Approvals, If They Are Granted At All

On May 13, 2003, the Applicants amended their Initial FCC Application to reflect that Hutchison had withdrawn as an investor and that ST Telemedia had assumed Hutchison's rights and obligations, in addition to its own, pursuant to the Purchase Agreement (the "**Amended FCC Application**").[37] As a result, ST Telemedia proposed to acquire a 61.5% ownership stake in New GX – a stake that would, in fact, be wholly owned and controlled by the government of Singapore.[38]

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35 Hutchison Whampoa Limited Press Release, Hutchison Telecommunications withdraws its proposed Global Crossing acquisition (April 30, 2002). Available at http://www.hutchison-whampoa.com/upload_docs/2003/04/Telco/1091/1091_eng.htm.

36 See Letter dated April 30, 2003 from ST Telemedia.

37 The May 13, 2003 filing was in fact the Debtors' third amendment to the FCC application.

38 ST Telemedia, a Singapore company, is a wholly-owned subsidiary of Singapore Technologies Pte Ltd., a Singapore conglomerate which is, in turn, a wholly-owned subsidiary of Temasek Holdings [Private] Limited, an investment company, wholly-owned by the government of Singapore. See FCC's Global Crossing webpage, http://www.fcc.gov/transaction/globalcrossing-gx.html#appdocs.

Although the CFIUS process is confidential, it has been reported in trade press accounts and FCC filings that the Amended FCC Application was necessitated by CFIUS' refusal to approve any deal that provided Hutchison an ownership interest in New GX.[39] Whether ST Telemedia's increased ownership interest, or its mere involvement in the transaction, will raise similarly insurmountable CFIUS concerns remains to be seen. What is beyond reasonable dispute, however, is that CFIUS will scrutinize carefully ST Telemedia's increased ownership stake, the government of Singapore's sole control over ST Telemedia and the implications of the proposed ownership structure for New GX on national security interests – a process that has already proved time consuming and expensive to the Debtors' and ultimately fatal to Hutchison's participation in the Initial Transaction.

While the FCC has released the Amended FCC Application for public comment, it can be expected to defer any dispositive action until the conclusion of the CFIUS review, thereby making it likely that the review period will be pushed into 2004.[40] Indeed, when submitting the revision, the Debtors expressly reiterated their request that the FCC defer dispositive action pending notice that national security or law enforcement issues have been resolved and requesting appropriate action by the FCC.[41] Assuming such Executive Agency notification is received, it cannot be conclusively determined where the Amended FCC Application would then reside on the FCC's informal 180-day timeline, if at all. The FCC may determine that the Debtors' Amended FCC Application constitutes a "major revision" to the Initial FCC Application. If so, then in accordance with its guidelines, the FCC may elect to re-start the

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[39] See e.g., IB Docket No. 02-286, Letter of William Malone to Marlene H. Dortch (April 18, 2003), *citing* Howard Buzkirk, Wolf Expresses Concerns Over Global Crossing Sale, TRDaily (April 10, 2003), a copy of which is attached hereto as **Exhibit 8**.

[40] Public Notice, Global Crossing Ltd. and GC Acquisition Limited File May 13, 2003 Amendment to Applications, IB Docket No. 02-286, DA 03-1724 (May 16, 2003). The Public Notice establishes a comment cycle that closes July 3, 2003 (attached as **Exhibit 9)**.

review clock at day 110 from the date of Executive Agency notification. Given the history of this administrative proceeding to date, however, the FCC may choose to start the 180-day clock at some earlier point, or even anew, in response to concerns well within the agency or opposition from external petitioners.[42] Regardless of where the Amended FCC Application may fall on the informal timeline, the FCC is presently entertaining the possibility, based on a request by XO, of further suspending its review until all other regulatory hurdles have been cleared.[43] Significantly, the Debtors' Motion appears to concede that it may likely be early 2004 before the FCC's review of the ST Telemedia Transaction would be complete.[44]

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41 See Third Amendment to Application for Consent to Transfer Control and Petition for Declaratory Ruling and Request for Expedited Treatment, IB Docket No. 02-286 at 10-11.

42 The FCC enjoys significant discretion in that 47 C.F.R. § 63.12(a) provides for an initial 90-day review period and 90-day extensions, as necessary. While the FCC's transaction-review timeline describes an informal process, Commission precedent affirms the proposition that when applicants "submit revisions during the review period in response to issues raised by the Commission or other parties, the timeline 'clock' is stopped or reset as necessary to afford time for additional public comment." See Application of Motorola, Inc. and Teledesic, LLC for Consent to Assignment of Authority to Launch and Operate the Millennium Geostationary Fixed-Satellite Service System, 17 FCC Rcd. 16543, 2002 FCC Lexis 4326, ¶ 16.

In addition to the Commission's rights to alter, amend, or suspend the review process by administrative fiat, Section 309 of the Communications Act also permits third parties the right to challenge "substantial amendments" to applications. See Comments of General Counsel Christopher J. Wright Introducing the Transactions Team Presentation on Timely Consideration of the Applications Accompanying Mergers, Wednesday, March 1, 2000, http://www.fcc.gov/Speeches/misc/statements/wright030100.html ("Section 309(d)(1) provides that anyone may file a petition to deny a license transfer application, and section 309(b) provides that no license transfer application may be granted without giving parties 'thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of ***any substantial amendment thereof***.' Let me repeat these requirements because, of course, these statutory provisions control our efforts to expedite review and our plan is designed with the procedural requirements of the statute very much in mind. The statute speaks of 'issuance of a public notice by the Commission of the acceptance for filing' of a license transfer application, and gives parties 30 days from the date of the issuance of a public notice to file a petition to deny. The statute also gives parties challenging a license transfer application 30 days to comment after ***any 'substantial amendment' of an application. So if major revisions are made to an application, another round of comment is required.*** These requirements are specific examples of the more general procedural rights provided to challengers by the APA." (emphasis added).

43 See Ex Parte Letter from Brian D. Oliver, Executive Vice President Strategy and Corporate Development, XO Communications, Inc, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 12, 2003). Attached hereto as **Exhibit 10**. Based on substantial concerns raised by Congressional leaders, XO requests that the FCC extend its comment cycle on the FCC Application until the DOJ and CFIUS have concluded their review.

44 See Debtors' Motion ("The typical timeline for FCC approval is approximately six months or more" (page 9); "the regulatory approval process will take several months to complete. With respect to certain regulatory authorities, the Debtors are required to submit amended applications for regulatory approval, and in at least several instances, the Debtors must submit a new application." (page 13); ("The Debtors estimate that the extended regulatory process may take three or more months to complete") (page 3).

Against this backdrop, the Debtors now seek a fifth extension of exclusivity, this time seeking additional time to gain regulatory approval of the ST Telemedia Transaction. However, due largely to the ownership of ST Telemedia by the government of Singapore, XO believes that the ST Telemedia Transaction is more problematic than the ownership structure that was denied approval by the U.S. government after several months of consideration (i.e., the Initial Transaction).

**E. ST Telemedia's Control of the New GX Already Faces Substantial Government Opposition and Demands for Extended Review of the FCC Application**

As stated above, on May 13, 2003, the Applicants submitted their Amended FCC Application, which sought expedited approval for ST Telemedia to become the 61.5% owner of New GX. Within forty-eight hours, Congressional opposition had emerged – not just to the expedited treatment of the Debtors' Amended FCC Application, but to the ST Telemedia Transaction generally. In a letter dated May 15, 2003, but publicly released during the week of June 9, 2003, senior Congressional leaders questioned the legality of the Debtors' purchase by a foreign government, raised "concerns about U.S. security and competitive telecommunications" created by the Transaction and doubted whether expedited consideration of the Amended FCC Application would be "consistent with the Commission's statutory obligations."[45] Other members of Congress, including the Co-Chairman of the House of Representatives' Singapore Caucus, followed suit, questioning the legality of the ST Telemedia Transaction and how the FCC will "determine whether [the Transaction] is in the public interest, and the types of

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[45] See Letter from Sens. Ernest F. Hollings and Conrad Burns to The Honorable Michael Powell, Chairman, Federal Communications Commission (May 15, 2003), attached hereto as **Exhibit 11**.

safeguards that the Commission might implement to assure that the integrity of telecommunications infrastructure in the United States is preserved."[46]

Just as it was when Hutchison was the lead party for the Initial Transaction, it appears that the stage has been set for a prolonged process of review of ST Telemedia's majority-owned bid to acquire the Debtors. Unfortunately, the time to obtain the necessary approvals for the Transaction, even if obtainable, is running out.

**F. The Timeline Associated With ST Telemedia's Regulatory Approvals Will Likely Extend Far Beyond the Reach of the Debtors' Bankbook; Meanwhile, The Potential for More Lucrative and Reasonably Acceptable Alternatives Is Available to the Debtors**

As set forth above, the ST Telemedia bid for the Debtors (successful or not) would likely emerge from the process of regulatory approvals at a time when the Debtors would have exhausted all or most of their unrestricted cash, and their access to restricted funds, and its effect on the future viability of the Debtors' operations, would be uncertain. Even a cursory review of the Debtors' monthly operating reports reveals that it is quickly drawing down its available unrestricted cash and may expend those resources entirely before its Amended FCC Application could (even assuming the most optimistic timeline) receive regulatory approval. The conclusion is inescapable: The Motion and the extended relief sought by the Debtors urges the Court to tie the Debtors to a timetable for regulatory and other approvals that likely far exceeds their ability to fund their operations in a manner consistent with supporting a viable reorganization.

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46 See Letter from Rep. Curt Weldon to The Honorable Michael Powell, Chairman, Federal Communications Commission and Commission members (June 12, 2003), attached hereto as **Exhibit 12** ("The proposal by Singapore Technologies to purchase Global Crossing has raised some concerns with me and my colleagues. Although as Co-Chairman of the Singapore Caucus, I strongly support improving our relations with Singapore, any time a company with ties to a foreign government seeks to purchase assets as vital as telecommunications facilities in the United States, it is essential that the proposal be viewed with the strictest of scrutiny. As Vice Chair of the House Armed Services Committee, my principal interest is in the national security implications of such an acquisition.").

## III. The Debtors' Proposed Amendment to the Purchase Agreement Should not be Authorized by the Court, and the Debtors Should Consider Other Proposals

### A. The Debtors Have not Shown Why the Court Should Reinstate the Liquidated Damages Provision

The original Purchase Agreement provided for liquidated damages in the amount of $30 million (the "**Liquidated Damages**") in the event the Debtors terminated the Purchase Agreement without cause prior to the April 30, 2003 Regulatory Approval Deadline. However, the original Purchase Agreement, by its terms, is terminable after April 30, 2003 (without the Debtors having to pay any Liquidated Damages), by either the Debtors or ST Telemedia.[47] Therefore, the Debtors now have a unique window of opportunity to (i) terminate the Purchase Agreement without liability and free themselves from a transaction that will either fail of its own accord or, in the alternative, endure such a prolonged process of review that the Debtors' unrestricted cash will run dry, and (ii) consider alternative proposals that are substantially better (from both financial and regulatory standpoints) than the ST Telemedia Transaction.

Instead of pursuing such opportunities, the Debtors' Motion seeks to amend the Purchase Agreement in a way that (i) prohibits any potential competitive bidding on the Debtors' assets (while permitting the possibility that ST Telemedia will hold a private auction, pursuant to the terms of the Purchase Agreement or otherwise, of direct and/or indirect interests in New GX), (ii) reinstates the Liquidated Damages without any justification, and (iii) attempts to consummate the Transaction, which is at least as flawed as the unsuccessful Initial Transaction.

The Debtors, however, have failed in any way to support a conclusion that ST Telemedia should receive the benefit of the Liquidated Damages provision.[48] First, the fears expressed by

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47 See Section 7.1(b) of the Purchase Agreement.

48 If the Court were to analyze the Liquidated Damages provision as a break-up fee, then the Debtors have not met their burden of showing why a break-up fee would be warranted at this instance. In Integrated Resources, Inc., the District Court stated that "[t]he usual rule is that if break-up fees encourage bidding, they are enforceable; if they

the Debtors that ST Telemedia will somehow evaporate as a potential suitor and terminate the Transaction are unfounded, and even if true are insufficient as a basis for reinstating the Liquidated Damages given the prior expressions of interest by XO and IDT to acquire the Debtors' assets. More than a month has passed since the Regulatory Approval Deadline expired, a period during which ST Telemedia has been without the alleged protections of the Liquidated Damages. Yet at no time does it appear that ST Telemedia has expressed any intention of withdrawing from the Transaction; indeed, just the opposite is true. ST Telemedia reaffirmed its interest in New GX by assuming the rights and ongoing obligations of Hutchison under the Purchase Agreement. Even in the absence of the Liquidated Damages, ST Telemedia agreed to double its investment in New GX. These are not the acts of an entity preparing to withdraw its bid, and no justification has been given to re-instate an incentive to retain a bidder when that bidder has already agreed to stay in the game.

Second, the Debtors have made no showing that ST Telemedia's proposal maximizes the value of the Debtors' assets. In fact, the strong interest from domestic potential investors, which have expressed their willingness to pay more for the Debtors than ST Telemedia, demonstrates that ST Telemedia's proposal is likely no better than a runner-up to the value that could be garnered by the Debtors. If the Debtors desire to provide the Liquidated Damages to ST Telemedia, the burden is on the *Debtors* to demonstrate that ST Telemedia's bid is tops. Ultimately, the Debtors cannot meet this burden for one simple reason – the Debtors' have

stifle bidding they are not enforceable." Integrated Resources, Inc., 147 B.R. 650, 660 (S.D.N.Y. 1992); see also CRTF Corp. v. Federated Dep't Stores, 683 F. Supp. 422, 441 (S.D.N.Y. 1988). "Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets." Integrated, at 659. Moreover, when a company "agrees to such 'buyer protection' devices as break-up fees, it may be required to show that these devices do not contravene its duty to maximize value." Id. Finally, break-up fees "may be legitimately necessary to convince a 'white knight' to enter the bidding by providing some form of compensation for the risks it is undertaking" when there are risks associated with the debtor's failure to close on the transaction. Id; Samjens Partners I v. Burlington Indus., 663 F. Supp. 614, 624 (S.D.N.Y. 1987). Based on this precedent, the Debtors have failed in any way to support a conclusion that ST Telemedia should receive a break-up fee, as the proposed "fee" would chill, indeed prohibit, bidding and does not allow the Debtors to maximize the value of their assets.

already been offered financially superior proposals and face the prospect of others from suitors who are more likely to meet with the swift regulatory approval necessary to save the Debtors from straining the limits of its unrestricted cash and running the risk of restructuring the value proposition of the present Transaction in order to access its cash reserves.

Finally, the Liquidated Damages provision has no purpose in this case other than to unnecessarily protect ST Telemedia. The failure to close the Transaction was not due to any fault of the Debtors; rather, it has been due to the failure of the Investors to obtain the regulatory approvals by the Regulatory Approval Deadline. Moreover, ST Telemedia is already being reimbursed for its ongoing out of pocket expenses.[49] Consequently, resuscitation of the now dead Liquidated Damages provision is of no value, except to simply impose a tax on any transaction submitted by a rival bidder or (as discussed further below) as a shield for ST Telemedia to conduct a private auction outside the ambit of the Court. As such, the Court should maintain the status quo and limit ST Telemedia's damages for any post-April 30, 2003 breach by the Debtors under the Purchase Agreement solely to the actual out-of-pocket expenses of ST Telemedia as of the date of any alleged breach.

**1. If Granted the Liquidated Damages Provision Would Unfairly Provide ST Telemedia the Opportunity to Conduct Its Own Auction of New GX**

The re-imposition of the Liquidated Damages provision would not only serve to chill, if not entirely prevent, bids by other interested bidders such as XO and IDT, but its imposition could actually be used by ST Telemedia to achieve other purposes contrary to the interest of the Debtors' estates and their creditors. The imposition of the Liquidated Damages provision would unnecessarily increase the cost of any competitive bid by $30 million, reduce the expected

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[49] See Section 4.6 of the Purchase Agreement, which states that the Debtors "shall promptly reimburse and pay to the Investors all reasonable, actual, documented, out-of-pocket costs and expenses incurred by the Investors,

payout to creditors and potentially reduce the Debtors' attractiveness to potential bidders. Meanwhile, the Purchase Agreement allows ST Telemedia to transfer, initially, over 10% of its interest to third parties.[50] Therefore, ST Telemedia can use the Liquidated Damages as a shield against competitive bids during the pendency of the administrative approval process while entertaining offers from third parties to buy direct or indirect interests in New GX (all of which would be permitted under the Purchase Agreement). ST Telemedia can thus conduct its own private auction, structuring syndication or other post-closing transactions whereby interests in New GX are directly or indirectly transferred to such third parties, while siphoning funds to ST Telemedia that would otherwise have gone directly to the Debtors and creditors.[51]

In sum, the Debtors have not provided sufficient justification for reinstating the Liquidated Damages. The Liquidated Damages, in the amount of $30 million, will discourage potential bids and prevent the Debtors from maximizing the value of its assets (in contravention of the Debtors' fiduciary obligations).

**B. Other Proposals Are Likely to Receive Expedited Regulatory Approval and Would Not Involve Complications of Foreign Ownership**

XO has previously tendered an offer superior to either ST Telemedia's or IDT's expression of interest in acquiring all of the assets of the Debtors.[52] XO remains interested in providing alternative structures to purchase the Debtors, and is both willing to enter negotiations

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for the period commencing on May 25, 2002 and ending on the Closing Date or the termination of this Agreement by the Investors or the [Debtors]."

50 See Section 8.3(c) of the Purchase Agreement, which allows for an assignment of ST Telemedia's rights so long as ST Telemedia invests an amount that exceeds the amount invested by its assignee and ST Telemedia owns at least 50.1% of New GX.

51 See 8.3(a) of the Purchase Agreement, which allows for ST Telemedia to create internal ownership structures conducive to the creation of syndication rights or to ease the potential post-effective date spin-off of an entity to a third-party purchaser.

52 See Press Release from IDT, IDT Corporation Reiterates Desire to Purchase Global Crossing and Applauds Continued Government Scrutiny Press Release, April 30, 2003, available at www.idt.com.

to tender an offer for all the $2.25 billion of Senior Secured Global Crossing LTD Bank Debt[53] (the "**Tender Offer**") and propose a plan of reorganization of the Debtor shortly thereafter. . The only condition of XO's offer to continue to negotiate is the termination of the Purchase Agreement.

XO submits that engagement with the Debtors by itself or IDT would offer the prospect of greater immediate value (both monetary and otherwise) to the Debtors and the creditors: (i) the potential involvement of either company provides the Debtors with the likely ability to garner more value; and (ii) a purchase by XO or IDT would not be subject to foreign ownership restrictions, thus permitting expedited review from U.S. regulators and conserving the Debtors' remaining cash reserves.

## IV. The Debtors Should Be Directed to Consider Proposals from Third Parties

XO submits that granting the Motion will force the Debtors back down the regulatory rabbit hole where only an unlikely turn of events might save the Debtors and their estates from an expensive, time consuming process that will likely lead to complete (or near complete) exhaustion of their unrestricted cash and a subsequent restructuring of the Transaction

The Debtors' return to the highly uncertain, at best, regulatory process appears predicated on the mistaken notion that the three courses of action identified in the Motion are the *only* three that exist,[54] and that the Debtors have selected the option they appear to believe is best. While

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53 Senior Secured Global Crossing LTD Bank Debt refers to the debt under the Amended and Restated Credit Agreement dated August 10, 2000, for which JPMorgan Chase Bank is the administrative agent for the lenders (the "**Bank Debt**").

54 In the Motion, the Debtors state that:

> At this point in the case, the Debtors have three alternatives available to them. The first alternative is to amend the Purchase Agreement to extend the Voluntary Termination Date to a date after the expected revised regulatory process. The second alternative is to continue to seek regulatory approvals without making any changes to the Purchase Agreement. The final alternative is to terminate the Purchase Agreement now.

Motion, paragraph 18. From the allegedly three available options, XO believes the Debtors have chosen the worst one. If the Court disagrees with XO's Objection and determines that the above options are in fact the only three the Debtors may believe they have selected the best of a bad lot, the Debtors have ignored other options that are substantially more attractive – one example being to seek the Court's determination that the Debtors' fiduciary duties can only be satisfied by encouraging (if not requiring) discussions with other potential suitors (all without the Debtors necessarily terminating the Purchase Agreement, but without being in breach of it). But even if the Court were to assume, arguendo, that the universe of options are only those set forth by the Debtors, then XO respectfully submits the Debtors have not only chosen poorly, but clearly to the detriment of the bankruptcy estates, and XO urges the Court to exercise its discretion to terminate (or cause the Debtors to terminate) the Purchase Agreement and deny approval to revive the Liquidated Damages provision.

For these reasons, and for the reasons stated above, the Court should deny the Motion.

**Request for Declaratory Judgment**

The United States Code – 28 U.S.C. § 2201(a) – provides: "In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."[55]

It appears the Debtors are closing the door on potential proposals because of their understanding that they are prohibited from considering other proposals due to Section 4.3 of the

available options, then the best option is to terminate the Purchase Agreement and re-auction the Debtors' assets. At a minimum, even continuing to seek regulatory approvals without making any changes to the Purchase Agreement is a better alternative than what the Debtors' propose. The Debtors have not produced any evidence of ST Telemedia's intent to terminate the Purchase Agreement in the event the Motion is not granted. Continuing with the regulatory approval process without amending the Purchase Agreement as requested by the Motion would spare the estate from the potential Liquidated Damages and allow the Debtors the flexibility of terminating the Purchase Agreement (without incurring any liability) if necessary. In sum, it appears that the Debtors simply chose the worst available course of action.

Purchase Agreement. As stated previously, Section 4.3 of the Purchase Agreement provides that the Debtors may not solicit or entertain proposals, except to the extent they are required to do so in order to "comply with [their] fiduciary duties."

The Debtors should be allowed to consider other proposals, without breaching Section 4.3 of the Purchase Agreement, as it is their fiduciary duty to maximize the value of their assets. The intersection of several factors – the Debtors' ability to now terminate the Purchase Agreement without any liability, the existence of at least two prior proposals which were superior to ST Telemedia's, and the grim outlook of consummating the Transaction due to regulatory obstacles facing ST Telemedia – makes it imperative that the Debtors be allowed to consider other proposals, without the unnecessary imposition of the $30 million Liquidated Damages provision, pursuant to the exercise of their fiduciary obligations.

XO anticipates that the Debtors and/or ST Telemedia will disagree with XO's position and allege that discussing alternative proposals will constitute a default under the Purchase Agreement. As such, the foregoing dispute represents an actual controversy between the parties under 28 U.S.C. § 2201.[55] And, for the reasons stated above, XO submits that the controversy should be resolved by the Court ordering that the Debtors must now engage in discussions with other potential suitors in order to comply with their fiduciary duties.

As such, XO requests that the Court enter an Order, determining that the Debtors are required to consider other potential proposals, and that the Court declare that the Debtors doing so will not constitute a breach or default under the Purchase Agreement.

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[55] 28 U.S.C. § 2201(a).

## Conclusion

This is the Debtors' motion and, therefore, they bear the burden of proof.[56] Almost one year has passed since the Court approved the Purchase Agreement and the prognosis for obtaining governmental approval is no better today than before. The Debtors' arguments in favor of the Motion are based on their assumption that terminating the Purchase Agreement now would significantly delay the Debtors' emergence from chapter 11. Amending the Purchase Agreement and extending the Regulatory Approval Deadline, however, would only delay what seems to be inevitable, i.e., the demise of the ST Telemedia Transaction and ultimate substitution of a transaction with a buyer capable of consummating such a sale. Continued consideration of these national security issues will severely delay the current Transaction's regulatory approval process and ST Telemedia's failure to satisfactorily address each of these concerns would be fatal to regulatory approval.

WHEREFORE, for the reasons stated herein, XO respectfully requests that this Court enter an Order denying the Motion. In the alternative, then XO respectfully requests that the Court terminate the exclusive period for filing a plan in each of the Debtors' cases.

WHEREFORE, for the reasons stated herein, XO respectfully further requests that regardless of any other relief the Court grants with respect to the Motion that the Court (i) deny the request in the Motion to reinstate the Liquidated Damages provision, (ii) affirmatively limit ST Telemedia's damages for any post April 30, 2003 breach by the Debtors under the Purchase Agreement solely to the actual out of pocket expenses of ST Telemedia as of the date of any alleged breach, (iii) determine that the Debtors will not violate Section 4.3 of the Purchase

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[56] See e.g., 11 U.S.C. § 1121(d) (requiring a debtor to show "cause" for an extension of the exclusivity periods).

Agreement by considering other proposals, as it is their fiduciary duty to do so at this time, and (iv) instruct the Debtors to engage in discussions with other potential suitors.

XO also requests that the Court grant such other and further relief as this Court deems just and proper.

Dated: June 20, 2003

/s/ Thomas J. Catliota
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ATTORNEYS FOR JPMORGAN CHASE BANK,
AS ADMINISTRATIVE AGENT FOR THE
SENIOR SECURED LENDERS

HEARING DATE:
June 25, 2003 at 9:45 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re: | |
| | Chapter 11 |
| GLOBAL CROSSING LTD., et al., | |
| | Case No. 02-40188 (REG) |
| Debtors. | (Jointly Administered) |

**OBJECTION OF JPMORGAN CHASE BANK, AS ADMINISTRATIVE AGENT FOR THE SENIOR SECURED LENDERS, TO DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363(b)(1) AND 1121 OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO (i) AMEND THE PURCHASE AGREEMENT, (ii) GRANT CERTAIN RELEASES TO HUTCHISON TELECOMMUNICATIONS LIMITED, AND (iii) EXTEND EXCLUSIVE PERIODS DURING WHICH DEBTORS MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

TO THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE:

JPMorgan Chase Bank, as Administrative Agent (the "Agent"), on its own behalf and on behalf of the Senior Secured Lenders, by its counsel, Milbank, Tweed, Hadley & McCloy LLP, hereby respectfully submits this objection (the "Objection") to the Debtors' Motion Pursuant to Sections 105(a), 363(b)(1), and 1121 of the Bankruptcy Code for Authorization To (i) Amend the Purchase Agreement, (ii) Grant Certain Releases to Hutchison

Telecommunications Limited, and (iii) Extend Exclusive Periods During Which Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof (the "Motion"), and in support thereof, respectfully represents as follows:

**Factual Background**

1. The Purchase Agreement. On August 9, 2002, the Court approved the Purchase Agreement among Global Crossing Ltd., Global Crossing Holdings Ltd., the Joint Provisional Liquidators, Singapore Technologies Telemedia Pte Ltd ("STT"), and Hutchinson Telecommunications Limited ("Hutchinson") (the "Purchase Agreement"). According to the terms of the Purchase Agreement, Hutchison and STT agreed to pay the Debtors $250 million for 61.5% of the equity in a newly formed company (the "Transaction").

2. The Plan and Disclosure Statement. On September 16, 2002, the Debtors filed with the Court the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "Plan") and the Disclosure Statement for Debtors' Joint Plan of Reorganization (the "Disclosure Statement"). On October 21, 2002, the Court entered an order approving the Disclosure Statement. On December 26, 2002, the Court entered an order confirming the Plan. Pursuant to the terms of the Debtor's confirmed Plan, the Senior Secured Lenders are to receive approximately 80% of the value of the distributions.

3. Cash Losses. The Debtors have cash losses of approximately $600 million since filing their voluntary petitions on January 28, 2002 (the "Petition Date"). The Debtors continue to experience significant cash losses and have consistently failed to meet the projections set forth in their Disclosure Statement for Year 2003. Although the Debtors in their Motion state that administrative expenses are current, in fact, on information and belief, professional fees have not been paid for the period from January 2003 through May 2003. This represents, conservatively, approximately $44-55 million of unpaid administrative expenses based upon the Debtors' monthly professional expenses of approximately $11 million.

4. Employee Bonuses. In addition, on April 15, 2003, the Debtors paid approximately $50 million in 2002 annual bonuses to management and certain employees. These payments were made two weeks before the April 30th termination option date. [1] When informed of Global Crossing's decision to make the $50 million bonus payments on the eve of the payments, the creditors' requested that such payments be delayed at a minimum until after the April 30th deadline. John Legere, CEO, refused

[1] Pursuant to section 7.1(b)(A) of the Purchase Agreement, if all regulatory approvals had not been received by April 30, 2003 (which they were not) any of the Debtors, STT, or Hutchison could terminate their obligations thereunder. When CFIUS failed to approve the transaction by April 30, 2003, Hutchison terminated. (See Debtors' Motion Ex. B).

this request.[2] Shortly thereafter, the Debtors informed the creditors that the Debtors will run out of available unrestricted cash by the third quarter of 2003 unless they obtain a $75 million DIP Facility.

5. Failed CFIUS Process. By April 30, 2003, CFIUS, after approximately five months of negotiation, had not approved the ownership of Global Crossing by the two foreign investors, STT and Hutchison, which caused Hutchison to terminate its rights and obligations under the Purchase Agreement (see Debtors' Motion at Ex. B). The Debtors and its professionals have represented that CFIUS was reportedly specifically focused during the last review process on Hutchison's ties to the Chinese government. Nonetheless, CFIUS has never indicated it does not have similar objections based on STT's ownership by the government of Singapore. Furthermore, especially since the terrorist attack on September 11, 2001, there are increased national security concerns. These concerns are particularly focused on telecommunications infrastructure and internet commerce. Additionally, there is a policy debate within various governmental agencies and branches regarding foreign ownership of any strategic assets believed to be crucial to national security. (See Letter of Credit of Curt Weldon attached hereto as Ex. A.)

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[2] Mr. Legere's bonus paid on April 15th, was more than $1 million.

6. STT Replaces Hutchison. On April 30, 2003, after Hutchison terminated its rights and obligations under the Purchase Agreement, (see Debtors' Motion Ex. B) STT agreed to assume Hutchison's former rights and obligations (see Debtors' Motion at Ex. C). Following the April 30th termination by Hutchison, the Debtors, without support or participation of the Agent or Senior Secured Lenders, reached the agreements with STT reflected in the Motion. Currently, pursuant to section 7.1(b)(A) of the Purchase Agreement, the Debtors and STT have been free since April 30th to terminate at will the Purchase Agreement without incurring the $30 million Liquidated Damages liability.[3]

7. The Debtors Seek to Commit to STT for Another Four Months. The Purchase Agreement currently provides that as of April 30, 2003, the Debtors and STT have been free to terminate the Transaction at will. The Debtors now propose an amendment to the Purchase Agreement ("Amendment #2") that will prevent either the Debtors or STT from terminating the Purchase Agreement until October 14, 2003 and ties the Debtors to the "no shop" provision and the Liquidated Damages liability for those four months. On May 14, 2003, the Debtors filed the Motion

[3] Pursuant to section 7.3 of the Purchase Agreement, the Debtors would owe liquidated damages to STT if the Purchase Agreement is amended to extend the April 30th date to October 14th and it is terminated by the Debtors at any time before the new date of

seeking authorization to, among other things, (i) prevent the Debtors and STT from terminating their obligations under the Purchase Agreement until October 14, 2003 and obligating the Debtors to pay a $30 million "breakup" fee in the event they wish to terminate; (iii) extend the exclusive period during which the Debtors may file a chapter 11 plan until October 28, 2003 (iv) extend the exclusive period during which the Debtors may solicit acceptances of such plan until sixty days after October 28, 2003; (v) reimburse STT up to $4.5 million for all expenses incurred with respect to the Transaction after May 25, 2003; and (v) release Hutchison from any liability related to the Transaction. The Debtors take the position that having agreed to Amendment #2, they are bound by the "no shop" provision of the Purchase Agreement unless and until they exercise their termination right.

8. XO Communications Bid. On May 30, 2003, XO Communications publicly announced a bid for the Debtor's assets for cash and securities. Thereafter, on June 12, 2003, XO Communications publicly announced a $700 million all-cash bid for the Debtors' assets without any contingencies. Specifically, CFIUS approval would not be required for an acquisition by XO Communications or any other U.S. buyer.

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October 14th In certain circumstances the Liquidated Damages increase to $50 million.

9. IDT Corporation Bid. Additionally, on June 3, 2003, IDT Corporation ("IDT") filed the Objection of IDT Corporation to Debtors' Motion for Authorization to, Among Other Things, Amend the Purchase Agreement And Extend the Exclusivity Periods (the "IDT Objection"). In the IDT Objection, IDT reaffirmed its stated interest in acquiring the Debtors' assets -- an interest first expressed, according to IDT, on February 26, 2003, when IDT announced that it would pay $255 million for an investment in the Debtors' assets. An acquisition by IDT would not require CFIUS approval.

**Relief Requested**

10. CFIUS Approval Is Too Uncertain to Approve Amendment #2. Given the uncertainty of CFIUS approval and the fact that the CFIUS application was just filed today, it is unreasonable to bind the Debtors and creditors for four months and burden the estate with $30 million of Liquidated Damages for a deal that has a high risk that it will not close. The risks to the estates of granting the Motion vastly exceed any potential benefits Any extension of the April 30th date or any exclusivity extension should be denied. The parties do not have a full evaluation of (a) the likelihood of STT receiving the necessary regulatory approvals, including CFIUS approval, (b) the public third party offers of XO Communications and IDT

Corporation, neither of which would require CFIUS approval, and (c) the Debtor's financial position.

11. The Debtors' Exclusivity Period Should Not Be Extended. This is the Debtors' fifth request for an extension of exclusivity. The Debtors now find themselves running out of cash, having expended the extraordinary sum of approximately \$600 million, paid rich bonuses and in need of a \$75 million DIP facility to complete their restructuring. Financial projections contained in the Disclosure Statement have not been met. This extension is clearly being used to force creditors to yield to a deal that is unreasonably risky.

12. Hutchison Should Not Be Released Without a Full Assessment of Liabilities. The Debtors propose to release Hutchison from all liability arising from and related to the Purchase Agreement. In addition the Debtors wish to preserve language in the confirmed plan of reorganization that releases Hutchison from all liability. Such releases should not be granted until Hutchison's liability is fully ascertained and all issues with the Purchase Agreement have been resolved. There is simply no reason to release Hutchison.

13. Payment of STT's Expense should be Denied. STT is the only party who benefits from the extension and is the only party without any economic stake in the success or failure of the Transaction. In light of the significant potential risks

to all of the parties other than STT if regulatory approval is not received and the significant gain to STT if the Transaction closes, the payment of the additional expenses should not be approved. The Debtors have paid $15.2 million in expenses to STT and Hutchison to date to cover all of their expenses in pursuing the Purchase Agreement Transaction. As a result, STT is the only party that has no economic investment in this Transaction. The Debtors continue to incur the costs and expenses and suffer the loss of business associated with chapter 11. Given the Debtors' stated need for DIP financing and the size of its unpaid Administrative Expenses, creditors may never see any distributions. In addition, other potential acquirers have to wait four more months to see if the Debtors or STT terminate the Purchase Agreement during which time the Debtors will continue to run out of cash. Only STT benefits, and benefits without having to provide any monetary consideration for the extra time or uncertainty that CFIUS will ever approve their investment. Therefore, the payment of an additional $4.5 million in expenses to STT should be denied.

## Argument

### A. THE DEBTORS MUST NOT BE LOCKED UP WITH THE PURCHASE AGREEMENT FOR FIVE MONTHS

14. CFIUS Approval Is Uncertain. The parties have reached a critical point in these cases. Rather than being in a

position to close the transaction contemplated by the confirmed Plan six months after confirmation, CFIUS has not approved the two foreign investors, Hutchison and STT, and the Debtors anticipate an additional four months will be needed before CFIUS approval might be received. It is not at all clear that CFIUS will approve the remaining foreign investor, STT. Hutchison's ties to the Chinese government apparently made it an unacceptable investor to CFIUS. STT is ultimately owned by a foreign government, Singapore, and there has been no indication in the past 6½ months that CFIUS will approve a foreign government-owned investor. It has been 45 days since the April 30th deadline under the Purchase Agreement and the CFIUS application was just filed today. The full application process can be as long as 90 days. Forty-five days have already passed without an application on file. This means the parties would still have 90 days or more to wait now that the application has been filed. It is by no means certain that at the end of the 90 day period CFIUS will have approved STT's investment. As the parties learned during the prior review process, four months or more can pass with no approval. During the last review, CFIUS requested the application be withdrawn, which it was, causing the time for approval to be reset when the new application was filed. In addition, once CFIUS makes its decision, the FCC must finalize its review process and provide its approval as well.

It should be noted Congressman Curt Weldon, Vice Chair of the House Armed Services Committee, among others, has filed with the FCC a letter expressing concern for the national security implications of this Transaction. (See Ex. A attached hereto.) So, it is by no means certain that FCC approval will be received once the CFIUS process is completed.

15. The Debtors should not be permitted to tie up the estate for another four months only leaving the creditor's fates up to CFIUS. Instead, the Debtors and creditors must be free to immediately pursue other opportunities in the event that approval is not granted. STT is the only party with "no money in the deal" and yet it is insisting on $30 million in Liquidated Damages, a continuing "no shop" clause binding the Debtors during the CFIUS review process, and full payment of all of its expenses. The Debtors and creditors are the only parties incurring all of the risk.

**B. ADDITIONAL EXPENSE FUNDS FOR STT SHOULD NOT BE APPROVED**

16. STT Should be Willing to Risk $4.5 Million To Seek CFIUS Approval. The Debtors, who have not paid four or more months of professional fees, propose to pay STT up to $4.5 million to cover any fees and expenses associated with the Transaction after May 25, 2002. These payments would be in addition to the $5.2 million already provided STT and Hutchison

in the Purchase Agreement and the $10 million provided STT and Hutchison in the Amendment to the Purchase Agreement dated December 20, 2002. Again, the only party who benefits by the Amendment #2, STT, is the only party without anything at risk here. STT should put its money at risk while it seeks CFIUS approval.

17. The Offset of $2.5 million Against $30 Million Is Meaningless. At a time when the Debtors have stopped paying some if not all of their administrative expense claims, the Debtors' proposal will only incur additional costs to the estate with no corresponding benefits to the creditors. Furthermore, the Debtors' suggestion that $2.5 million of the STT expense payments would reduce any future Liquidated Damages owed to the STT is small comfort since that will mean the estate will still be liable for a large breakup fee of $27.5 million, the transaction will not close and a new plan will need to be proposed. By October, the options available to the Debtors and creditors will be more limited.

## C. AMENDMENT #2 AND THE RELATED DOCUMENTS HAVE NOT BEEN FINALIZED

18. Amendment #2. Although the Agent views the likelihood of CFIUS approval as a major issue here and by no means a certainty, it is not the only open issue. STT has requested what the Agent views as material modifications to the

terms of certain provisions of the Confirmed Plan and/or documents filed as part of the Plan Supplement. Although no changes have been agreed to, the Agent is in the process of evaluating these requested changes in the context of both (i) the economic differences in valuation of the Senior Secured Lenders' recoveries in these cases and (ii) a plan that has already been voted upon by creditors and confirmed.

19. The Confirmation Letter. After the Debtors' Motion was filed, the Agent learned that the Confirmation Letter attached to the Motion as Exhibit A to Amendment #2 has not yet been executed by STT and that STT has been engaged in due diligence in order to reach a decision as to whether it will sign the Confirmation Letter as currently drafted. Additionally, the Agent has asked for certain language changes to the Confirmation Letter with respect to the Material Adverse Effect provision, among other provisions. At this time, these issues have not been resolved and the Confirmation Letter remains unexecuted.

### D. THE HUTCHISON RELEASES SHOULD NOT BE APPROVED AT THIS TIME

20. In the Motion, the Debtors request the Court to approve the release and discharge of Hutchison and related parties from any and all liabilities. In addition, the Debtors request that the language in the Plan releasing Hutchison from

liability also be preserved. It is simply too early to tell whether or not the Debtors have any claims against Hutchison. The purported justification for the release of Hutchison is that the Debtors will receive corresponding releases. However, Hutchison having failed to satisfy a significant pre-condition to the Transaction there is no conceivable claim that Hutchison could have against the Debtors and the Debtors do not suggest otherwise. In a Plan that will yield creditors only pennies on the dollar, the Debtors should not release any claims that could increase the value of the estate. No release should be granted until it is clear exactly which claims are being released and for what amounts. Indeed, since Hutchison will not, as previously anticipated, participate in the Transaction, the language in the plan releasing Hutchison no longer serves the purpose for which it was intended and should be deleted.

**E. DEBTORS' NEED FOR FINANCING**

21. Cash Losses, Employee Bonuses and DIP Financing. The Agent is also concerned about the Debtors' cash position while the necessary CFIUS approval is sought. The Debtors have failed to meet any of the financial projections in the Disclosure Statement. In April the Debtors paid out approximately $50 million in bonuses - enriching management at the expense of these estates and the creditors. Now, the Debtors have informed the creditors they are seeking debtor-in-

possession financing of approximately $75 million in the next 30 days for Global Crossing to complete the CFIUS approval process before the confirmed Plan can become effective. The Agent has not agreed to a DIP facility and is awaiting a proposal from the Debtors; however, with CFIUS approval so uncertain, the need to seek alternative restructuring possibilities is even more urgent in light of the cash burn.

22. Liquidated Damages. Given the Debtors' need for DIP financing, it is beyond understanding why the Debtors would commit themselves to a situation that will require them to pay $30 million Liquidated Damages if they wish to terminate before October 14th. If it becomes clear STT will not receive CFIUS approval in July, for example, the Debtors will have to pay $30 million to terminate the Purchase Agreement at that time or have to wait until October 14th. Additionally, if a higher or better transaction is available, and several alternative transactions have been made public, the Debtors would again need to pay the $30 million fee to take advantage of it. The Liquidated Damages liability will make the acquisition of these assets much more difficult and result in lower recoveries for creditors. Tying themselves to an uncertain deal for four months and incurring a $30 million Liquidated Damages liability is not reasonable for the Debtors at this time.

### F. THE DEBTORS HAVE HAD THEIR TURN: ANY FURTHER EXTENSIONS OF EXCLUSIVITY SHOULD BE TERMINABLE BY CREDITORS

23. The Debtors Have Had Four Exclusivity Extensions. The Debtors have preserved their exclusive filing and exclusive solicitation periods since the very beginning of this case with the support of the creditors. On April 21, 2003, the Court granted the Debtors' fourth motion to extend the Debtors' exclusivity periods to May 15, 2003.

24. Section 1121(d) of the Bankruptcy Code. Bankruptcy Code section 1121(d) provides that "[o]n request of a party in interest made within the respective periods specified in subsection (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. § 1121(d) (emphasis added). "[A] request to either extend or reduce the period of exclusivity is a serious matter. Such motion should be 'granted neither routinely nor cavalierly.'" In re All Seasons Indus., Inc., 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (citations omitted).

25. The Debtors Must Show Cause for Extension. In order to retain the exclusive right to file and solicit votes for a plan, the Debtors must show cause. In re Curry Corp., 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992) ("This court will not routinely extend the exclusivity period absent a showing of

"cause" when creditors object to such requests for extensions."). A debtor has the burden of proving that cause exists for the extension. Id. at 755. If the debtor fails to meet that burden, any party in interest may submit a plan.

26. The Debtor Cannot Use Exclusivity To Bully the Creditors. As this Court has stated, "An extension should not be employed as a tactical device to put pressure on creditors to yield to a plan that they might consider unsatisfactory." In re Curry Corp., 148 B.R. at 756; In re Southwest Oil Co. of Jourdanton, Inc., 84 B.R. 448, 453 (Bankr. W.D. Tex. 1987) ("A debtor may not employ an extension as a tactical devise to put pressure on parties in interest to yield to a plan they consider unsatisfactory."). Here the Debtors are asking for additional exclusive time to support the STT Transaction exclusively and have the exclusive right to propose a plan in the event this Transaction fails. The creditors should have an opportunity to propose alternative plans given the regulatory approval risks in the STT Transaction.

27. Exit Financing Is No Excuse for Extending Exclusivity. In the Motion, the Debtors suggest that they need exclusivity to continue arranging their exit loan. Now it turns out it is a DIP Loan that the Debtors are seeking. However, the Court approved the Debtors' exit financing work fee more than

two months ago and this should not be a basis for continued exclusivity when the STT deal is so precarious.

28. Contrary to Their Belief, the Debtors Are Not Entitled to "Permanent Exclusivity". The Debtors state that "in the event that any of the regulatory authorities do not approve the Purchase Agreement and the Debtors are forced to abandon the Plan, the Debtors seek an opportunity to propose and solicit a new plan of reorganization without competing plans." Contrary to the Debtors' assertion, the Debtors have absolutely no right to continue to dominate the plan process in the event the Plan fails. The Debtors have had a full opportunity to present the Plan that they believe gives them the best opportunity to reorganize. The fact that they want another chance if this plan crumbles is not sufficient "cause" to support an extension of the Debtors' exclusive periods. Most of the creditors have made significant sacrifices to accommodate the Debtors' agenda throughout the past year and a half. Enough, however, is enough. If the Debtors' plan falters, the creditors must be able to take matters into their own hands and resolve these cases for good. It is, after all, the creditors' money at stake.

29. The Debtors Are Still Free to Propose a Plan. Declining to extend exclusivity will not prejudice the Debtors' ability to file their own plan. The time limitations set forth

in section 1121 of the Bankruptcy Code do not impose a deadline for filing a plan. They merely limit the Debtors' exclusive rights with respect to the plan and afford the creditors the opportunity to submit a competing plan. See, e.g., In re All Seasons Indus., Inc., 121 B.R. at 1005 (denying exclusivity "does not sound [a] death knell for debtor's reorganization . . . . '[I]t only affords creditors their right to file the plan; there is no negative effect upon the debtor's co-existing right to file its plan'"). For this reason, the Debtors' request for exclusivity should be denied.

WHEREFORE, the Agent respectfully requests that the Court enter an order (i) denying the Motion and (ii) granting the Agent such other and further relief as is just and proper.

Dated: New York, New York
June 20, 2003

MILBANK, TWEED, HADLEY & McCLOY LLP

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# EXHIBIT A

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MIGRATORY BIRD CONSERVATION COMMISSION
REPUBLICAN POLICY COMMITTEE

# Congress of the United States
## House of Representatives
Washington, DC 20515-3807

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MILITARY PROCUREMENT, CHAIRMAN
MILITARY READINESS
SPECIAL OVERSIGHT PANEL ON MERCHANT MARINE
SPECIAL OVERSIGHT PANEL ON TERRORISM

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CONGRESSIONAL FIRE SERVICES CAUCUS
DUMA–CONGRESS STUDY GROUP
GLOBE OCEAN PROTECTION TASK FORCE
CONGRESSIONAL DIABETES CAUCUS

June 12, 2003

Chairman Michael K. Powell
Commissioner Kathleen G. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: In the Matter of Application of Global Crossing Ltd and GC Acquisition Limited for Consent to Transfer Control to Singapore Technologies Telemedia Pte Ltd-- IB Docket No. 02-286

Dear Chairman Powell and Commissioners:

The proposal by Singapore Technologies to purchase Global Crossing has raised some concerns with me and my colleagues. Although as Co-Chairman of the Singapore Caucus, I strongly support improving our relations with Singapore, any time a company with ties to a foreign government seeks to purchase assets as vital as telecommunications facilities in the United States, it is essential that the proposal be reviewed with the strictest of scrutiny. As Vice Chair of the House Armed Services Committee, my principal interest is in the national security implications of such an acquisition.

Of paramount importance to me are the criteria for such a review, both through the CFIUS process as well as at the Federal Communications Commission, and specifically the measures that the Commission may take to assure that the public interest is protected. In particular, I am interested in learning how the Commission will evaluate this proposal to determine whether it is in the public interest and the types of safeguards that the Commission might implement to assure that the integrity of telecommunications infrastructure in the United States is preserved.

I look forward to a response from the Commission by June 30, 2003.

Very truly yours,

Curt Weldon

CURT WELDON
Member of Congress

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 statement to the following:

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I further certify that I have caused to be e-mailed copies of the foregoing statement to the following persons as prescribed in Part VI of Public Notice DA 02-2299.

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Gerard Lavery Lederer

Washington, D C
June 26, 2003
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