

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Global Crossing Ltd. (Debtor-in-Possession), Transferor,	)	
	)	IB Docket No. 02-286
and	)	
	)	
GC Acquisition Limited, Transferee,	)	
	)	
Applications for Consent to Transfer Control of Submarine Cable Landing Licenses, International and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act	)	

To: The International Bureau, Wireless Telecommunications Bureau, and Wireline Competition Bureau

**PETITION FOR RECONSIDERATION**

PC Landing Corp. (“PC Landing”), by its attorneys and pursuant to Section 1.106 of the Commission’s rules,<sup>1</sup> respectfully petitions for reconsideration of the Commission’s *Order and Authorization* in the above-captioned proceeding approving the transfer of control from Global Crossing Ltd. (Debtor-in Possession) (“GCL”) to GC Acquisition Corp. (“New GX”) of various authorizations and licenses held by subsidiaries of GCL, including the cable landing license held by petitioner PC

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<sup>1</sup> 47 C.F.R. § 1.106. Although PC Landing did not participate in this proceeding previously, consideration of the issue addressed in this petition is “required in the public interest,” *id.* § 1.106(c)(2), because resolution of the issue is essential to ensuring compliance with the transfer

Landing.<sup>2</sup> As shown below, GCL's controlling interest in PC Landing already had been extinguished as of the date of the Commission's *Order and Authorization*.

Accordingly, the Commission should remove PC Landing from the list of GCL's FCC-Licensed Subsidiaries, as that term is used in the *Order and Authorization*, and remove the PC-1 cable landing license from the list of authorizations to be transferred to New GX, including the condition that the PC-1 license is conditioned on PC Landing's compliance with the New GX/Executive Branch agreement.

PC Landing, a Delaware company and a wholly owned subsidiary of Pacific Crossing Ltd., debtor-in-possession ("Pacific Crossing"), holds the U.S. submarine cable landing license for the Pacific Crossing cable system ("PC-1").<sup>3</sup> As the Commission previously has been advised, Pacific Crossing is 84.5% owned by Asia Global Crossing Ltd. ("AGC") through two wholly owned subsidiaries of AGC. AGC, in turn, is 58.9% owned by GCL, with Microsoft Corporation and Softbank AGCH Holdings Ltd. each holding 14.7% interests.<sup>4</sup>

On October 8, 2003, the Commission approved the transfer of control from GCL to New GX of certain authorizations and licenses held by subsidiaries of GCL (referred to in the *Order and Authorization* as "FCC-Licensed Subsidiaries"), including the PC-1 cable landing license held by PC Landing.<sup>5</sup> As the Commission noted in the *Order and Authorization*, at that time PC Landing was subject to two pending bankruptcy

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of control requirements of the Communications Act, the Submarine Cable Act, and the Commission's implementing rules thereunder.

<sup>2</sup> See *Order and Authorization*, IB Docket No. 02-286, DA 03-3121 (rel. Oct. 8, 2003) ("*Order and Authorization*").

<sup>3</sup> PC-1 consists of four segments connecting each of its four landing stations: Ajiguara, Japan to Harbour Pointe, Washington; Shima, Japan to Grover Beach, California; Ajiguara to Shima; and Harbour Pointe to Grover Beach. PC-1, spanning 13,076 route-miles, is one of only three major trans-Pacific fiber optic cable systems with available capacity linking Japan and the United States.

<sup>4</sup> The remaining 11.7% interest in AGC is held by the public and others.

<sup>5</sup> See *Order and Authorization* at Appendix B (listing PC Landing's submarine cable landing license among the authorizations to be transferred (File No. SCL-T/C-20020822-00077)).

proceedings in which GCL retained only an indirect, non-controlling equity interest in PC Landing.<sup>6</sup> Notwithstanding statements made by GCL prior to the issuance of the *Order and Authorization* to the effect that Commission approval still was needed for the transfer of PC Landing's license,<sup>7</sup> in fact GCL already was divested of *de jure* and *de facto* control over PC Landing and the PC-1 system license prior to the *Order and Authorization* by virtue of the pending bankruptcy proceedings described below.

On July 19, 2002, Pacific Crossing, and its affiliates, including its wholly owned FCC-licensed subsidiary PC Landing, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in Delaware.<sup>8</sup> Pacific Crossing and PC Landing continue to be in possession of their properties and are operating and managing their businesses as debtors and debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

In furtherance of the Pacific Crossing reorganization under bankruptcy, Pacific Crossing executed an Amended and Restated Asset Purchase Agreement with Pivotal Telecom LLC (the "APA") on April 21, 2003, pursuant to which Pivotal Telecom, a U.S.-owned company,<sup>9</sup> at closing, will acquire substantially all of the assets composing the PC-1 system. The Bankruptcy Court approved the APA in a Sale Order entered on June 3, 2003. If the transaction contemplated by the APA closes, Pivotal Telecom will succeed to the current business and operations of the PC-1 system. An application for

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<sup>6</sup> See *Order and Authorization* at ¶ 15.

<sup>7</sup> See *Order and Authorization* at ¶ 15 ("Although the Applicants expect that the two bankruptcy proceedings eventually will eliminate Global Crossing's equity interests in Commission licensee PC Landing, they continue to seek authority to transfer control of their interests in the Pacific Crossing-1 ("PC-1") cable landing license because these interests have not yet been extinguished."); see also *id.* at n.63.

<sup>8</sup> See *Order and Authorization* at ¶ 15; see also *In re PC Landing Corp. et al.*, Chap. 11 Case No. 02-112086 (PJW) (Bankr. D.Del., July 19, 2002).

<sup>9</sup> There are no direct or indirect ownership interests in Pivotal Telecom of 10% or greater that will be held by foreign entities or entities affiliated in any way with foreign entities. See Application for Assignment of Submarine Cable Landing License from PC Landing to Pivotal Telecom, File No. SCL-ASG-20030819-00024 (filed Aug. 19, 2003).

the assignment of the PC-1 license from PC Landing to Pivotal Telecom, LLC was filed with the Commission on August 19, 2003,<sup>10</sup> and was placed on Public Notice on September 22, 2003.<sup>11</sup>

In addition, on November 17, 2002, PC Landing's indirect parent company, AGC, filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code, and was initially operating as a debtor-in-possession.<sup>12</sup> While AGC completed the sale of substantially all of its assets on March 10, 2003, that transaction did not include the PC-1 cable system or the sale of AGC's equity interest in Pacific Crossing, including AGC's indirect interest in PC Landing. On June 13, 2003, AGC's bankruptcy case was converted from a Chapter 11 case to a Chapter 7 case.<sup>13</sup> At that time, the United States Trustee appointed Robert Geltzer, a U.S. citizen, as interim trustee of the AGC estate.

As a result of the conversion of AGC's bankruptcy to a Chapter 7 case and the appointment of Mr. Geltzer as its trustee, GCL was involuntarily divested of its ability to exercise any indirect control over Pacific Crossing, and consequently PC Landing.<sup>14</sup> Instead, Mr. Geltzer, as AGC's Chapter 7 trustee, has the sole and exclusive right and duty to control and dispose of the property of the AGC bankruptcy estate, including AGC's ownership interest in Pacific Crossing.<sup>15</sup>

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<sup>10</sup> See File No. SCL-ASG-20030819-00024.

<sup>11</sup> See Non-Streamlined International Applications Accepted for Filing, Public Notice, Rep. No. TEL-00714NS (rel. Sept. 22, 2003).

<sup>12</sup> See *Order and Authorization* at ¶ 15; see also *In re Asia Global Crossing Ltd.*, Chap. 11 Case Nos. 02-15749 (SMB) (Bankr. S.D.N.Y., Nov. 17, 2002).

<sup>13</sup> See *Order and Authorization* at n.62.

<sup>14</sup> See 47 C.F.R. § 1.767(g)(7). In hindsight, PC Landing recognizes that Commission consent to the involuntary transfer of the PC-1 license to the bankruptcy trustee should have been obtained prior to the appointment, and is preparing and will file such an application as soon as possible.

<sup>15</sup> See 11 U.S.C. §§ 704 and 725.

Nevertheless, prior to the date of the *Order and Authorization*, GCL twice represented to the Commission that Commission approval remained necessary for the transfer of control of PC Landing as part of the GCL-New GX transaction, notwithstanding the disposition of the bankruptcy proceedings described above.<sup>16</sup> Specifically, GCL stated that PC Landing had to be included in the GCL-New GX transfer of control application “until either (i) the PC Landing reorganization concludes or (ii) the AGCL Chapter 7 trustee abandons its equity interest in PC Landing.”<sup>17</sup> While GCL’s statement that GCL’s equity interests in PC Landing will be eliminated when the PC Landing reorganization concludes is consistent with PC Landing’s expectations, those equity interests currently are in the possession and control of AGC’s trustee and GCL has no legal right to direct or exercise control over the AGC trustee.

Consequently, GCL’s *de jure* and *de facto* control over PC Landing was extinguished when AGC’s case was converted to a Chapter 7 liquidation, which occurred prior to the issuance of the *Order and Authorization*. Specifically, the appointment on June 13, 2003, of a Chapter 7 trustee vested with the sole and exclusive power to sell, dispose of, and control AGC’s remaining assets, including AGC’s indirect interest in PC Landing and the PC-1 license, eliminated GCL’s ability to attempt to influence the day-to-day operations of PC Landing, which is a key element of control under the Commission’s rules.<sup>18</sup>

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<sup>16</sup> See Reply Comments of Global Crossing Ltd. and GC Acquisition Limited, IB Docket No. 02-286 (filed July 3, 2003) at 4-5 (“GCL Reply Comments”); Letter from Jean Kiddoo, Counsel for Global Crossing Ltd. and GC Acquisition Limited, to Marlene H. Dortch, Secretary, FCC, IB Docket 02-286 (filed July 18, 2003) at 2-3 (“GCL Status Letter”).

<sup>17</sup> GCL Status Letter at 3; see also GCL Reply Comments at 4 (“GCL retains an equity interest in AGCL and will hold it until AGCL’s bankruptcy case closes. Similarly, AGCL will retain its equity interest in PC Landing until PC Landing’s reorganization is complete or AGCL’s trustee abandons that interest. Until one of those events occurs, PC Landing must be included in the Application.”)

<sup>18</sup> See 47 C.F.R. § 1.2110(c)(2) (defining *de jure* control as holding greater than 50 percent of the voting stock of a corporation, and *de facto* control as having an equity interest and at least the following indicia of control: (i) constituting or appointing more than 50 percent of the board of

Thus, despite GCL's statements to the Commission to the contrary, prior to the date of the *Order and Authorization* GCL already was divested of *de jure* and *de facto* control over PC Landing and the PC-1 system license. While GCL retains an indirect equity interest in PC Landing, that interest does not constitute a locus of control under the Commission's ownership rules.

For these reasons, the Commission should remove PC Landing from the list of FCC-Licensed Subsidiaries subject to the *Order and Authorization*, and the PC-1 cable landing license from the list of authorizations to be transferred to New GX, including the condition that the license is conditioned on PC Landing's compliance with the New GX/Executive Branch agreement.

Respectfully submitted,

PC LANDING CORP.



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directors or management committee; (ii) authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (iii) playing an integral role in management decisions); *see also* 47 C.F.R. § 63.24, Note 1 to ¶ (d) ("The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including the expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.").

November 7, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Reconsideration was sent by first-class mail, postage prepaid, and by hand delivery, this 7th day of November, 2003, to each of the following:

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