XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

June 12, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Global Crossing Ltd. and GC Acquisition Limited ("Global Crossing") Application to Transfer Control and Request for Declaratory Ruling Allowing Indirect Foreign Ownership, IB Dkt. No. 02-286

Dear Ms. Dortch:

XO Communications, Inc. ("XO") is responding to the June 9, 2003 letter submitted by the Official Committee of Unsecured Creditors in the Global Crossing bankruptcy proceeding (the "Committee") to the Department of Justice ("DOJ") and the Committee on Foreign Investment in the United States ("CFIUS") and copied to the Commission in the above-referenced docket. In its letter, the Committee urged CFIUS to review expeditiously the proposed Singapore Technologies Telemedia Pte Ltd ("ST Telemedia") transaction and, in doing so, indirectly and inaccurately characterized XO's superseding bid for Global Crossing. XO wishes to correct the record in the Commission's proceeding regarding the transfer of Global Crossing's authorizations to ST Telemedia.

By way of background, XO's original bid of cash, debt, preferred stock and stock warrants provided equivalent or better consideration to Global Crossing's creditors than ST Telemedia's proposed offer.[1] This afternoon, XO extended an "any and all" tender offer for the $2.25 billion in outstanding senior secured bank debt of Global Crossing Ltd., equivalent to an all cash offer of $472.5 million. The only condition to XO's offer is the termination of the ST Telemedia purchase agreement. As an alternative, XO is now prepared to offer $700 million in cash to acquire all of the assets of Global Crossing as the lead bidder in an open sale of Global Crossing's assets. This offer would be subject to higher and better offers from third parties through a Bankruptcy Court administered auction process.

[1] More specifically, XO's original offer was for cash and debt equivalent to that offered by ST Telemedia, but the equity component of XO's offer was more attractive – for example, the new stock would include preferred stock with a guaranteed value, plus four years of assured cash dividends and an additional 15 million warrants for XO Communications stock.

In its letter, the Committee incorrectly characterized XO's original offer for Global Crossing as non-binding. With today's offers from XO, there can be no misunderstanding: XO's proposed bid is a firm commitment and does not raise the uncertainties associated with ownership by a foreign government that continue to plague the ST Telemedia transaction. As the Commission well knows, there have been substantial questions about "whether approval [of the ST Telemedia transaction] would be possible in view of statutory limits on foreign ownership set forth in Sections 310(a) and (b) of the Communications Act of 1934".[2]

Moreover, the Committee's assertion that review of a new competing bid at this point would create "substantial delay" is an overstatement. Unlike the proposed ST Telemedia transaction, XO's bid does not involve any foreign ownership, let alone foreign government ownership, and no CFIUS review would be required. The XO transaction could be approved expeditiously upon receipt of regulatory approvals. The absence of foreign ownership would reduce regulatory and governmental review of the XO transaction to a fraction of the time that the ST Telemedia has taken just to this point.

The foreign ownership issues raised by leading members of Congress, in the letter referenced above and in recent legislative hearings,[3] have been echoed elsewhere, particularly in the Executive Branch. As Global Crossing acknowledged in its May 13, 2003 Third Amendment to its pending application, the CFIUS review has still not resolved these concerns. Congressional leaders also have raised concerns about this specific transaction in a public hearing. Based on the foregoing, it is clear that the XO proposal which can be approved in its present form contrasts sharply with the ST Telemedia transaction, which, even after exhausting all available procedural requirements, is unlikely to be approved in its current form – thereby resulting in further delay to the conclusion of the viable sale of Global Crossing.

XO urges the Commission to ensure that all interested parties have ample opportunity to assess the public interest implications of the ST Telemedia takeover of Global Crossing by extending the comment cycle in this proceeding until the DOJ and CFIUS have concluded their review. The Commission should continue to hold this docket in abeyance at least until the DOJ and CIFUS processes are completed at which point the Commission should seriously consider an entirely new docketed proceeding to review the ST Telemedia transaction.

For some time, it has been a hallmark of the Commission's policy to encourage the emergence of competition in both the U.S. and abroad. As part of this effort, the Commission has worked to discourage continued government monopoly ownership of telecommunications companies and assets

[2] See, Letter from Sens. Conrad Burns and Ernest F. Hollings to the Hon. Michael Powell, Chairman of the Federal Communications Commission (May 15, 2003) (attached hereto as Attachment A).
[3] See, Question from Representative Markey to Mr. Ralph F. Ives, III, the Assistant U.S. Trade Representative for Asia-Pacific and APEC Affairs, Federal News Service May 8, 2003, page 5-6 (attached hereto as Attachment B).

abroad. The Commission should continue its vigilance in these areas to ensure that the effects of foreign government monopoly ownership are not visited upon U.S. consumers in this case. XO is positioned to be a major domestic and international competitive player and, in contrast to ST Telemedia, would not impose these negative competitive effects upon U.S. consumers.

Sincerely,

Brian D. Oliver
Executive Vice President
Strategy and Corporate Development

Douglas W. Kinkoph
Vice President
Regulatory and External Affairs

Attachment

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein

CERTIFICATE OF SERVICE

I, Theresa L. Pringleton, do hereby certify that I have on this 12th day of June, 2003, had copies of the foregoing **LETTER** delivered to the following via electronic mail or First Class Mail, as indicated:

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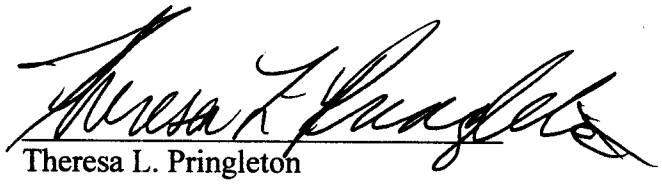

Theresa L. Pringleton

* Via First Class Mail

ATTACHMENT A

United States Senate

WASHINGTON, DC 20510

May 15, 2003

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Dear Chairman Powell:

We write to you today to express our serious concern about the proposed sale of Global Crossing, Ltd. ("Global Crossing") to a company owned and controlled by a foreign government.

It has been reported that the withdrawal by Hutchison Whampoa from the proposed transaction will result in lessened scrutiny of the transaction by the Federal Communications Commission and other government officials. However, it is our understanding that, due to Hutchison Whampoa's withdrawal, Singapore Technologies Telemedia Pte Ltd – which is wholly owned by the Government of Singapore – now proposes to obtain control of Global Crossing. Such substantial ownership and control of U.S. critical infrastructure and other telecommunications assets by a foreign government – even a friendly government such as Singapore – raises serious concerns about U.S. security and competitive telecommunications markets. It also raises questions about whether approval would be possible in view of statutory limits on foreign ownership set forth in Sections 310(a) and (b) of the Communications Act of 1934.

We understand that Global Crossing has asked the Commission to expedite consideration of its revised transaction. We do not believe this would be consistent with the Commission's statutory obligations.

We urge you and the Commission to thoroughly probe this transaction, giving thorough consideration to Congressional intent regarding foreign ownership.

With kind regards,

Sincerely,

Conrad Burns
Senate Committee on Commerce,
Science, and Transportation

Ernest F. Hollings
Senate Committee on Commerce
Science, and Transportation

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein

1 of 1 DOCUMENT

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May 8, 2003 Thursday

LENGTH: 22593 words

HEADLINE: HEARING OF THE COMMERCE, TRADE, AND CONSUMER PROTECTION SUBCOMMITTEE OF THE HOUSE ENERGY AND COMMERCE COMMITTEE

SUBJECT: TRADE IN SERVICES AND E-COMMERCE: THE SIGNIFICANCE OF THE SINGAPORE AND CHILE FREE TRADE AGREEMENTS

CHAIRED BY: REPRESENTATIVE CLIFF STEARNS (R-FL)

LOCATION: 2123 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C.

WITNESSES: PANEL ONE: RALPH F. IVES III, ASSISTANT U.S. TRADE REPRESENTATIVE FOR ASIA-PACIFIC AND APEC AFFAIRS, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE;

MICHELLE O'NEILL, DEPUTY ASSISTANT SECRETARY FOR INFORMATION TECHNOLOGY INDUSTRIES, U.S. DEPARTMENT OF COMMERCE;

REGINA K. VARGO, ASSISTANT U.S. TRADE REPRESENTATIVE FOR THE AMERICAS, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE;

PANEL TWO: ROBERT W. HOLLEYMAN II, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BUSINESS SOFTWARE ALLIANCE;

BRIAN KELLY, SENIOR VICE PRESIDENT OF GOVERNMENT RELATIONS AND COMMUNICATIONS, ELECTRONIC INDUSTRIES ALLIANCE;

RONALD T. MONFORD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MIND OVER MACHINES, INC.;

MARK BOHANNON, GENERAL COUNSEL AND SENIOR VICE PRESIDENT PUBLIC POLICY, SOFTWARE & INFORMATION INDUSTRY ASSOCIATION;

DAVID WASKOW, INTERNATIONAL POLICY ANALYST AND TRADE POLICY COORDINATOR, FRIENDS OF THE EARTH;

FRANKLIN J. VARGO, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS;

THEA LEE, CHIEF INTERNATIONAL ECONOMIST, AFL-CIO

BODY:

REP. CLIFF STEARNS (R-FL): (Hearing room audio begins in progress) -- offices are testifying before us this afternoon. Their particular insight into the substance and process of developing the FTAs I'm sure will be helpful to all of us and give us better understanding of the agreements.

Now, this is a significant hearing for our subcommittee and of course for the full committee. In exercising its trade

agreement with Singapore. The Indonesian production facilities would have no obligation to comply with the agreement's labor standards.

Also the U.S. goods are now awarded into reciprocal market access to Indonesia. Not only will these provisions encourage offshore export production to the U.S., it could essentially facilitate the proliferation of some of our problems we have with sweatshops on islands. Furthermore, the agreement in no way limits the extension of this initiative to other territories and thus sets a dangerous precedent that future free trade agreements could follow.

I'm also concerned about the immigration provisions in these agreements that create the potential of the U.S. labor market to be crowded by an influx of foreign workers without any authority from the law granting the administration fast track trading authority. The U.S. trade rep created a new visa category that would allow U.S. companies to employ foreign workers, even without a domestic labor shortage.

Mr. Chairman, almost nine million Americans are currently out of work and I find it unreasonable for the U.S. trade representative to negotiate these special privileges for foreign workers when we already have skilled labor right here in the United States who need jobs. And I know that's a separate issue under — we have exceptions for high-skilled workers, but I also understand there's going to be a reduction in that.

Without the authority to amend these trade agreements, our hands in Congress are tied. And therefore I thank the chairman and ranking member for the opportunity to give these two agreements a full examination.

REP. STEARNS: I thank the gentleman.

Mr. Shimkus.

REP. JOHN SHIMKUS (R-IL): Thank you, Mr. Chairman. And I would not speak, but I do want the administration to hear a couple of comments about trade. I've always been a strong supporter of trade and based upon in Illinois the great benefits we receive from the agricultural sector, major companies like Motorola, Caterpillar, Deere, the finance and banking industry and the service sector.

But I'm becoming a skeptic as far as the manufacturing sector has been involved. And I'm pleased with what the administration did on the section 201 filing on steel, and as it comes up for review, I want to encourage them to be as vigilant as they were in the past with — as we relook.

You'll hear both sides of the aisle talk about free and fair trade, that's a great moniker to use. And I think if we, as a nation, pushed for the fairness aspect, we'll win this debate and everybody will benefit. How do you get fairness? You have to rapidly lower tariffs, rapidly lower tariffs. You have to ensure market access and you have to make sure there's a prohibition against illegal subsidization. And I think in the manufacturing arena that's not occurring. And as long as that doesn't occur and as long as we don't enforce that, we're going to lose a lot of this debate on the other benefits of trade.

I am also — I'm aghast at how long the international dispute resolution takes place, how long the process internationally takes to resolve conflict and get to some — because what happens is companies fold up. By the time we get a dispute resolution through the process, we've already lost the jobs, the factories have already closed.

From a free trader, these should be sending some startling signals to the administration on how strong they need to be, hopefully more in a unilateral negotiation where we get country on country agreeing so that we can get outside the international aspects, because I just personally think it takes too long to resolve conflict. So send the message back if you all need to come talk to me, please come to my office. These comments you should not be hearing from someone who's a strong supporter of trade, and I think the manufacturing sector in this country is at great risk. And I yield back my time.

REP. STEARNS: I thank the gentleman.

The gentleman from Massachusetts is recognized.

REP. EDWARD J. MARKEY (D-MA): Thank you, Mr. Chairman, very much. I'm just going to raise two points here in my opening statement and then refer back to them during the question and answer period.

The first subject I'm going to raise is with regard to the government of Singapore in that the controlling owner of Singapore Technologies is the government of Singapore, and that Singapore Technologies has proposed purchasing 61.5 percent of the remains of Global Crossing for $250 million. My concern is that we may end up with a situation where U.S. companies which are not controlled by the government end up having to compete with companies that are owned by

a government: Singapore.

That is not fair trade because the foreign competitor is both the owner and the regulator of the same company. We don't like that in the United States. We don't like government-owned companies and we don't like it when it's overseas, especially when they purchase an American company. So I am going to make the point that our government has to intervene in this Global Crossing acquisition to ensure that the government controlled purchaser's share is not a controlling interest and that U.S. companies be allowed to bid for the shares not held by Singapore Technologies or by Global Crossing.

The second point that I'm going to make in the question and answer period goes to China and the precedent which it sets in terms of how it handled the SARS crisis. In November of 2002, what seemed to be the first cases of SARS in Guangdong Province of China went unreported by the state-run media organizations. These media outlets were ready to print by they were stopped by Chinese officials, worried that a public health scare would cause people to stay home instead of spending money during the Chinese New Year, adversely affecting its economy.

By early February this year, five people had died due to SARS and at least 300 people were infected. On February 21st, a doctor staying in a Hong Kong hotel spread the infection to other guests on his floor and died of the disease on March 4th. In March, senior Chinese officials maintained that SARS was under control and China was open to and safe for travelers. On March 12th, WHO officials issued a global alert about SARS, warning travelers to be careful. And on April 4th, WHO cautioned against non-essential travel to Hong Kong and Guangdong.

As late as April 28th, China removed SARS patients from a Beijing hospital, hiding them from doctors and officials with the World Health Organization, who were repeatedly not granted access to hospitals and other affected areas. Today China has almost 5,000 cases, 18,000 people are quarantined and there's a 15 percent fatality rate. The world community outside China has suffered from 3,000 SARS cases and nearly 250 deaths now in 30 countries. Without a doubt, the Chinese government's continued cover-up has badly damaged its own economy, the Asian economy, but also the global economy.

Travel advisories have now been issued for Hong Kong and Guangdong Province in China and for Toronto, Canada as well.

I'm sending a letter today, Mr. Chairman, to President Bush. And what I'm saying to him is that I urge you to direct the United States trade representative at the next World Trade Organization roundtable in September in Cancun, Mexico to raise the issue of China's dangerous departure from well understood public health procedures as a cause of concern among its WTO trading partners, and to urge that the WTO make adherence to World Health Organization guidelines a condition of continuing membership in the World Trade Organization.

We cannot have global trade without also abiding by healthcare standards which ensure that the open trading and travel of citizens of the global is accompanied by a well understood adherence to those standards, and I'm going to be pressing on these witnesses the importance for the president to take that stand. And I yield back the balance of my time.

REP. STEARNS: I thank the gentleman.

The gentleman from New Hampshire is recognized.

REP. CHARLES F. BASS (R-NH): Thank you, Mr. Chairman. And I appreciate your efforts in making this hearing possible to discuss trade between the U.S. and Chile and Singapore. And I'm also glad that this subcommittee is setting or continuing to set a place in its important role in determining trade policy and reviewing these two agreements that will soon be before the Congress.

Since 1997, total exports to just these two countries from my home state of New Hampshire have totaled over a third of a billion dollars. And for the entire New England region, that total grows to more than $6 billion. Almost half of these totals were export coded as computers and electronic products, which is directly relative to this hearing today.

In addition, New Hampshire and New England account for an important share of this country's software development and servicing and we're home to a large number of financial, medical, research, telecommunications and other service firms that will benefit from open trade and the president setting e-commerce-specific provisions in these agreements.

Free people of the world prosper when goods and ideas flow without restriction across borders and oceans. When these goods and ideas are digitally manifested, barriers have even fewer justifications than for physical products and services.