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

In the Matter of	)	
	)	
Global Crossing Ltd. and GC Acquisition Limited	)	IB Docket No. 02-286
Application to Transfer Control and	)	
Request for Declaratory Ruling	)	
Allowing Indirect Foreign Ownership	)	

Comments of XO Communications, Inc.

XO Communications, Inc. ("XO") opposes the above-referenced application ("Application") that seeks Commission approval for the transfer of control of Global Crossing Ltd. and GC Acquisition Limited (together, "Global Crossing") to state-owned Singapore Technologies Telemedia Pte Ltd ("ST Telemedia") and the resulting indirect foreign ownership by ST Telemedia. XO has submitted a competing bid for the Global Crossing assets at issue in this proceeding.[1] XO earlier filed a letter in this docket to correct the record with respect to the nature of its bid,[2] and seeks in these comments to expand upon its concerns.

Introduction and Summary

The Communications Act of 1934, as amended, obligates the Commission to provide an independent assessment as to whether the public interest will be served by its approval of the Application. In making this assessment, the Commission must examine, among other things, the possible impact of the Application on national security, law

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[1] On June 25, 2003, XO submitted a revised proposal for a bankruptcy restructuring of Global Crossing that would run in parallel with ST Telemedia's current offer to acquire Global Crossing. *See* XO Communications, Inc. Press Release (June 26, 2003) (attached as Exhibit 1 hereto).

[2] *See* Letter from B. Oliver and D. Kinkoph, XO Communications, Inc. to M. Dortch, Secretary, FCC (June 12, 2003).

enforcement and public safety. The record in this proceeding supports a conclusion that the public interest is not served by the transfer, and XO submits that the record warrants a denial of Global Crossing's Application. If the Commission does not deny the Application outright, however, upon completion of the Committee on Foreign Investment in the United States ("CFIUS") review process, the Commission should either: (a) restart the 180-day "clock" for review of the Application, or (b) at a minimum, provide for an additional comment period so that interested parties can comment upon the outcome of and conditions (if any) imposed as a result of the CFIUS process. This approach will allow the Commission to build a complete record addressing the national security, law enforcement and public safety issues raised by the Application and accordingly to fulfill its statutory review obligation.

The Communications Act Requires The Commission To
Conduct An Independent Public Interest and National Security Review

The Organization for International Investment's assertion that U.S. treaty commitments somehow compel approval of the ST Telemedia transaction misses the mark.[3] This assertion conveniently minimizes the separate and important national security, law enforcement and public safety assessment that must be included in the Commission's required evaluation.[4] In adopting its open entry standard for World Trade Organization ("WTO") member countries in 1997, the Commission expressly acknowledged that it remained "*statutorily obligated* to evaluate all applications to ensure

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[3] *See, e.g.,* Comments of the Organization for International Investment (June 16, 2003) ("OFII Comments") (arguing that the U.S. WTO commitment and the Singapore Free Trade Agreement require the Commission to approve the ST Telemedia transaction).

[4] OFII briefly acknowledges this separate national security component in a footnote. *See* OFII Comments at 5, n.10.

that they are consistent with the public interest."[5] Accordingly, the Commission stated that it would continue to examine national security, law enforcement and public safety concerns as relevant to any decision to grant or deny transfer and/or foreign ownership applications from WTO member country applicants.[6] Although the Commission will defer to the Executive Branch agencies regarding national security, law enforcement and public safety concerns,[7] the Commission "will make an independent decision" regarding such issues during its review of such applications.[8] In short, although the Commission presumes that WTO member country applications do not pose a risk of anticompetitive harm, the Commission "do[es] *not*... presume that [such] an application poses no national security... concerns. [Rather, it] will continue to consider these concerns independent of our competition analysis."[9] Accordingly, independently from its competition analysis, the Commission must address the national security, law enforcement and public safety issues raised in this proceeding.

To Fulfill Its Statutory Obligation, The Commission Must Allow Additional Time To Build A Full Record On The National Security Issues

The Commission evaluates national security, law enforcement and public safety concerns raised by the Executive Branch agencies "in light of all the issues raised (and comments in response) in the context of a particular application."[10] Further, any advice

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5 *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* 12 FCC Rcd 23891, 23911 (1997) ("*Foreign Participation Order*") (emphasis added).

6 *Foreign Participation Order* at 23919.

7 *Id.* at 23919-20.

8 *Id.* at 23921.

9 *Id.* at 23920-21 (emphasis added).

10 *Id.* at 23921.

from the Executive Branch agencies must be in writing and be made a part of the public file in the proceeding.[11] The clear intent of this process is to ensure that all parties both have access to, and the opportunity to comment upon, any national security, law enforcement and public safety issues raised by an application.[12] Accordingly, in order to fully consider the national security concerns that have been raised in this proceeding, the Commission must ensure that all interested parties have had ample opportunity to assess the national security and public interest implications of the ST Telemedia acquisition of Global Crossing.

In this particular case, the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") filed a joint motion in this proceeding (in which the Department of Defense concurred) requesting that the Commission defer any dispositive action on the Application until such time that these agencies notify the Commission that their review has been completed.[13] In February of this year, the Commission suspended its review of the Application, and by extension, tolled the 180-day clock.[14] In April, the Commission again expressly confirmed that it "would not restart the clock . . . during the pendency of

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[11] *Id.* (except, of course, as to classified information).

[12] Members of Congress have filed letters with the Commission raising national security concerns regarding the Application as part of this process. *See* Letter from Sens. Conrad Burns and Ernest F. Hollings to the Hon. Michael Powell, Chairman of the Federal Communications Commission (May 15, 2003); and Letter from Rep. Curt Weldon to the Hon. Michael Powell, Chairman, and the Commissioners of the Federal Communications Commission (June 12, 2003).

[13] *See* DOJ and FBI Motion for Continued Deferral (Oct. 21, 2002) ("DOJ/FBI Motion").

[14] *See* Letter from J. Ball, Chief, Policy Division, FCC to A. Lipman, Swidler Berlin Shereff Friedman LLP (Mar. 27, 2003) (attached as Exhibit 2 hereto) (confirming that the clock remains stopped at day 149). The Commission has applied to this transaction the 180-day informal, non-binding timeline that it applies to complex applications that do not qualify for streamlined processing. *See* www.fcc.gov/transaction/.

applicants' discussion with the Executive Branch on national security, law enforcement and public safety issues. . . ."[15]

Depending upon the outcome of the CFIUS review, the Application could well be considered a "major revision" to the initial application to the extent that it might be subject to an entirely new set of material conditions that could directly affect the Commission's public interest and national security analysis. Although the Commission initially applied its 180-day complex transaction review timeline to the Application, Commission precedent affirms that when applicants "submit revisions during the review period in response to issues raised . . ., the timeline 'clock' is stopped or reset as necessary to afford time for additional public comment."[16] Further, Section 309 of the Communications Act grants third parties the right to challenge "substantial amendments" to applications.[17] These administrative procedures require that interested parties be provided with additional time to comment on the outcome of the CFIUS review process in this proceeding. XO believes that the Commission should either restart the 180-day clock or, at a minimum, establish an additional comment period on these issues.

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[15] *See* Letter from J. Ball, Chief, Policy Division, FCC to A. Lipman, Swidler Berlin Shereff Friedman LLP (Apr. 22, 2003) (attached as Exhibit 3 hereto).

[16] *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, 16549 (IB 2002).

[17] *See* Comments of General Counsel Christopher J. Wright Introducing the Transactions Team presentation on Timely Consideration of the Applications Accompanying Mergers (Mar. 1, 2000) (available at 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 of or any substantial amendment thereof'. . . . *So if major revisions are made to an application, another round of comment is required....*") (emphasis added).

Conclusion

The record developed in this proceeding supports a denial of Global Crossing's Application. If the Commission does not deny the Application, however, upon receiving further notice from the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (and other participating Executive Branch agencies) that the CFIUS review has been completed, the Commission should either (a) restart the 180-day "clock" for review of what may effectively be an entirely new Application with new conditions resulting from the CFIUS process, or (b) at a minimum, establish a new comment cycle to permit interested parties to comment on the conclusions of and conditions imposed, if any, as a result of this national security review process. By ensuring a complete record in this matter the Commission can properly perform its statutory obligation to fully assess the national security, law enforcement and public safety implications of its approval of the Global Crossing Application.

Respectfully submitted,

/s/ Douglas W. Kinkoph
Douglas W. Kinkoph
Vice President
Regulatory and External Affairs

/s/ Christopher T. McKee
Christopher T. McKee
Director of Legal and Regulatory Affairs

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June 26, 2003

dc-352520

CERTIFICATE OF SERVICE

I, Theresa L. Pringleton, do hereby certify that I have on this 26th day of June, 2003, had copies of the foregoing **COMMENTS** delivered to the following via electronic mail or First Class Mail (*), as indicated:

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/s/ Theresa L. Pringleton
Theresa L. Pringleton

* Via First Class Mail

Exhibit 1

XO Offers "Insurance" Policy for Global Crossing Restructuring

Contact XO

Corporate Headquarters
1.703.547.2000
Contact us online

6/26/03

Reston, VA - XO Communications, Inc. ("XO") today announced that it has offered a revised proposal for a bankruptcy restructuring of Global Crossing, Ltd. and Global Crossing Holdings, Ltd. (collectively "Global Crossing") that would run in parallel with Global Crossing's current efforts to emerge from bankruptcy under the terms of its current Purchase Agreement with Singapore Technologies Telemedia PTE ("STT").

XO's revised offer was prompted by Global Crossing's deteriorating financial condition coupled with its pending request to extend, until mid-October, STT's exclusive rights to close a deal with Global Crossing. If approved, Global Crossing's request would prevent the bankrupt company from soliciting other potential offers – a circumstance that would likely prevent an alternative plan from being presented, approved, and consummated until the first quarter of 2004, at the earliest. During a court hearing yesterday, Global Crossing's financial advisor, the Blackstone Group, L.P., acknowledged the uncertainty regarding the company's cash reserves and confirmed that Blackstone had recommended that Global Crossing secure debtor-in-possession financing as early as the end of the third quarter of 2003.

"The prospect of continued exclusivity and a failed STT deal could result in Global Crossing running out of cash without having an alternative restructuring plan in place – a possibility that requires Global Crossing to adopt a 'dual track' approach," said Brian Oliver, Executive Vice President of Strategy and Corporate Development.

"Global Crossing's prolonged bankruptcy and dwindling cash reserves are expected to result in continued erosion of its customer base unless an alternative offer is put in place," added Oliver. "XO has been through the bankruptcy process and understands the necessity of having at least two purchase plans in place in order to retain existing customers and attract new customers. An added benefit of accepting the XO plan is that customers will be more confident that Global Crossing will survive regardless of whether the STT plan is consummated."

The revised offer, which supersedes all prior XO offers with the exception of its tender offer for the $2.25 billion of senior secured bank debt made on June 24, 2003, was detailed in a term sheet that accompanied a letter sent late yesterday by Carl Icahn, XO's Chairman of the Board, to John Legere, CEO of Global Crossing, Ltd. The revised offer contemplates that XO would be authorized to propose and file by July 15, 2003 a Plan and Disclosure Statement ("XO Plan") that includes the following terms:

- XO will pay holders of the $2.25 billion senior secured Global Crossing bank debt $220 per $1,000 of principal, or approximately $495 million in the aggregate.

- XO will pay holders of Global Crossing's pre-petition unsecured indebtedness $200,000,000 in cash in full satisfaction of all unsecured claims.
- A disclosure statement hearing for the XO Plan must occur on or prior to August 16, 2003 and a confirmation hearing for the XO Plan must occur on or prior to September 30, 2003.
- All allowed administrative and priority claims will be paid in full as and when allowed or on such other terms as holders of such allowed administrative and priority claims may agree but such allowed claims shall not exceed $195 million.
- If the STT transaction receives all requisite regulatory approvals (including those required by the Committee on Foreign Investment in the U.S. and the Federal Communications Commission) prior to the confirmation hearing date, then the confirmation hearing for the XO Plan shall be canceled and Global Crossing shall proceed with the STT transaction.
- If the STT transaction has not received all requisite regulatory approvals prior to the XO Plan confirmation hearing, then Global Crossing will terminate its Purchase Agreement with STT, pursuant to the terms of the Purchase Agreement and neither Global Crossing nor XO shall be liable for liquidated damages. Global Crossing shall then immediately proceed to confirmation of the XO Plan.
- The XO offer is subject to the revision by Global Crossing of its pending request in U.S. Bankruptcy Court to extend exclusivity and approval by the Court of a revised motion that would permit Global Crossing to terminate its Purchase Agreement with STT, without incurring liquidated damages, on or after September 30, 2003.
- This XO offer is not subject to due diligence or financing contingencies.

About XO Communications
XO Communications is a leading broadband communications service provider offering a complete set of communications services, including: local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services.

XO has assembled an unrivaled set of facilities-based broadband networks and Tier One Internet peering relationships in the United States. XO currently offers facilities-based broadband communications services in more than 60 markets throughout the United States.

FOR MORE INFORMATION CONTACT:

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Media and Industry Analysts
703-547-2011

THE STATEMENTS CONTAINED IN THIS RELEASE THAT ARE NOT HISTORICAL FACTS ARE "FORWARD-LOOKING STATEMENTS" (AS SUCH TERM IS DEFINED IN THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995). THESE STATEMENTS INCLUDE THOSE DESCRIBING THE EXPECTED FUTURE OPERATIONS AND RESULTS OF OPERATIONS OF GLOBAL CROSSING, AND XO'S ESTIMATE OF THE LENGTH OF TIME THAT GLOBAL CROSSING'S CASH AND MARKETABLE SECURITIES WILL FUND ITS OPERATIONS. MANAGEMENT WISHES TO CAUTION THE READER THAT THESE FORWARD-LOOKING STATEMENTS ARE ONLY PREDICTIONS AND ARE SUBJECT TO RISKS AND UNCERTAINTIES AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE INDICATED IN THE FORWARD-LOOKING STATEMENTS AS A RESULT OF A NUMBER OF FACTORS. THESE FACTORS INCLUDE, BUT ARE NOT LIMITED TO, THOSE RISKS AND UNCERTAINTIES DESCRIBED FROM TIME TO

TIME IN THE REPORTS FILED BY XO COMMUNICATIONS WITH THE SECURITIES AND EXCHANGE COMMISSION, INCLUDING ITS ANNUAL REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2002 AND IN ITS QUARTERLY REPORT ON FORM 10-Q FOR THE QUARTER ENDED MARCH 31, 2003.

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Exhibit 2

Federal Communications Commission
Washington, DC 20554

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March 27, 2003

Re: Application of Global Crossing Ltd. and GC Acquisition Limited for Consent to Transfer Control of Various Licenses and Authorizations and Petition for Declaratory Ruling, IB Docket No. 02-286

Dear Mr. Lipman, Ms. Kiddo, and Mr. Gagnier:

On February 14, 2003, day 149, we stopped the 180-day clock in IB Docket No. 02-286 pending clarification of information counsel for applicants had submitted on February 6, 2003, and pending the acceptability for filing of the February 13, 2003 amendments to the submarine cable and section 214 applications. We stated that we would restart the clock once we had had the opportunity to ensure that the information provided and, if applicable, any comments received were sufficient to allow us to complete our review of the applications. On March 13, 2003, counsel provided the requested clarification to the February 6, 2003 submission. Further, on February 20, 2003, the Policy Division issued a public notice finding the February 13, 2003 amendments to the applications acceptable for filing, and received comments and reply comments, respectively, on March 6 and 13, 2003.

Notwithstanding the foregoing, we will not restart the clock at this time in light of: (1) applicants' request (see Petition for Declaratory Ruling at 20) that the Commission defer dispositive action on the applications "pending notification to the Commission that all issues identified by the Executive Agencies have or have not been resolved ..."; (2) the pending Executive Branch motion of October 21, 2002 to defer dispositive action in the proceeding for review of national security, law enforcement and public safety issues; and (3) the continuing discussions that counsel advises, in its March 25, 2003 letter, are occurring between applicants and the Executive Branch. The clock remains stopped at day 149.

Sincerely,

James L. Ball

James Ball, Chief
Policy Division

Cc: Myla R. Saldivar-Trotter, DOJ
Debbie Goldman, CWA
Karl Schwartz, Global Axxess
William Malone, Counsel for ACN
Julian Gehman, Counsel for Newbridge Capital
David Albalah, IDT Corporation

Exhibit 3

Federal Communications Commission
Washington, D.C. 20554

International Bureau

April 22, 2003

Andrew D. Lipman
Jean L. Kiddoo
Paul O. Gagnier
Counsel for Applicants
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Re: Application of Global Crossing Ltd. and GC Acquisition Limited for Consent to Transfer Control of Various Licenses and Authorizations and Petition for Declaratory Ruling, IB Docket No. 02-286

Dear Mr. Lipman, Ms. Kiddoo, and Mr. Gagnier:

On March 27, 2003, we advised we would not restart the clock in IB Docket No. 02-286 during the pendency of applicants' discussions with the Executive Branch on national security, law enforcement and public safety issues.[1] Subsequently, applicants filed their April 7, 2003 amendment, providing details of anticipated changes to Hutchison Telecom's investment that applicants hope to negotiate with the CFIUS agencies and then incorporate into a proxy agreement to be filed with the Commission along with a network security agreement. In filing the amendment, applicants asked that we review the details provided and, upon receiving Executive Branch notification and the network security and proxy agreements, act promptly, because of applicants' need to satisfy all closing conditions to the consummation of the proposed transaction by April 30, 2003, to condition grant of the applications on applicants' compliance with the executed versions of the network security and proxy agreements.

To date, we have not received Executive Branch notification or copies of the network security and proxy agreements. This letter advises that we 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 and enclosing copies of the negotiated network security and proxy agreements in sufficient time to complete this review.

Sincerely,

James L. Ball

James Ball
Chief, Policy Division

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[1] We cited to: applicants' request in its Petition for Declaratory Ruling, at 20, that we defer dispositive action on the applications "pending notification to the Commission that all issues identified by the Executive Agencies have or have not been resolved ..."; the pending Executive Branch motion of October 21, 2002 to defer Commission action in the proceeding for review of national security, law enforcement and public safety issues; and applicants' March 25, 2003 letter advising of continuing discussion with CFIUS on these issues.

Cc: Myla R. Saldivar-Trotter, DOJ
Debbie Goldman, CWA
Karl Schwartz, Global Axxess
William Malone, Counsel for ACN
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