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

In the Matter of	)	
GLOBAL CROSSING LTD. (Debtor-in-Possession),	)	
Transferor,	)	IB Docket No. 02-286
and	)	
GC ACQUISITION LIMITED,	)	
Transferee,	)	
Application for Consent to Transfer Control and Petition for Declaratory Ruling	)	

REPLY COMMENTS OF GLOBAL CROSSING LTD.
AND GC ACQUISITION LIMITED

Global Crossing Ltd. ("GCL") and GC Acquisition Limited ("New GX" and, together with GCL, "Applicants"), by their undersigned counsel, submit these Reply Comments in response to the recent comments of XO Communications, Inc. ("XO").[1]

While XO feigns concern about the impact of the Amended Transaction on national security and law enforcement, its real motive is to delay review of the transaction to gain an advantage in its attempt to acquire GCL.[2] The Commission should not permit its processes to be abused in this way. The Bankruptcy Court has rejected XO's efforts to interfere in GCL's reorganization and has approved the Amended Transaction. Further, XO's request that the

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[1] *In re Global Crossing Ltd.*, IB Docket 02-286, Comments of XO Communications, Inc. (June 26, 2003).

[2] XO's new-found concern regarding foreign investment is curious in light of the fact that less than one year ago XO requested and obtained approval for foreign investors to obtain a substantial interest in XO as part of its own Chapter 11 reorganization. *In re XO Communications, Inc.*, 17 FCC Rcd 19212 (2002) ("*XO Order*"). In that proceeding, XO asserted that the proposed foreign investment raised no national security or law enforcement issues. *In re XO Communications, Inc.*, File No. ISP-PDR-20020221-00007, Application for Transfer of Control and Petition for Declaratory Ruling (filed Feb. 21, 2002) at 24. Although the transaction was not concluded, XO consistently argued that the proposed foreign investment was consistent with the U.S. public interest.

Commission "restart the clock" or solicit comments following approval by the Committee on Foreign Investment in the United States ("CFIUS") is inconsistent with Commission precedent. Accordingly, the Commission should proceed with its review and should be prepared to grant the Application promptly following CFIUS approval.

The Bankruptcy Court Has Approved The Amended Transaction

On December 17, 2002, the Bankruptcy Court approved GCL's Plan of Reorganization, which was based on a proposed transaction involving investment from Singapore Technologies Telemedia Pte Ltd and Hutchison Telecommunications Limited.[3] On July 1, 2003, the Bankruptcy Court issued a decision (the "Bench Decision"), over XO's objections,[4] that approved technical amendments to the Purchase Agreement for the proposed transaction, approved mutual releases between GCL and Hutchison Telecom, and extended the exclusive period during which GCL may file a plan of reorganization and solicit acceptances to October 28, 2003.[5] In light of the Bankruptcy Court's ruling, the Commission's review of the Amended Transaction should proceed immediately.

XO's Request To Restart The Clock Or To Solicit Additional Public Comment Is Not Supported By Commission Precedent

In support of its argument that the Commission should restart the clock or solicit additional public comment following CFIUS approval of the Amended Transaction, XO misinterprets the

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[3] The Bankruptcy Court's written order was issued on December 26, 2002. Hutchison Telecommunications Limited terminated its proposed investment on April 30, 2003.

[4] Copies of the objections of XO and IDT Corporation were filed with the Commission on June 26, 2003 by American Communications Network. *In re Global Crossing Ltd.*, IB Docket 02-286, Opposition to Amended Applications and Petition for Declaratory Ruling (June 26, 2003).

[5] A copy of the Bench Decision is attached as Exhibit A. The Bench Decision also called XO to task for what the Bankruptcy Court called XO's attempt to "derail the regulatory approval process." At the same time XO has been urging the Commission to deny the Application or, alternatively, to restart the Commission's review or seek additional public comment, it has been advising the Bankruptcy Court that the Amended Transaction is unlikely to receive timely regulatory approval. The Bankruptcy Court rejected XO's argument, stating that the testimony of XO's principal witness was "wholly unconvincing" and noting that "XO has taken active, affirmative steps seeking to block the requisite regulatory approvals." Bench Decision at 18 and n. 35. While the Bankruptcy Court has extended the exclusivity period until October 28, 2003, due to the continuing restraints of GCL's bankruptcy status, it is critical that the Amended Transaction be consummated as soon as possible.

Foreign Participation Order.[6] In addition, XO fails to cite a single transaction in which the Commission followed XO's suggested approach to addressing national security and law enforcement issues. The reason for this is clear: both the *Foreign Participation Order* and Commission precedent are contrary to XO's position.

Neither the plain language nor the intent of the *Foreign Participation Order* requires the Commission to start a new proceeding or to seek comment regarding national security or law enforcement matters raised by the Executive Branch with respect to a transaction. To the contrary, the *Foreign Participation Order* provides that the Commission must consider "any national security, law enforcement, foreign policy, and trade concerns *raised by the Executive Branch*."[7] That requirement recognizes that the identification and resolution of these difficult issues are "uniquely within the expertise of the Executive Branch."[8] For that reason, while the Commission independently examines whether a proposed transaction is in the public interest, it "accord[s] deference to the expertise of Executive Branch agencies" in identifying, interpreting, and resolving national security and law enforcement matters.[9] Thus, XO's assertion that the Commission must seek comment on the Executive Branch's advice is not contemplated by the *Foreign Participation Order* or consistent with the inter-agency process described therein.

XO's proposed course of action also is contrary to the Commission's practice – including XO's own experience. XO fails to identify a single transaction in which the Commission has proceeded as XO suggests. Certainly, XO did not urge the Commission to adopt this approach in connection with the proposed foreign investment in XO, and the Commission did not do so.[10] Rather, consistent with the *Foreign Participation Order*, the Commission has repeatedly stated

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

7 *Id.* at ¶ 59 (emphasis added).

8 *Id.* at ¶ 62.

9 *Id.* at ¶ 63.

10 *XO Order* at ¶¶ 36-40.

that while it considers the entire record in determining whether a transaction is in the public interest, it also affords appropriate deference to the Executive Branch in identifying and resolving national security and law enforcement issues.[11] XO provides no convincing reason why the Commission should depart from the requirements of the *Foreign Participation Order* or its precedent. Therefore, the Commission should deny XO's request.

Status of Asia Global Crossing Ltd. and
PC Landing Corp. Bankruptcy Proceedings

As Applicants have advised the Commission, on or about March 10, 2003, Asia Global Crossing Ltd. ("AGCL") completed the sale out of bankruptcy of substantially all of its assets to Asia Netcom Corporation.[12] On June 12, 2003, AGCL announced that its Chapter 11 reorganization had been converted into a Chapter 7 liquidation. Pursuant to that process, the remaining assets of AGCL will be sold and the proceeds will be distributed to AGCL's creditors.

On June 5, 2003, PC Landing Corp. ("PC Landing") announced that the U.S. Bankruptcy Court for the District of Delaware had approved the sale of its assets to Pivotal Telecom, LLC. PC Landing stated that the sale transaction is expected to close by the end of 2003 following receipt of required regulatory approvals.[13]

Despite these developments, Applicants believe that Commission approval is required to transfer control of PC Landing. 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.

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[11] *Id.* ¶ 39; *In re Lockheed Martin Global Telecommunications, Comsat Corp., and Telenor Satellite Mobile Serv.*, 16 FCC Rcd 22897 (2001) at ¶ 50; *In re VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779 (2001) at ¶ 76.

[12] Letter from Paul O. Gagnier, Counsel for Applicants, to Marlene H. Dortch, FCC (Mar. 20, 2003).

[13] See http://www.heraldnet.com/Stories/03/6/6/17045263.cfm. Applicants expect that PC Landing will file with the Commission in connection with the transaction and will advise the Commission when and if that occurs.

In the event one of the above events occurs before a final Commission order in this proceeding, Applicants will promptly advise the Commission so that the appropriate action can be taken. If none of them has occurred when an order is issued, the order should contain appropriate language noting the status of the AGCL and PC Landing bankruptcy proceedings and the effect of the conclusion of those proceedings on the eventual disposition of PC Landing.

Conclusion

For the reasons set forth above and in their prior submissions, Applicants request that the Commission continue its examination of the Amended Transaction and be prepared to grant the Application promptly following the conclusion of CFIUS's review of any national security and law enforcement issues.

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Dated: July 3, 2003

CERTIFICATE OF SERVICE

I, Ivonne Diaz, hereby certify that on this 3rd day of July 2003, I caused a true and correct copy of the foregoing Reply Comments of Global Crossing Ltd. and GC Acquisition Limited to be served upon the following parties in the manner indicated:

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