**Before the**
**Federal Communications Commission**
**Washington, D.C.**

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| In the Matter of | ) | |
| | ) | |
| Global Crossing Ltd. and | ) | CC Docket No. 99-264 |
| Frontier Corporation | ) | |
| | ) | |
| Applications for Transfer of Control | ) | |
| Pursuant to Sections 214 and 310(d) | ) | |
| of the Communications Act, as amended | ) | |
| | ) | |

# MEMORANDUM OPINION AND ORDER

**Adopted: September 21, 1999** **Released: September 21, 1999**

**By the Chiefs, Wireless Telecommunications Bureau, International Bureau, and Common Carrier Bureau:**

## I. INTRODUCTION AND BACKGROUND

1. On March 16, 1999, Global Crossing Ltd. (Global Crossing) and Frontier Corporation (Frontier) executed an Agreement and Plan of Merger, pursuant to which Global Crossing would acquire control of Frontier and its operating companies.[1] On April 26, 1999, Global Crossing and Frontier (collectively, Applicants) filed applications pursuant to sections 214 and 310 of the Communications Act, as amended (the Act), seeking authorization for the transfer of control to Global Crossing of certain cellular, paging, cable television relay, business radio, industrial/business radio telephone maintenance, and point-to-point microwave licenses, and domestic and international 214 authorizations held directly or indirectly by Frontier and its subsidiaries.

[1] *Applications for Approval of Transfer of Control of Frontier Corporation to Global Crossing Ltd.*, filed April 26, 1999 (Applications). The Applications included FCC Forms 603, 703, 704 and 327, as well as separate applications for authority to transfer authorizations pursuant to section 214 of the Communications Act, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18. Each of the Applications includes an essentially identical Description of the Transaction and an exhibit regarding foreign ownership issues. Unless otherwise indicated, citations herein to the Applications will refer to those statements as filed with the applications pursuant to Section 214 and Part 63. *See also infra* note 58 (discussing separate application to transfer Frontier's submarine cable landing license).

2. Through its subsidiaries, Frontier operates a "full-service" domestic telecommunications company that provides fully unified voice and data communications services to residential, business and "carrier" customers throughout the United States.[2] Frontier is authorized to provide intrastate interexchange services throughout the country. It is qualified as a competitive local exchange carrier in twenty-nine states and provides incumbent local exchange services in thirteen states.[3] Frontier also provides a full range of enhanced and other information services. Through one of its subsidiaries it offers a complete range of data and Internet services, including high-end content distribution, dedicated connectivity, e-commerce capabilities, dial-up Internet access, and web management services. It has not substantially expanded into the international facilities-based market.[4]

3. The Applicants state that Global Crossing is the developer, owner, and operator of "the world's first independent global submarine and terrestrial fiber optic network,"[5] operating as a carrier's carrier that provides a global fiber optic network for data, voice, video, and Internet. It has built private submarine cables that offer "global connectivity to international carriers and Internet service providers."[6] When completed, Global Crossing's communications network will span four continents, connect approximately 100 cities, and address 80 percent of the world's international traffic. When completed, its fiber network will total more than 81,000 route kilometers.[7] Other than backhaul facilities for its cable landing sites, Global Crossing's current system does not include domestic terrestrial capacity.[8] The Applicants claim that neither company competes in markets served by the other and that, with one minor exception discussed below, "neither is a likely potential entrant into the other's market."[9]

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[2] *Id.* at 2.

[3] *Id.* at 7.

[4] *Id.* at 7-8.

[5] *Id.*

[6] *Id.* at 4.

[7] More specifically, its network will be made up of three segments. The first segment will use submarine cable to link the United States, the United Kingdom, the Netherlands, and Germany and will be complemented by a terrestrial network that will connect at least 24 European cities. The second segment will link the United States with Japan and will connect with the Global Access Ltd. terrestrial network that links Tokyo, Osaka, and Nagoya, Japan. The third segment will be comprised of three undersea and terrestrial cable systems in the Americas that will be interconnected with the first two segments. In addition, Global Crossing is building another transatlantic cable. *Id.* at 4-5.

[8] *Id.* at 4-7.

[9] *Id.* at 2. The Applicants cite "the possible exception of the already-competitive domestic long-distance market." *Id.* We discuss this point in para. 18, below.

4. On May 14, 1999, the Applications for transfer of control were placed on public notice.[10] Three parties filed timely petitions in opposition: Price Communications Corporation (Price), Qwest Communications Corp. (Qwest), and PSINet, Inc. (PSINet).[11] The Applicants filed a consolidated opposition to the three petitions.[12] All three petitioners filed a reply.[13]

5. During the public notice period, Global Crossing informed the Commission that it had entered into a separate agreement with U S West, Inc. (U S West), pursuant to which Global Crossing would merge with U S West as well.[14] Qwest and PSINet each argued that the consideration of the Global Crossing-Frontier applications should be deferred and considered with the applications for the then-anticipated merger between Global Crossing and U S West. The Applicants took the position that the Global Crossing-Frontier transaction and the Global Crossing-U S West transaction were independent, and that processing of the proposed merger with Frontier should proceed without regard to the prospective U S West merger. Subsequently, on July 23, 1999, the Applicants advised the Commission that Global Crossing and U S West had terminated their merger agreement.[15] Because the Global Crossing-U S West transaction has now been abandoned, Qwest and PSINet have each moved to withdraw its petition in this proceeding, motions that we grant with this Order.[16] Therefore, only Price's petition remains.

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[10] *Frontier and Global Crossing Seek FCC Consent to Transfer Control of Licenses and Authorizations from Frontier to Global Crossing*, Public Notice, DA 99-921 (rel. May 14, 1999). This proceeding was later docketed. *See* Procedure Changes -- Frontier and Global Crossing Application Seeking FCC Consent to Transfer Control of Licenses and Authorizations from Frontier to Global Crossing Changed to Docketed Proceeding, *Public Notice*, DA 99-1511 (rel. July 29, 1999).

[11] Petition to Deny, filed June 15, 1999 by Price Communications Corporation (Price Petition); Petition to Dismiss or Deny, filed June 15, 1999 by Qwest Communications Corp.; Petition to Deny and to Defer, filed June 15, 1999 by PSINet, Inc.

[12] Consolidated Opposition to Petitions to Deny, filed June 25, 1999 by Frontier Corporation and Global Crossing Ltd. (Consolidated Opposition).

[13] Response to Consolidated Opposition to Petitions to Deny, filed June 30, 1999 by PSINet; Reply to Consolidated Opposition to Petitions to Deny, filed July 2, 1999 by Price (Price Reply); Reply to Consolidated Opposition to Petitions to Deny, filed July 2, 1999 by Qwest Communications Corp. On June 29, 1999, Price and Qwest filed motions, which the Applicants opposed, requesting extension of the time in which to file a reply; Price and Qwest were each granted an extension of time until July 2, 1999.

[14] Letter from James C. Gorton, Senior Vice President & General Counsel, Global Crossing Ltd., and Martin T. McCue, Senior Vice President & General Counsel, Frontier Corporation to Maria Ringold, Office of Public Affairs, Federal Communications Commission (May 17, 1999).

[15] Letter from Martin T. McCue, Senior Vice President & General Counsel, Frontier Corporation, Eliot J. Greenwald, Swidler Berlin Shereff Friedman, LLP, and William J. Sill, Donelan Cleary Wood & Maser, P.C. to Magalie Roman Salas, Secretary, Federal Communications Commission (July 23, 1999).

[16] *See* Motion to Withdraw or to Dismiss Without Prejudice Petition to Deny, filed July 26, 1999 by Qwest Communications Corporation; Motion to Withdraw or to Dismiss Without Prejudice Petition to Deny and to Defer, filed Aug. 3, 1999 by PSINet.

## II. DISCUSSION

6. The Applicants have applied for our consent to the proposed transfer of control of certain wireless licenses and wireline authorizations held directly or indirectly by Frontier, as part of a merger of the two companies. The only remaining challenge to the applications is the petition filed by Price. Based on the record, we find that Applicants have demonstrated that the proposed transfers serve the public interest, and we accordingly grant the applications.

### A. Statutory Authority

7. Before the Commission can approve the transfer of control of authorizations and licenses in connection with a proposed merger, sections 214(a) and 310(d) of the Communications Act require the Commission to find that the proposed transfers serve the public interest.[17] The legal standards of sections 214(a) and 310(d), which we must apply to the transfers before us, require us to weigh the potential public interest harms against the potential public interest benefits.[18] The Communications Act's public interest standard requires us to consider both the possible competitive effects of the proposed transfers and the broader aims of the Communications Act and federal communications policy.[19] These aims include, among other things, implementing Congress' pro-competitive, de-regulatory national policy framework designed to open all communications markets to competition, preserving and advancing universal service, and accelerating private sector deployment of advanced services.[20]

### B. Qualifications

#### 1. Transferor

8. Price argues that the Applicants have not provided sufficient information about Frontier's ownership of the cellular licenses involved for the Commission to make a public interest determination with respect to their transfer under section 310(d) of the Act.[21] Price also

[17] 47 U.S.C. §§ 214(a), 310(d); *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18,025, 18,030-35 ¶¶ 8-14 (1998) (*WorldCom-MCI Order*).

[18] *WorldCom-MCI Order*, 13 FCC Rcd at 18,030-31 ¶ 9. Where necessary, the Commission may attach conditions to the transfer of authorizations or licenses to ensure that the public interest is served by the transaction. *Id.* at 18,031-32 ¶ 10 (quoting 47 U.S.C. §§ 214(c), 303(r)).

[19] *See* 47 U.S.C. §§ 214(c), 303(r); *WorldCom-MCI Order*, 13 FCC Rcd at 18,030-31 ¶ 9.

[20] *See, e.g., WorldCom-MCI Order*, 13 FCC Rcd at 18,030-31 ¶ 9; 47 U.S.C. §§ 254, 259, 332(c)(7), 706; Preamble to Pub. L. No. 104-104, 110 Stat. 56 (1996).

[21] Price challenges only the ownership of the cellular licenses at issue, and not the ownership of the paging, cable television relay, and private microwave licenses addressed by the Applications. We note, however, that a number of the common carrier microwave licensees involved in the Applications are the same entities as a number

questions whether Frontier actually controls the cellular licenses at issue.[22] Finally, in its reply, Price argues that Frontier's qualifications as a licensee are in doubt.[23] In response, the Applicants contend that they have filed all required information regarding Frontier's ownership interests, that Frontier controls the licenses at issue, and that Price has failed to raise any issue regarding Frontier's qualifications as a licensee.[24]

9. First, we conclude that the Applicants have provided sufficient information regarding Frontier's ownership and control of the cellular licenses at issue here. Frontier and Global Crossing have fully responded to all questions on the relevant forms, and have provided all ownership information required by our rules.[25] The record also supports the conclusion that Frontier has a controlling interest in the licenses in question through its partnership interest in Upstate Cellular Network (UCN), a general partnership between subsidiaries of Frontier and Bell Atlantic (formerly NYNEX). As a general partner in UCN, Frontier holds a controlling interest by definition.[26] UCN, in turn, is either the licensee or holds a general partner interest (or, in several cases, the sole general partner interest) in the licensee for all of the cellular licenses at issue. This is sufficient to establish control, and Price has not provided any information that refutes this showing.

10. We also conclude that Price has failed to raise any significant issue regarding Frontier's qualifications. In evaluating transfer of control applications under section 310(d) of the Act, we do not re-evaluate the qualifications of the transferor unless the Commission has designated issues related to its basic qualifications for hearing.[27] There is no such inquiry

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of the cellular licensees.

[22] Price Petition at 4-12.

[23] Price Reply at 5.

[24] Consolidated Opposition at 4-7.

[25] We note that Price's arguments are based, in part, on Commission rules that have been repealed. For instance, Price relies in part on the requirements of section 22.108 of the Commission's rules, which required applications for assignment or transfer to provide information regarding holders of five percent or more in the licensee and all affiliates of the licensee. Price Petition at 5. Section 22.108 was deleted in January 1999 and replaced with section 1.919, which significantly reduces the amount of information that assignment and transfer applicants are required to submit and, by requiring filing of Form 602, raises the benchmark for reporting disclosable interest holders to ten percent. 47 C.F.R. § 1.919(b). Equally unpersuasive is Price's reliance on *Eric Fishman*, 65 Rad.Reg.2d 694 (CCB 1988). Price Petition at n.6. This case involved former rule section 22.13, which was directed at the disclosures of tentative selectees of cellular lotteries to ensure compliance with ownership rules. This section did not apply to transfers of the sort at issue here and, in any case, has been deleted.

[26] *See* Stephen F. Sewell, "Assignments and Transfer of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 310 (1991) (discussing Commission's treatment of control in partnerships).

[27] *See MobileMedia Corporation, et al.,* 14 FCC Rcd 8017 (1999) (citing *Jefferson Radio Co. v. FCC,* 340 F.2d 781, 783 (D.C. Cir. 1964)).

ongoing at this time, and Price has provided no information that would cause us to begin such an inquiry.[28] Further, we reject Price's contention that the transfer should be deferred pursuant to the Commission's *Jefferson Radio* policy.[29] That policy applies to issues regarding a licensee's basic qualifications that, if proved, could result in the loss of operating authority or denial of a pending application,[30] which is not the case here. Therefore, we deny Price's petition.

### 2. Transferee

11. Section 310(b)(4) of the Communications Act allows the Commission to deny or revoke a common carrier radio license if more than 25 percent of an entity that controls the applicant or licensee is owned by, *inter alia*, a company organized under the laws of a foreign country and the Commission finds that denial or revocation would serve the public interest.[31] The Commission most recently refined this public interest inquiry in its 1997 *Foreign Participation Order*. There, the Commission found that, because additional foreign investment can promote competition in the U.S. market, the public interest would be served by permitting more open investment by entities from countries that are members of the World Trade Organization (WTO).[32]

12. When analyzing investment by entities from countries that are not members of the WTO, however, the Commission engages in a more stringent analysis. The Commission concluded that its goals of increasing competition and opening foreign markets would continue to be served by opening the U.S. market to investors from non-WTO countries only to the extent that the investors' home markets are open to U.S. investors.[33] If more than 25 percent of an

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[28] Moreover, the precedent that Price cites on this issue does not support its position. *Roy M. Speer*, 11 FCC Rcd 18,393 (1996), and *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2554 (1997), stand for the proposition that a transferor must be basically qualified, but each involved a different situation than Price suggests. In each case, specific factual allegations were made against the transferor involving such serious violations of Commission rules that revocation proceedings were in order. Here, Price provides only a vague suggestion that Frontier lacks basic licensee qualifications and does not allege that Frontier has violated Commission rules in a manner that would cause us even to consider revocation.

[29] Pursuant to longstanding Commission policy, as explained in *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1994), a transfer or assignment application will not be granted when issues designated for hearing regarding the qualifications of the transferor or assignor remain unresolved.

[30] *In re Application of Mark R. Nalbone, Receiver*, Memorandum Opinion and Order, 6 FCC Rcd 7529 (Video Services Division 1991). Price cites this case for the proposition that we must defer action on the Application pending more in-depth consideration of Price's allegations. Price Reply at n.6. We disagree with Price's interpretation of how *Mark R. Nalbone* applies the *Jefferson Radio* policy because we do not believe that *Jefferson Radio* requires that we delay action on these Applications.

[31] 47 U.S.C. § 310(b)(4); *see Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,890, 23,935 ¶ 97, *recon. pending* (*Foreign Participation Order*).

[32] *Id.* at 23,940 ¶ 111.

[33] *See id.* at 23,946 ¶ 131 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order,

entity that controls a common carrier radio licensee is owned of record or voted by aliens, foreign governments or their representatives, or foreign corporations whose nationality is in a non-WTO country, then the Commission will conduct an "effective competitive opportunities" (ECO) analysis. The purpose of an ECO analysis is to assess whether U.S. entities are legally and practically able to own a similar interest in a company operating in the same service sector in that foreign country.

13. Because Global Crossing would not itself hold any radio licenses and would not directly own more than one-fifth of the capital stock of a licensee, the prohibitions of section 310(b)(2) and (3) do not apply.[34] Rather, Global Crossing's ownership of the licensees would be indirect; that is, Frontier's licensee subsidiaries would be controlled by companies that are owned by Global Crossing, a company organized under the laws of Bermuda.[35] In this situation, section 310(b)(4) applies, and the Commission must determine whether denial would serve the public interest.

14. We focus our analysis on the fact that Global Crossing is a foreign corporation. As discussed above, section 310(b)(4) is not otherwise implicated under the public interest analysis adopted in the *Foreign Participation Order* where, as here, non-WTO investment in the ultimate parent company does not exceed 25 percent. According to the Applicants, at least 55.11 percent of Global Crossing's common stock is directly and indirectly held by the U.S. directors and officers of Global Crossing.[36] The only substantial non-U.S. investment is a 22.15 percent interest held indirectly by the Canadian Imperial Bank of Commerce, a Canadian banking institution the shares of which are widely held and publicly traded on, *inter alia*, the Toronto Stock Exchange and the New York Stock Exchange.[37] Because Canada is a member of the WTO, CIBC's investment is presumptively in the public interest.[38] Another 12 percent of Global Crossing's stock is publicly traded on the Nasdaq National Market and is widely held, primarily by U.S. citizens. Applicants also state that the overall percentage of U.S. ownership of Global Crossing is not expected to change significantly following consummation of the proposed merger, given that the vast majority of Frontier's shareholders are reasonably believed to be U.S.

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11 FCC Rcd 3873, 3944 ¶ 186 (1995) (*Foreign Carrier Entry Order*)).

[34] Price is incorrect when it argues that Global Crossing must establish that it is less than 25 percent foreign owned. *See* Price Petition at 12. No provision of the Act or our rules requires such a showing. We find also, contrary to Price's assertion, that the Applicants have provided all the ownership information that is required by our rules and that is necessary for us to make our public interest determination under section 310(b)(4).

[35] *See* Applications, Att. A, at 2; *see also* Letter from Jean L. Kiddoo *et al*., Counsel for Applicants, to Magalie Roman Salas, Secretary, FCC (Aug. 13, 1999), at 2 (August 13 *Ex Parte* Letter) (confirming corporate structure to be used by Global Crossing).

[36] *See* Applications, Att. A, at 3.

[37] *See id.*, Att. C.

[38] *See Foreign Participation Order*, 12 FCC Rcd at 23,893, 23,913, 23,940 ¶¶ 2, 50, 111.

citizens.[39]

15. In deciding whether to apply the ECO analysis to ownership by a foreign company such as Global Crossing, the Commission first identifies that company's "home market."[40] It is not dispositive that Global Crossing is organized under the laws of Bermuda; rather, the Commission uses a "principal place of business" test to determine a company's home market.[41] The Commission also will consider other means of determining an entity's nationality if such other means are appropriate.[42]

16. Here, balancing the five factors of the Commission's "principal place of business" test,[43] it is clear that Global Crossing's business is principally conducted in countries that are members of the WTO, not in Bermuda:

(1) *Place of incorporation:* Bermuda.

(2) *Nationality of investment principals, officers, and directors:* Global Crossing states that U.S. citizens hold all key management positions and 15 of 18 seats on its board of directors. The three others are citizens of Canada, Japan, and the United Kingdom, each of which is a member of the WTO. It is majority-owned by U.S. citizens, and the only substantial non-U.S. investor is the Canadian banking institution, CIBC.[44] Most of the remaining stock is held by U.S. citizens.[45]

(3) *Country in which its world headquarters is located:* Global Crossing's Bermuda office is "the locus of [its] off-shore cable system assets and is the operational headquarters for the global system."[46] Twenty-one percent of its employees are based in the Bermuda office. Its office in Beverly Hills, California, serves as the place of employment for many of its key employees and is the office from which it conducts its holding company activities.[47]

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39 Applications, Att. A, at 3-4 & n.9

40 *See Foreign Participation Order*, 12 FCC Rcd at 23,941–42 ¶ 116.

41 *See id*.

42 *See id.*

43 *See Foreign Carrier Entry Order*, 11 FCC Rcd at 3951 ¶ 207 (listing the five factors). *See also, e.g., AT&T Corp. and Loral Spacecom Corporation*, 12 FCC Rcd 925 (1997) and *Melbourne International Communications, Ltd.*, 12 FCC Rcd 898 (1997) (applying the principal place of business test).

44 *See supra* para. 14.

45 *See* Applications, Att. A, at 3–4.

46 *Id.* at 3 n.6.

47 *Id.* at 3.

(4) *Country in which the majority of its tangible property is located:* Global Crossing is a global business, and its tangible property is not principally located in any one country. The great majority of its property is, however, either located in countries that are members of the WTO or located in international waters connecting countries that are members of the WTO. Global Crossing states that the portion of its property located in non-WTO member countries "does not constitute a significant portion of Global Crossing's total tangible property."[48]

(5) *Country from which it derives the greatest sales and revenues from its operations:* Global Crossing states that "virtually all" of its revenues are derived from sales to customers located in countries that are members of the WTO.[49]

17. On balance, we find that Global Crossing principally conducts its business in countries that are members of the WTO. Citizens of the United States or WTO member countries hold all key management positions and all director positions in the company. U.S. citizens own a majority of the company's stock, and the only substantial non-U.S. investor is a Canadian banking institution. Further, the great majority of Global Crossing's tangible property is located in, and virtually all of its revenues are derived from, WTO member countries. These facts outweigh Global Crossing's Bermuda incorporation and headquarters location. Therefore, we believe that it would best serve the policies adopted in the *Foreign Participation Order* to apply the Commission's WTO standard to Global Crossing's indirect ownership of common carrier radio licensees. Accordingly, we do not apply an ECO analysis, and there is a strong presumption that no competitive concerns are raised by the foreign ownership at issue here.[50] Seeing no reason to rebut that presumption, we find, pursuant to section 310(b)(4) and the Commission's *Foreign Participation Order*, that the public interest would be served by allowing the proposed indirect foreign ownership.[51] This finding allows the common carrier radio licenses held by Frontier's subsidiaries to be indirectly owned by Global Crossing, the Canadian Imperial Bank of Commerce, and CIBC's direct and indirect subsidiaries.[52]

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[48] *See* August 13 *Ex Parte* Letter at 2.

[49] *See id.*

[50] *See Foreign Participation Order*, 12 FCC Rcd at 23,913 ¶ 50.

[51] We note that the Executive Branch has not raised any national security, law enforcement, foreign policy or trade concerns with respect to the proposed transaction.

[52] *See* August 13 *Ex Parte* Letter at 1 (limiting its request to seek permission to have unlimited indirect foreign ownership of its future radio licensee subsidiaries by Global Crossing and CIBC and CIBC's direct and indirect subsidiaries). The merged company would need additional Commission authority under section 310(b)(4) before foreign entities other than Global Crossing and CIBC may own in the aggregate a greater-than-25-percent indirect interest in the licensee subsidiaries. For this purpose, non-U.S. ownership of Global Crossing or CIBC would be included in the total indirect foreign ownership of the licensee subsidiaries. We note that, in its August 13, 1999 letter, Global Crossing's request stated that it sought authority for unlimited "direct" foreign ownership, as opposed to "indirect." In all previous correspondence on this issue, Global Crossing clearly requested authority for unlimited indirect foreign ownership. Therefore, we treat the request as one for unlimited indirect foreign ownership and

## C. Public Interest Analysis

### 1. Potential Public Interest Harms

#### a. Domestic and International Services

18. We begin by analyzing whether the merger of Global Crossing and Frontier will have any adverse impact in the relevant communications services markets, as envisioned by the Communications Act. Applicants state that "[n]either company currently competes in the market sectors served by the other and, with the possible exception of the already competitive domestic long distance market, neither is a likely potential entrant into the other's market."[53] Although Frontier holds several international section 214 authorizations, it is primarily a "major player across the country in many sectors of the domestic telecommunications industry."[54] Global Crossing does not compete in Frontier's domestic markets but, rather, builds "competitive private submarine and terrestrial fiber optic cable systems that offer global connectivity to international carriers and Internet Service Providers."[55] Other than their own statement about possibly competing in the domestic long distance market, there is no allegation or evidence in the record that Global Crossing and Frontier have any intent, or are particularly likely, to enter each other's market sectors in the absence of a merger or acquisition. There is also no allegation or evidence in the record that the companies are among a limited number of significant potential competitors in each other's markets. Further, there is no allegation or evidence that, as compared to other actual or potential competitors, Global Crossing and Frontier have any special capabilities or incentives to enter each other's market sectors, whether by virtue of significant financial resources or expertise, telecommunications assets or brand name reputation in each other's service territories. Moreover, even if we were to determine that both Global Crossing and Frontier would provide long distance services in the same market, we have found that the number of facilities-based domestic long distance providers is increasing.[56] Therefore, the instant merger is unlikely to lead to any potential public interest harm.

19. Based on this record, we find that the merger of Global Crossing and Frontier will not eliminate any significant potential market participants in their respective market sectors for the relevant communications services for either the mass market or large business market. The instant merger will not create a communications services provider of sufficient size to dominate any relevant communications market or affect significantly the Commission's implementation of

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consider the statement in the August 13, 1999 letter to be a typographical error.

53 Applications at 2.

54 *Id.* at 8.

55 *Id.* at 8-9.

56 *WorldCom-MCI Order*, 13 FCC Rcd at 18,039-70 ¶¶ 23-77.

the Communications Act and federal communications policy. We thus conclude that the proposed merger of Global Crossing and Frontier is unlikely to result in any adverse effect on competition or federal communications policy.

### b. Other International Issues

20. As discussed above, we find that the merger of Global Crossing and Frontier will not eliminate one of a limited number of most significant market participants in their respective market sectors for the relevant communications services, including international services, for either the mass market or large business market. There is also no allegation or evidence in the record to demonstrate that the proposed merger would affect competition adversely in any input market that is essential for the provision of international services.[57] While Global Crossing is constructing significant submarine cable capacity, including backhaul capacity, Frontier has no substantial international facilities.[58] No party filed an opposition to the Applicants' request that we transfer control of Frontier's international section 214 authorizations to Global Crossing. We find no basis to conclude that the proposed merger would have anti-competitive effects in any U.S. international services market.

21. Our conclusion that the merger would not have anti-competitive effects in any U.S. international market includes our consideration of whether, as a result of its acquisition by Global Crossing, Frontier (and its operating subsidiaries) would become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that Frontier is authorized to serve. We also consider whether, as a result of its acquisition of Frontier, Global Crossing would become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that Global Crossing is authorized to serve.[59] As the Commission

[57] *See id.* at 18,071 ¶ 81 ("the Commission appropriately has tended to focus its analysis on particular inputs in considering competitive effects on international routes").

[58] *See supra* paras. 2-3. Frontier's ownership of U.S. international facilities is *de minimis*. Frontier Communications Services, Inc. reported that it had one T-1 circuit between the United States and Canada during 1998. *See* Frontier Communications Services, Inc. Annual Circuit Status Report (filed Mar. 31, 1999). As of 1998, Frontier also had 0.19% of the total TAT-12/13 undersea cable capacity and 0.21% of the U.S. half capacity on that system. *See* TAT-12/13 WDM Upgrade Program Schedules at Schedule C-10 and WDM-3 Upgrade Program Schedules at C-15 (Feb. 3, 1998) in Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc., CC Docket No. 97-211. Frontier Communications is a licensee in a recently authorized undersea cable system known as the Japan-U.S. Cable Network. *See AT&T Corp. et al.*, File No. SCL-LIC-19981117-00025, FCC 99-167 (rel. July 9, 1999). Frontier Communications has the following interests in that cable system: a 0.22630% investment share and allocation of network capital costs, and a 0.18692% capacity allocation, ownership interest in segments, and voting interest. *See* Application of Frontier Communications Services, Inc. for Transfer of Control of a Cable Landing License from Frontier Corporation to Global Crossing Ltd., File No. SCL-TAO-19990914-00018 (filed Sept. 14, 1999). On September 21, 1999, the International Bureau granted the Applicants special temporary authority (STA) to transfer control of Frontier's license for the Japan-U.S. Cable Network to Global Crossing. This grant is without prejudice to consideration of the underlying transfer of control application for this cable landing license, which Frontier filed concurrently with its STA request.

[59] We recently granted international section 214 authorization to Global Crossing Marketing USA Inc., an indirect wholly owned subsidiary of Global Crossing. *See* Public Notice Report No. TEL-00098, DA 99-1152, rel.

observed in the *Foreign Participation Order*, the exercise of foreign market power in the U.S. market could harm U.S. consumers through increases in prices, decreases in quality, or a reduction in alternatives in end-user markets.[60] Generally, this risk occurs when a U.S. carrier is affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market.[61] In circumstances in which an authorized U.S. carrier (such as Global Crossing or Frontier) acquires an affiliation with a foreign carrier that has market power on the foreign end of an authorized route, the Commission may classify the U.S. carrier as "dominant" in its provision of international service on the newly affiliated route.[62] In certain circumstances, it may also impose other safeguards on the U.S. carrier's provision of service on the route, or prohibit the carrier from operating on that route, if the affiliation raises a concern contrary to the public interest or Commission policies.[63]

22. Global Crossing certifies, pursuant to section 63.18 of the Commission's rules, that it is affiliated, within the applicable definition in part 63,[64] with a carrier authorized to provide telecommunications services in Japan and with entities that are involved in its submarine and terrestrial networks in Europe.[65] The Applicants also state, in satisfaction of requirements in

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June 11, 1999 (granting File No. ITC-214-19990412-00202 effective June 4, 1999).

[60] *See Foreign Participation Order*, 12 FCC Rcd at 23,951-23,954 ¶¶ 144-46 (1997); *In the Matter of the Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15,351, 15,409-10 ¶¶ 154–155; Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 Yale L.J. 209 (1986).

[61] *Foreign Participation Order*, 12 FCC Rcd at 23,954 ¶ 147. Section 63.09(e) of the rules, 47 C.F.R. § 63.09(e) (as amended 1999), provides in relevant part that "[t]wo entities are affiliated with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one."

[62] *See* 47 C.F.R. § 63.18(e)(3) & (m) (as amended 1999) (stating that any transferee that is affiliated with a foreign carrier and that desires to be regulated as non-dominant for the provision of particular international services to that country should provide information in its transfer of control application to demonstrate that it qualifies for non-dominant classification pursuant to section 63.10). *See also* 47 C.F.R. § 63.11(e)(1) (stating that the Commission may, in the case of a notification of foreign carrier affiliation filed under this section, impose dominant carrier regulation on the authorized carrier for the affiliated route).

[63] *See Foreign Participation Order*, 12 FCC Rcd at 23,913-15, 23,945 ¶¶ 50-53, 128. The Commission may take such action in the context of a section 214 application, including an application to transfer control of a section 214 authorization, or in the context of those notifications of foreign carrier affiliations filed pursuant to Section 63.11(a). *See* 47 C.F.R. § 63.11(a) & (e)(2) (as amended 1999). *See also Foreign Participation Order*, 12 FCC Rcd at 24,036 ¶ 333.

[64] *See* 47 C.F.R. § 63.09(e) (as amended 1999); 47 C.F.R. § 63.18(h)(1)(i) (1998). *See also* 47 C.F.R. § 63.11(a)(2) (as amended 1999) (requiring authorized carriers such as Frontier to notify the Commission sixty days prior to the acquisition of a direct or indirect interest greater than 25 percent, or a controlling interest, in the capital stock of the authorized carrier by a foreign carrier or by an entity that controls a foreign carrier).

[65] *See* Applications at 12-13.

section 63.11(a) of the rules, that upon consummation of the proposed merger, Global Crossing would also become the ultimate parent of Frontel Communications Limited, an indirect subsidiary of Frontier that is authorized to provide telecommunications services in the United Kingdom, and of RCI Long Distance Canada Ltd., another Frontier subsidiary, which is an authorized carrier in Canada.[66]

23. In this case, the Applicants have demonstrated that none of Global Crossing's present affiliates has sufficient market power in any foreign market to affect competition adversely in the U.S. market. Each affiliate is a new entrant that operates as a carrier's carrier in its respective market.[67] Similarly, Applicants have provided information sufficient to demonstrate that Frontier's two subsidiaries that are foreign carriers lack sufficient market power to affect competition adversely in the U.S. market. Because neither Frontel Communications Limited nor RCI Long Distance Canada Ltd. has a 50 percent market share in any market,[68] they qualify for a presumption that they lack market power, and there is nothing in the record to suggest that the presumption should be rebutted here.[69] We also note that, because Global Crossing's and Frontier's foreign carrier affiliates operate or will operate in WTO member countries, Applicants are on this basis also entitled to a presumption that their foreign carrier affiliations do not raise competition concerns.[70] There is nothing in the record to suggest that this presumption should be rebutted here.

24. We therefore conclude the proposed merger would not result in either Global Crossing or Frontier acquiring an affiliation with a foreign carrier that has market power on the foreign end of routes that either carrier is authorized to serve. This finding further supports our conclusion that the merger would not have anti-competitive effects in any U.S. international market and would serve the public interest, convenience, and necessity.

### 2. Potential Public Interest Benefits

25. Applicants argue that the proposed merger would "further the Commission's public interest goal of promoting competition in the telecommunications industry by positioning the merged firm to compete across-the-board with the largest domestic and global carriers."[71] First, Applicants claim that the "merger will extend the reach of Global Crossing's network to

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66 *See* 47 C.F.R. § 63.11(a)(1) (requiring, in relevant part, that authorized carriers such as Global Crossing notify the Commission sixty days prior to the acquisition of a controlling interest in a foreign carrier).

67 Applications at 13.

68 *See* Applications at 13–14.

69 *See Foreign Participation Order*, 12 FCC Rcd at 23,996 ¶¶ 232–233.

70 *See id.* at 23,913-15 ¶¶ 50-53.

71 Applications at 9.

provide a nationwide U.S. terrestrial infrastructure that will enhance the competitiveness of Global Crossing's fiber optic offerings." Second, the merged firm will be able to compete across-the-board with the offerings of established global carriers. Third, the "complementary networks" of the Applicants will be able to offer a broad scope of services using highly advanced, state-of-the-art electronics. Finally, expanding Frontier's domestic full service 'turnkey' wholesale products to include worldwide services will facilitate reseller entry on a global basis.[72]

26. We find that Applicants have demonstrated that the proposed merger is likely to produce at least some tangible public interest benefits. We assess Applicants' public interest claims against the backdrop of current trends in the communications industries for which the Commission has statutory responsibility. We note that the proposed merger will provide the Applicants with an opportunity to provide more services than either entity could provide itself. This may result in improved competition in the market for domestic and foreign telecommunications services. Further, some cost savings could be realized from the linking of Global Crossing's and Frontier's networks and from the economies of scale achieved by the combination of the two companies' operations. We need not ascertain the exact magnitude of the public interest benefits of the proposed merger because "where, as here, potential harms are unlikely, Applicants' demonstration of potential benefits need not be as certain."[73]

## III. ORDERING CLAUSES

27. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a), 214(c), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(b), 310(d), that the applications filed by Global Crossing Ltd. and Frontier Corporation in the above-captioned proceeding ARE GRANTED.

28. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 214(a), 214(c), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(b), 310(d), that the above grant shall include authority for Global Crossing Ltd. to acquire control of:

a) any Title III authorization issued to Frontier Corporation's subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval;

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[72] *Id*.

[73] *WorldCom-MCI Order* at ¶ 194; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21,292, 21,315 ¶ 45 (1998).

b) Title III construction permits held by licensees involved in this transfer that mature into licenses after closing;

c) Title III applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control; and

d) domestic and international section 214 authorizations held directly or indirectly by Frontier or its subsidiaries.

29. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 214(a), 214(c), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the "Petition to Deny" filed by Price Communications Corporation IS DENIED.

30. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the "Motion For Extension of Time" filed by Price Communications Corporation and the "Expedited Request for Extension of Time" filed by Qwest Communications Corp. ARE GRANTED IN PART and DENIED IN PART.

31. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the "Consolidated Opposition to Motions for Extension of Time" filed by Frontier Corporation and Global Crossing Ltd., IS GRANTED IN PART and DENIED IN PART.

32. IT IS FURTHER ORDERED, that the "Motion to Withdraw or to Dismiss Without Prejudice Petition to Deny of Qwest Communications Corporation" filed by Qwest Communications Corporation IS GRANTED.

33. IT IS FURTHER ORDERED, that the "Motion to Withdraw or to Dismiss Without Prejudice Petition to Deny and to Defer of PSINet" filed by PSINet, Inc., IS GRANTED.

34. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

Donald Abelson
Chief, International Bureau

Lawrence E. Strickling
Chief, Common Carrier Bureau