

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,	)	
	)	
Applications for Consent to Transfer Control of	)	
Submarine Cable Landing Licenses, International	)	
and Domestic Section 214 Authorizations, and	)	
Common Carrier and Non-Common Carrier Radio	)	
Licenses, and Petition for Declaratory Ruling	)	
Pursuant to Section 310(b)(4) of the	)	
Communications Act	)	

**ORDER AND AUTHORIZATION**

Adopted: October 8, 2003

Released: October 8, 2003

By the Chief, International Bureau; Chief, Wireless Telecommunications Bureau; and Chief, Wireline Competition Bureau:

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## I. INTRODUCTION

1. We grant, subject to certain conditions, the Applications of Global Crossing Ltd. (Debtor-in-Possession) ("Global Crossing") and GC Acquisition Limited ("New GX" and, with Global Crossing, the "Applicants") to transfer control, from Global Crossing to New GX, of authorizations and licenses held by subsidiaries of Global Crossing (collectively, the "FCC-Licensed Subsidiaries").<sup>1</sup> As discussed below, we conclude, pursuant to our review under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the "Communications Act" or "Act"), and under section 2 of the Cable Landing License Act, that approval of the Applications will serve the public interest, convenience, and necessity.<sup>2</sup> In addition, subject to the limitations specified herein, we grant the Applicants' petition for a declaratory ruling that the public interest would not be served by prohibiting the proposed indirect foreign ownership of Global Crossing's common carrier wireless licensees in excess of the 25 percent benchmark set by

<sup>1</sup> See Application for Consent to Transfer Control and Petition for Declaratory Ruling, File No. ISP-PDR-20020822-00029 ("Petition for Declaratory Ruling") (filed Aug. 22, 2002); Application to Transfer Control of International and Domestic Section 214 Subsidiaries, File Nos. ITC-T/C-20020822-00406 *et al.* ("Section 214 Application") (filed Aug. 22, 2002); Application to Transfer Control of Submarine Cable Landing Licensees, File Nos. SCL-T/C-20020822-00068 *et al.* ("Submarine Cable Application") (filed Aug. 22, 2002); Application for Transfer of Control, ULS File No. 0001001014 ("Radio License Application") (filed Aug. 22, 2002); Amendment to Application for Consent to Transfer Control and Petition for Declaratory Ruling (filed Feb. 13, 2003) ("First Amendment"); Third Amendment to Application for Consent to Transfer Control and Petition for Declaratory Ruling (filed May 13, 2003) ("Third Amendment"); and Fourth Amendment to Application for Consent to Transfer Control and Petition for Declaratory Ruling, ULS File No. 0001366194 (filed June 30, 2003) ("Fourth Amendment" and, together with Third Amendment, First Amendment, Radio License Application, Submarine Cable Application, Section 214 Application, and Petition for Declaratory Ruling, the "Applications"). Appendix B to this Order and Authorization provides a detailed list of the licenses and authorizations held by the FCC-Licensed Subsidiaries, whereas Appendix C to this Order and Authorization provides the post-closing ownership structure.

<sup>2</sup> See 47 U.S.C. §§ 214(a) and 310(d) of the Communications Act of 1934, 47 U.S.C. §§ 151 *et al.* The Telecommunications Act of 1996 amended the Communications Act of 1934. See Pub. Law No. 104-104, § 202, 110 Stat. 56 (1996). See also An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 ("Cable Landing License Act"), at § 35. Hereinafter, all citations to the Communications Act, as amended, and the Cable Landing License Act will be to the relevant section of the United States Code unless otherwise noted.

section 310(b)(4) of the Act.<sup>3</sup>

## II. BACKGROUND

### A. Transferor

2. Global Crossing is a telecommunications company organized under the laws of Bermuda, with its principal offices in Madison, New Jersey.<sup>4</sup> Through its subsidiaries, including the FCC-Licensed Subsidiaries, Global Crossing owns and operates a global fiber optic network that reaches five continents, 27 countries, and more than 200 major cities.<sup>5</sup> Global Crossing's operating subsidiaries use this network to provide integrated telecommunications services, including a full range of managed data, voice, and Internet services, to large corporations, government agencies, and telecommunications carriers.<sup>6</sup> Global Crossing's U.S. subsidiaries, including the FCC-Licensed Subsidiaries, own and operate the U.S. portion of the global network.<sup>7</sup> On January 28, 2002, Global Crossing and certain of its subsidiaries, including most of the FCC-Licensed Subsidiaries, filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code.<sup>8</sup> According to the Applicants, Global Crossing and the FCC-Licensed Subsidiaries retain possession of their property and business and intend to continue their operations throughout the bankruptcy process.<sup>9</sup>

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<sup>3</sup> 47 U.S.C. § 310(b)(4).

<sup>4</sup> See Petition for Declaratory Ruling, *supra* note 1, at 3.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* at 3-4.

<sup>7</sup> See *id.* at 4. The FCC-Licensed Subsidiaries hold international section 214 authorizations, blanket domestic section 214 authority, common carrier wireless licenses, a non-common carrier wireless license, and interests in submarine cable licenses. In addition, according to the Applicants, public utility commissions in all fifty states and the District of Columbia have authorized five of the FCC-Licensed Subsidiaries to provide telecommunications services. See *id.*; see also note 148, *infra*.

<sup>8</sup> See *In re Global Crossing Ltd., et al.*, Chap. 11 Case Nos. 02-40187 – 02-40241 (REG) (Bankr. S.D.N.Y., Jan. 28, 2002). The same day, Global Crossing and certain of its Bermuda-incorporated subsidiaries filed petitions for the appointment of Joint Provisional Liquidators in the Supreme Court of Bermuda. See Petition for Declaratory Ruling, *supra* note 1, at 4 n.7. On December 26, 2002, the U.S. Bankruptcy Court for the Southern District of New York approved Global Crossing's plan of reorganization. See *In re Global Crossing Ltd., et al., Order Pursuant to Section 1129(a) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors' Joint Plan of Reorganization*, Chap. 11 Case No. 02-40188 (REG) (Bankr. S.D.N.Y., Dec. 26, 2002) ("Confirmation Order"). PC Landing Corp. (Debtor-in-Possession) ("PC Landing"), a submarine cable licensee in which Global Crossing holds an indirect controlling interest, subsequently filed separately for bankruptcy. See *infra* ¶ 15.

<sup>9</sup> See Petition for Declaratory Ruling, *supra* note 1, at 4-5. Following the Chapter 11 filings, the affected FCC-Licensed Subsidiaries assigned their respective licenses and authorizations on a *pro forma* basis to themselves as debtors-in-possession. See *Global Crossing Ltd. et al., Application for Authority for a Pro Forma Assignment of Cable Landing Licenses*, File Nos. SCL-ASG-20020214-00005 through SCL-ASG-20020214-00011 (filed Feb. 14, 2002; granted June 6, 2002); Letter from Jean L. Kiddoo, Helen E. Disenhaus and Paul O. Gagnier, Special Counsel for Global Crossing Ltd. (Debtor-in-Possession), to Acting Secretary, Federal Communications Commission re Notice of *Pro Forma* Assignments Involving Certain Subsidiaries of Global (continued....)

## B. Transferee

3. According to the Applicants, New GX is a company formed under the laws of Bermuda for purposes of carrying out the reorganization of Global Crossing under Chapter 11 of the U.S. Bankruptcy Code and Bermuda insolvency law.<sup>10</sup> Applicants state that Global Crossing will be the sole shareholder of New GX until consummation of the proposed transaction.<sup>11</sup>

## C. The Proposed Transaction

### 1. Terms of the Transaction

4. The proposed transaction, as amended, contemplates that: (1) Global Crossing will transfer substantially all of its assets and operations, including its ownership interests in the FCC-Licensed Subsidiaries, to New GX; (2) Singapore Technologies Telemedia Pte Ltd. ("ST Telemedia") will invest \$250 million in New GX in exchange for which Global Crossing will relinquish all of its equity and voting interest in New GX and ST Telemedia will obtain common and preferred stock equal to a controlling interest of 61.5 percent of New GX's equity and voting interests; and (3) certain creditors of Global Crossing ("Creditor Shareholders") will receive New GX common stock in an aggregate amount of 38.5 percent of New GX's equity and voting interests, as well as \$200 million in senior secured notes of New GX and \$300 million in cash.<sup>12</sup> The proposed transaction also contemplates the issuance of stock options to the future management of New GX in an aggregate amount of eight percent of New GX's fully diluted equity, with the holdings of Singapore Telemedia and the Creditor Shareholders diluted upon the exercise of the issued management options.<sup>13</sup> These arrangements are set out in an amended Purchase

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Crossing Ltd. (filed Feb. 14, 2002); Application of Global Crossing North American Networks, Inc. for *Pro Forma* Assignment of Authorization, ULS File No. 0000788919 (filed Feb. 27, 2002; granted July 2, 2002); PC Landing Corp., Application for Authority for a *Pro Forma* Assignment of a Cable Landing License, File No. SCL-ASG-20020913-00076 (filed Sept. 13, 2002; granted Oct. 22, 2002).

<sup>10</sup> See Petition for Declaratory Ruling, *supra* note 1, at 5; see also Letter from Andrew D. Lipman, Jean L. Kiddoo, and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Dec. 18, 2002) ("December 18 Letter"), at 4. New GX will hold its interests in the FCC-Licensed Subsidiaries through a newly formed Bermuda subsidiary, GC Holdings Limited ("GC Holdings"). GC Holdings is a holding company that is not expected to engage in commercial operations. Following consummation of the proposed transaction, GC Holdings will be an indirect, intermediate parent company of the FCC-Licensed Subsidiaries. See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Sept. 18, 2003) ("September 18 Letter"), at 1.

<sup>11</sup> See Petition for Declaratory Ruling, *supra* note 1, at 5.

<sup>12</sup> See *id.* at 2 & 6; see also Third Amendment, *supra* note 1, at 4. Six percent of the common stock will issue to bank creditors and 32.5% will issue to other creditors. See Petition for Declaratory Ruling, *supra* note 1, at 6. This amended transaction reflects the withdrawal of Hutchison Telecommunications Ltd. as an investor, as described *infra* at note 14.

<sup>13</sup> See Petition for Declaratory Ruling, *supra* note 1, at 5-7; Third Amendment, *supra* note 1, at 4. The proposed capitalization of New GX would result in the creation of 25,478,261 common shares and 18 million preferred shares and the following share ownership by the various investment holders: (1) ST Telemedia would hold 6.6 million common shares and 18 million convertible preferred shares, representing 61.5% of share capital at closing before giving effect to options issued to management, 58.42% of share capital after giving effect to options issued to management, or 56.58% of share capital after giving effect to exercise of all options issuable to management; (2) the Creditor Shareholders would hold 15.4 million common shares, representing 38.5% of share (continued....)

Agreement that reflects the withdrawal of Hutchison Telecommunications Ltd. as an investor.<sup>14</sup>

5. The Applicants state that the Purchase Agreement, as amended, sets out the proposed corporate governance of New GX.<sup>15</sup> The Purchase Agreement provides that the board of directors of New GX ("Board") will be comprised of ten directors and that ST Telemedia will nominate eight directors.<sup>16</sup> The Official Committee of Unsecured Creditors of the Global Crossing Debtors will nominate the remaining two directors, each of whom must satisfy the independent director requirements of the New York Stock Exchange.<sup>17</sup> The Board will make decisions by simple majority vote.<sup>18</sup> ST Telemedia will vote the new preferred stock of New GX on an as-converted basis with New GX's

(Continued from previous page)

capital as of closing before giving effect to options issued to management, 36.58% of share capital after giving effect to options issued to management, or 35.42% of share capital after giving effect to exercise of all options issuable to management; and (3) management would hold no shares as of closing before giving effect to options issued to management, but would hold 3,478,261 common shares representing 5% of share capital as of closing after giving effect to options issued to management, or 8% of share capital after giving effect to exercise of all options issuable to management. See Petition for Declaratory Ruling, *supra* note 1, at 7; Third Amendment, *supra* note 1, at Attachment F (confirming that ST Telemedia will double its investment interests over those stated in the Petition for Declaratory Ruling). Share ownership is calculated on a fully-diluted and as-converted basis, assuming: (1) full conversion of all preferred stock of New GX into common stock; and (2) exercise of all options issued to New GX's management. See Petition for Declaratory Ruling, *supra* note 1, at 7; Third Amendment, *supra* note 1, at Attachment F.

<sup>14</sup> ST Telemedia and Hutchison Telecommunications Ltd. originally contemplated a joint purchase of the 61.5% interests. See Purchase Agreement Dated As of August 9, 2002 Among Global Crossing Ltd. and Global Crossing Holdings Ltd., Debtors and Debtors in Possession, Joint Provisional Liquidators of Global Crossing Ltd. and Global Crossing Holdings Ltd., Singapore Technologies Telemedia PTE Ltd., and Hutchison Telecommunications Limited ("Purchase Agreement"), at Exhibit B. Global Crossing, New GX, Hutchison Telecommunications Ltd. and ST Telemedia subsequently entered into an amendment that made a number of technical modifications to the Purchase Agreement. See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Jan. 16, 2003), at 2. On April 30, 2003, Hutchison Telecommunications Ltd. withdrew from the Purchase Agreement and ST Telemedia agreed to assume the rights and obligations of Hutchison Telecommunications Ltd. under the Purchase Agreement. See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Apr. 30, 2003), at 1-2; see also Third Amendment, *supra* note 1, at 3-4. On July 1, 2003, the bankruptcy court approved a second amendment to the Purchase Agreement reflecting the withdrawal of Hutchison Telecommunications Ltd. See Reply Comments of Global Crossing Ltd. and GC Acquisition Limited, IB Docket No. 02-286 (filed July 3, 2003) ("Global Crossing Reply to XO Comments"). As a result of Hutchison Telecommunications Ltd.'s withdrawal, a prior amendment to the Applications (the "Second Amendment") filed on April 7, 2003 became moot. See Third Amendment, *supra* note 1, at 3 n.5.

<sup>15</sup> See Petition for Declaratory Ruling, *supra* note 1, at 7-8; Third Amendment, *supra* note 1, at 4-5. The shareholder agreement between ST Telemedia and Hutchison Telecommunications Ltd., originally filed with the Petition for Declaratory Ruling, has been terminated. See Third Amendment, *supra* note 1, at 5 n.8.

<sup>16</sup> See Petition for Declaratory Ruling, *supra* note 1, at 8; Third Amendment, *supra* note 1, at 4.

<sup>17</sup> See *id.*

<sup>18</sup> See Petition for Declaratory Ruling, *supra* note 1, at 8. Neither the chairman of the Board nor the chairman of any committee of the Board has a "casting vote" or other special voting rights in the event of a deadlock. See *id.*

common stock on all matters subject to a vote of the shareholders.<sup>19</sup>

6. The Applicants state that, through the proposed transaction, New GX will acquire the knowledge and expertise of Global Crossing's management and personnel in constructing and operating telecommunications networks and providing telecommunications services, as well as the benefit of ST Telemedia's telecommunications and management experience.<sup>20</sup> The Applicants assert that the proposed transaction will enhance competition by strengthening the financial and competitive position of the FCC-Licensed Subsidiaries.<sup>21</sup> The Applicants state that the FCC-Licensed Subsidiaries are important competitors in the U.S. international and domestic telecommunications market, as well as major providers of telecommunications facilities and services to other telecommunications carriers and service providers.<sup>22</sup> They contend, therefore, that Commission approval of the proposed transaction will serve the public interest by ensuring the continued viability of the Global Crossing network, including the operations of the FCC-Licensed Subsidiaries.<sup>23</sup> The Applicants further contend that the continued viability of the FCC-Licensed Subsidiaries will benefit consumers, businesses and carriers by ensuring reasonable market prices and will benefit competition by ensuring that the FCC-Licensed Subsidiaries continue to provide carrier services.<sup>24</sup> They state that, should the proposed transaction not be consummated, Global Crossing might be forced to reduce operations, discontinue services and terminate additional employees.<sup>25</sup> Finally, they allege that the proposed transaction will not cause anti-competitive

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<sup>19</sup> See Petition for Declaratory Ruling, *supra* note 1, at 8; Third Amendment, *supra* note 1, at 4-5.

<sup>20</sup> See Petition for Declaratory Ruling, *supra* note 1, at 14; Third Amendment, *supra* note 1, at 6.

<sup>21</sup> See Petition for Declaratory Ruling, *supra* note 1, at 14-15; Third Amendment, *supra* note 1, at 6-7. The FCC-Licensed Subsidiaries are: (1) Budget Call Long Distance, Inc. (Debtor-in-Possession) ("Budget Call"); (2) Equal Access Networks, LLC (Debtor-in-Possession) ("EAN"); (3) Global Crossing Bandwidth, Inc. (Debtor-in-Possession) ("GC Bandwidth"); (4) Global Crossing Government Markets USA, Inc. (Debtor-in-Possession) ("Global Crossing Government Markets"); (5) Global Crossing Holdings USA, Inc. (Debtor-in-Possession) ("Global Crossing Holdings USA"); (6) Global Crossing Latin America & Caribbean Co. (Debtor-in-Possession) ("Global Crossing Latin America & Caribbean"); (7) Global Crossing Local Services, Inc. (Debtor-in-Possession) ("Global Crossing Local Services"); (8) Global Crossing North American Networks, Inc. (Debtor-in-Possession) ("GCNAN"); (9) Global Crossing Telecommunications, Inc. (Debtor-in-Possession) ("Global Crossing Telecommunications"); (10) GC Pacific Landing Corp. (Debtor-in-Possession) ("GC Pacific Landing"); (11) GT Landing Corp. (Debtor-in-Possession) ("GT Landing"); (12) GT Landing II Corp. (Debtor-in-Possession) ("GT Landing II"); (13) International Optical Networks, L.L.C.; (14) MAC Landing Corp. (Debtor-in-Possession) ("MAC Landing"); (15) PAC Landing Corp. (Debtor-in-Possession) ("PAC Landing"); (16) PC Landing; and (17) Racal Telecommunications, Inc. All of the FCC-Licensed Subsidiaries, with the exception of PC Landing and EAN, are wholly-owned indirect subsidiaries of Global Crossing; Global Crossing holds a 49.77% indirect equity interest in PC Landing and an 86.7% indirect equity interest in EAN.

<sup>22</sup> See Petition for Declaratory Ruling, *supra* note 1, at 21.

<sup>23</sup> See *id.* The Applicants state that Global Crossing is a key player in the submarine cable capacity global services market, introducing competitive pricing and practices to a sector that previously had been the province of incumbent national carriers. See *id.*

<sup>24</sup> See *id.* at 22.

<sup>25</sup> See *id.*

effects or result in the aggregation of market power.<sup>26</sup>

## 2. The Proposed Shareholders of New GX

7. *ST Telemedia*. ST Telemedia is a Singapore telecommunications and information technologies company that, through its subsidiaries, provides fixed and mobile telecommunications, data, and Internet services as well as telephone equipment distribution, managed hosting, teleport, broadband cable and video, and e-business software development services.<sup>27</sup> Singapore Technologies Pte Ltd. ("Singapore Technologies") wholly owns ST Telemedia and itself is wholly owned by Temasek Holdings [Private] Limited ("Temasek"), an investment holding company wholly owned by the Government of Singapore.<sup>28</sup> ST Telemedia, Singapore Technologies and Temasek are organized under the laws of the Republic of Singapore.<sup>29</sup> Temasek, through a 67.56 percent equity holding, also controls Singapore Telecommunications Limited ("SingTel"), the dominant provider of domestic and international telecommunications services, including cable landing station capacity, in Singapore.<sup>30</sup> The Applicants state that SingTel and ST Telemedia, although under common control, are legally separate and operate independently of each other.<sup>31</sup> In December 2002, ST Telemedia acquired, through its subsidiary Indonesian Communications Limited, a 41.94 percent controlling stake in PT Indonesian Satellite Corporation ("Indosat"), the dominant provider of telecommunications services in Indonesia.<sup>32</sup>

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<sup>26</sup> See *id.*

<sup>27</sup> See *id.* at 11-12; see also Third Amendment, *supra* note 1, at 6. ST Telemedia will hold its interests in New GX through two intermediate subsidiaries. STT Communications Limited, a Singapore holding company, is a direct 98.91% subsidiary of ST Telemedia, with the remainder of its shares held by its management. STT Communications Limited has established a new wholly-owned Mauritius subsidiary, STT Crossing Ltd., to directly hold ST Telemedia's interest in New GX. See December 18 Letter, *supra* note 10, at 6 n.8; September 18 Letter, *supra* note 10, at 1.

<sup>28</sup> See Petition for Declaratory Ruling, *supra* note 1, at 12.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 12-13; December 18 Letter, *supra* note 10, at 11. SingTel also holds interests in a number of other Singapore telecommunications providers of Internet access, mobile wireless, cable, and other services, and SingTel subsidiaries provide various telecommunications services in Australia, Hong Kong, India, Japan, Korea, Malaysia, Mauritius, Sri Lanka, Taiwan, and the United Kingdom. See Petition for Declaratory Ruling, *supra* note 1, at 13; Third Amendment, *supra* note 1, at Attachment G, 2-3.

<sup>31</sup> See Petition for Declaratory Ruling, *supra* note 1, at 24. In addition, ST Telemedia holds approximately 50.37% of the equity of StarHub Pte Ltd. ("StarHub"), which the Applicants characterize as the largest non-incumbent telecommunications carrier in Singapore. See Petition for Declaratory Ruling, *supra* note 1, at 12. The Applicants state that StarHub does not have market power in any relevant Singapore telecommunications market, and enjoys no legal or practical advantage over other competitive carriers in obtaining interconnection and related services from SingTel. See *id.* at 12 & 24. StarHub's wholly-owned affiliate StarHub, Inc. holds international section 214 authorizations under which it provides "carrier's carrier" services on the U.S.-Singapore route. See *id.* at 12.

<sup>32</sup> See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Jan. 30, 2003) ("January 30 Letter"), at 1-2; First Amendment, *supra* note 1, at 1-2.

8. *Creditor Shareholders*. Applicants state that Global Crossing's creditors, the majority of which are U.S. persons, include a variety of banks, bondholders, other communications carriers, equipment vendors, and other secured and unsecured creditors of the Global Crossing debtors.<sup>33</sup> The Applicants further state that they do not expect any Creditor Shareholder to hold a ten-percent-or-greater direct ownership interest in New GX immediately following the consummation of the proposed transaction.<sup>34</sup>

### 3. Public Comment

9. On September 19, 2002, we issued a consolidated public notice in IB Docket No. 02-286, announcing the acceptability for filing of the Petition for Declaratory Ruling, Section 214 Application, Submarine Cable Application and Radio License Application and establishing a three-round pleading cycle to permit interested parties an opportunity to comment.<sup>35</sup> The Communications Workers of America ("CWA") opposed the applications, making this a restricted *ex parte* proceeding.<sup>36</sup> In addition, the U.S. Department of Justice and the Federal Bureau of Investigation (the "DOJ/FBI") filed a motion asking the Commission to defer dispositive action on the Applications until the Department of Defense or the DOJ/FBI had notified the Commission that the national security, law enforcement, and public safety issues under review by the Executive Branch agencies had or had not been resolved and appropriate action had been requested of the Commission.<sup>37</sup> On November 5, 2002, the Applicants filed a response to the initial round of comments.<sup>38</sup> In addition, on November 5, 2002, American Communications Network, Inc. ("ACNI") filed a pleading that we treat as a second-round comment, and, on November 18,

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<sup>33</sup> See Petition for Declaratory Ruling, *supra* note 1, at 14.

<sup>34</sup> See Section 214 Application, *supra* note 1, at 6; Petition for Declaratory Ruling, *supra* note 1, at 14. See also ¶ 33, below.

<sup>35</sup> Public Notice, *Global Crossing Ltd. and GC Acquisition Limited Seek FCC Consent to Transfer Control of Subsidiaries Holding Submarine Cable Landing Licenses, Wireless Licenses and Section 214 Authorizations, and Request Declaratory Ruling Allowing Indirect Foreign Ownership*, IB Docket No. 02-286, DA 02-2299, 17 FCC Rcd 17206 (Int'l Bur. 2002) (providing the following filing dates: October 21, 2002 for first-round petitions/comments; November 5, 2002 for second-round oppositions/responses; and November 18, 2002 for third-round replies). See also 47 C.F.R. § 1.45 (pleadings and filing periods).

<sup>36</sup> Comments of Communications Workers of America, IB Docket No. 02-286 (filed Oct. 21, 2002) ("CWA Comments"). CWA, which represents employees and retirees of the Frontier companies that formerly were owned by Global Crossing, argues that the Applicants have failed to demonstrate the public interest benefits of the proposed transaction, and therefore asks the Commission to deny the transfers of control and petition for declaratory ruling. See *id.* at 5. See also 47 C.F.R. §§ 1.1200(a), 1.1208 (once a petition to deny is filed against an application for authority under Title III, the proceeding becomes a restricted *ex parte* proceeding in which *ex parte* presentations to the Commission generally are prohibited).

<sup>37</sup> Motion for Continued Deferral, IB Docket No. 02-286 (filed Oct. 21, 2002) ("DOJ/FBI Motion"). On September 26, 2003, the DOJ/FBI filed a pleading requesting that the Commission condition grant of the Applications on compliance with a network security agreement. See *infra* ¶ 46.

<sup>38</sup> Response of Global Crossing Ltd. and GC Acquisition Limited, IB Docket No. 02-286 (filed Nov. 5, 2002).



2002, the Applicants responded to the ACNI pleading.<sup>39</sup>

10. The Commission received additional pleadings outside of the initial three-round pleading cycle. ACNI sought an extension of time to file third-round comments, and the Applicants opposed ACNI's request.<sup>40</sup> We did not grant ACNI's request to extend the third-round comment date because ACNI, not having been a first-round petitioner, did not have a formal right to file a third-round reply.<sup>41</sup> ACNI nonetheless subsequently filed further comments.<sup>42</sup> The Commission also received correspondence and pleadings on behalf of Newbridge Capital, a bidder for the assets of Pacific Crossing Ltd., the indirect parent of submarine cable licensee PC Landing, asking the Commission to take administrative notice of the various U.S. bankruptcy court proceedings involving Global Crossing and its subsidiaries.<sup>43</sup> The Newbridge Capital pleadings are now moot.<sup>44</sup>

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<sup>39</sup> Statement in Support of Objections to Applicants' Petition for Declaratory Ruling, IB Docket No. 02-286 (filed Nov. 5, 2002) ("ACNI Statement"); Response of Global Crossing Ltd. and GC Acquisition Limited, IB Docket No. 02-286 (filed Nov. 18, 2002) ("Global Crossing Response to ACNI"). The ACNI Statement argues that ACNI would be adversely impacted by approval of the proposed transaction because Global Crossing's indirect subsidiary GC Bandwidth is an ACNI investor and, should that investment pass to New GX, ACNI's future viability and opportunity to compete would be seriously compromised. *See* ACNI Statement at 5. ACNI states that the Applicants have failed to offer to ACNI, prior to the closing under the plan of reorganization, the opportunity to repurchase the ACNI shares held by Global Crossing under the provisions of a shareholder agreement giving ACNI a right of first refusal in the event that GC Bandwidth seeks to sell its interests in ACNI pursuant to a *bona fide* offer from a third party. *See id.* at 5-6. ACNI argues that the agreements it has signed with GC Bandwidth constrain ACNI's ability to compete freely and, therefore, that the dispute over ACNI's right of first refusal is not merely a contractual issue. *See id.* at 5. Applicants respond that even if ACNI's claims had merit, the courts would be the proper *fora* for their resolution. *See* Global Crossing Response to ACNI at 2.

<sup>40</sup> Letter from Gerard Lavery Lederer, Attorney for ACNI, to Secretary, Federal Communications Commission (filed Nov. 18, 2002); Letter from Andrew D. Lipman, Jean L. Kiddoo, and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Nov. 22, 2002).

<sup>41</sup> *See* 47 C.F.R. § 1.45(c) (person who filed original pleading may reply to oppositions). In addition, it appears that ACNI's November 18, 2002 letter is a prohibited *ex parte* filing pursuant to sections 1.1202(b) and (d) and 1.1208 of the rules because the letter fails to attach a service list and, although copying CWA, fails to copy the Applicants. *See* 47 C.F.R. § 1.1202(b), (d) (written presentations not served on the parties to the proceeding are *ex parte* presentations, and a person filing an application is a party); 47 C.F.R. § 1.1208 (*ex parte* presentations are prohibited in restricted proceedings). As we note below, *see* notes 50, 54 and 216, ACNI filed a number of pleadings that, from the face of the pleadings, ACNI apparently did not serve on various parties. Because we deny the relief sought by ACNI in its pleadings, all of which are available through the Commission's Electronic Comment Filing System, we find that ACNI's prohibited *ex parte* filings caused no harm. However, we caution ACNI, in the future, to ensure that it serves all parties to any proceeding in which it files pleadings.

<sup>42</sup> *See infra* ¶ 11 and note 46.

<sup>43</sup> *See* Letter from Julian P. Gehman to Secretary, Federal Communications Commission (filed Dec. 3, 2002), at 1 & 3 (asking the Commission to clarify that Commission approval of the Applications would not give Global Crossing any new control over PC Landing beyond the control Global Crossing currently exercises through its equity interests in PC Landing and to await an order of the U.S. Bankruptcy Court for the District of Delaware before acting on the transfer of control of the assets of PC Landing); Motion to Accept Late-Filed Pleading Submitted by Newbridge Capital and Petition to Deny with Respect to PC Landing Corp. Submitted by Newbridge Capital, File No. ISP-PDR-20020822-00029 (filed Jan. 28, 2003). *See also* the Applicants' Opposition to Motion to Accept Late-Filed Pleading and to Petition to Deny with Respect to PC Landing Corp., IB Docket No. 02-286 (continued....)

11. On February 20, 2003, we issued a public notice announcing the acceptability for filing of a minor amendment to the Section 214 Application and Submarine Cable Application and establishing an abbreviated pleading cycle to permit an opportunity to comment on this First Amendment.<sup>45</sup> On March 6, 2003, ACNI filed comments.<sup>46</sup> On March 13, 2003, the Applicants and IDT Corporation ("IDT") each filed a reply.<sup>47</sup>

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(filed Feb. 7, 2003); Reply of Newbridge Capital to Opposition to Motion to Accept Late Filed Pleading and Petition to Deny with Respect to PC Landing Corp., IB Docket No. 02-286 (filed Feb. 26, 2003).

<sup>44</sup> See Letter from Julian P. Gehman, Counsel for Newbridge Capital, to Secretary, Federal Communications Commission (filed June 9, 2003) (stating that the bankruptcy judge in the PC Landing bankruptcy proceeding acted on June 3, 2003 and thus Newbridge Capital no longer considers itself to be a party in interest in the Commission's proceeding). We treat the June 9, 2003 letter as a request to withdraw the December 3, 2002, January 28, 2003, and February 26, 2003 pleadings filed by and on behalf of Newbridge Capital, and we dismiss the pleadings, with prejudice.

<sup>45</sup> Public Notice, *Global Crossing Ltd. and GC Acquisition Limited File Amendment to Application*, IB Docket No. 02-286, DA 03-465, 18 FCC Rcd 2464 (Int'l Bur. 2003) (providing the following comment dates: March 6, 2003 for first-round comments; March 13, 2003 for second-round reply comments); see also First Amendment, *supra* note 1.

<sup>46</sup> Further Comments of ACN in Opposition to Applicants' Petition for Declaratory Ruling, IB Docket No. 02-286 (filed Mar. 6, 2003) ("ACNI Further Comments"). These comments, however, do not address the minor amendment that we placed on public notice on February 20, 2003, and essentially are late-filed comments in response to the September 19, 2002 consolidated public notice. See *infra* note 214. During the period of March 18, 2003 to May 16, 2003, ACNI filed five additional pleadings in the form of letters unaccompanied by motions to accept late-filed pleadings. On March 18, 2003, ACNI filed a letter "to bring to the Commission's attention what appear to be significant developments in the United States Bankruptcy Court and the Committee on Foreign Investment in the United States (CFIUS) affecting the pending application." See Letter from William Malone, Gerard Lavery Lederer and James R. Hobson, Counsel for ACNI, to Secretary, Federal Communications Commission (filed Mar. 18, 2003) ("ACNI Letter"), at 1; but see Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Mar. 25, 2003) ("Global Crossing Reply to ACNI Letter") (confirming no material change to information provided to Commission). On March 24, 2003, ACNI filed a supplement to the ACNI letter. See Letter from William Malone, Gerard Lavery Lederer and James R. Hobson, Counsel for ACNI, to Secretary, Federal Communications Commission (filed Mar. 24, 2003) ("ACNI Supplement to Letter"). On April 16, 2003, ACNI filed a letter arguing that the Second Amendment, now moot, see *supra* note 14 and *infra* note 215, was a major amendment that required the Commission to provide ACNI further opportunity to comment. See Letter from William Malone, Gerard Lavery Lederer and James Hobson, Counsel for ACNI, to Secretary, Federal Communications Commission (filed Apr. 16, 2003) ("ACNI Second Supplemental Letter"). On April 18, 2003, ACNI filed a letter enclosing a press release it found on the website of Congressman Frank Wolf. See Letter from William Malone, Gerard Lavery Lederer and James Hobson, Counsel for ACNI, to Secretary, Federal Communications Commission (filed Apr. 18, 2003) ("ACNI Third Supplemental Letter"). On May 16, 2003, ACNI filed a letter opposing any abbreviated public notice period for the Third Amendment, see *supra* note 1, that Applicants had filed May 13, 2003. See Letter from William Malone and Gerard Lavery Laderer, Attorneys for ACNI, to Secretary, Federal Communications Commission (filed May 16, 2003) ("ACNI Fourth Supplemental Letter").

<sup>47</sup> Reply of Global Crossing Limited and GC Acquisition Limited to Further Comments of ACN, IB Docket No. 02-286 (filed Mar. 13, 2003) ("Global Crossing Further Reply to ACNI"); Reply Comments of IDT Corporation, IB Docket No. 02-286 (filed Mar. 13, 2003) ("IDT Reply"). The IDT Reply does not respond to the Commission's February 20, 2003 public notice seeking comment on the foreign affiliations set out in the First Amendment, but rather untimely comments generally on the Applications. See IDT Reply at 1-2 and Exhibit A (in continued....)

12. On May 16, 2003, we issued a consolidated public notice announcing the acceptability for filing of a major amendment to the Applications and establishing a three-round pleading cycle to permit interested parties an opportunity to comment on this Third Amendment.<sup>48</sup> On June 16, 2003, IDT filed a petition to deny the Third Amendment, including an opposition to the petition for declaratory ruling, as amended.<sup>49</sup> ACNI filed a petition to deny.<sup>50</sup> The Organization for International Investment (“OII”) filed comments in support of the Third Amendment.<sup>51</sup> On June 26, 2003, Applicants filed a second-round opposition to the petitions to deny the Third Amendment.<sup>52</sup> XO Communications, Inc. (“XO”) filed a late-filed petition to deny the Third Amendment, which it styles as comments opposing the Third

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two-page reply and attached press release about IDT’s intention to submit bankruptcy bid, IDT generally states support for comments filed by ACNI and alleges that foreign control of Global Crossing’s assets would not be in the public interest). It also appears that the IDT Reply is a prohibited *ex parte* filing because the service list included only Commission staff and not Applicants and other parties. IDT filed a second pleading that, from the face of the pleading, IDT apparently did not serve on various parties. *See infra* note 56. Because we deny the relief sought in the two IDT filings, which are available on the Commission’s Electronic Comment Filing System, we find that IDT’s prohibited *ex parte* filings caused no harm. We caution IDT, in the future, to ensure that it serves all parties to any proceeding in which it files pleadings. Finally, during the period of April 22, 2003 to May 14, 2003, counsel for IDT submitted three additional letters, unaccompanied by requests to accept late-filed pleadings. *See* Letter from David Albalah and Kirk S. Burgee, Counsel for IDT Corporation, to Secretary, Federal Communications Commission (filed April 22, 2003), at 1 (asking the Commission not to act on the Second Amendment, now moot, *see supra* note 14, prior to an Executive Branch determination on national security issues and an opportunity for public comment); Letter from Mark J. Tauber and E. Ashton Johnston, Counsel for IDT, to Secretary, Federal Communications Commission (filed May 7, 2003) at 2 (urging the Commission to make the Third Amendment, when filed, available for public review and comment); Letter from E. Ashton Johnston and Mark J. Tauber, Counsel for IDT, to Secretary, Federal Communications Commission (filed May 14, 2003) (asking the Commission to issue a public notice on the Third Amendment).

<sup>48</sup> *Public Notice, Global Crossing Ltd. and GC Acquisition Limited Amend Their Applications to Transfer Control of Subsidiaries Holding Submarine Cable Landing Licenses, Wireless Licenses and Section 214 Authorizations, and Their Request for Declaratory Ruling Allowing Indirect Foreign Ownership*, IB Docket No. 02-286, DA 03-1724, 18 FCC Rcd 10447 (Int’l Bur. 2003 ) (providing the following filing dates: June 16, 2003 for first-round petitions; June 26, 2003 for second-round oppositions; and July 3, 2003 for third-round replies). *See also* 47 C.F.R. §§ 1.45 (pleadings and filing periods), 1.939(e) (petition to deny a major amendment may raise only matters directly related to the major amendment). As discussed above, the filing of the Third Amendment, reflecting ST Telemedia’s assumption of the rights and obligations of Hutchison Telecommunications Ltd. in addition to the continuation of ST Telemedia’s own rights and obligations under the Purchase Agreement, mooted the Second Amendment that Applicants had filed earlier. *See supra* note 14.

<sup>49</sup> *Petition to Dismiss or Deny and Opposition to Petition for Declaratory Ruling*, IB Docket No. 02-286 (filed June 16, 2003) (“IDT Petition to Deny Third Amendment”).

<sup>50</sup> *Objections to Amended Applications and Petition for Declaratory Ruling*, IB Docket No. 02-286 (filed June 16, 2003) (“ACNI Objections to Third Amendment”). It appears, from the service list attached to the pleading, that ACNI did not serve all of the parties. *See supra* note 41.

<sup>51</sup> *Comments of the Organization for International Investment*, IB Docket No. 02-286 (filed June 16, 2003) (“OII Comments”). OII is a membership organization representing U.S. subsidiaries of foreign parent companies that, according to OII, employ millions of Americans. *See* OII Comments at 1.

<sup>52</sup> *Consolidated Response of Global Crossing Ltd. and GC Acquisition Limited to Comments on Third Amendment*, IB Docket No. 02-286 (filed June 26, 2003) (“Global Crossing Opposition to Petitions to Deny Third Amendment”).

Amendment.<sup>53</sup> ACNI filed a “supplement” to its petition to deny the Third Amendment, restating its arguments from its November 5, 2002, March 6, 2003, March 24, 2003, April 9, 2003, April 18, 2003, and June 16, 2003 pleadings.<sup>54</sup> On July 3, 2003, Applicants filed a response to XO’s late-filed pleading.<sup>55</sup> IDT filed a third-round reply.<sup>56</sup>

13. On July 2, 2003, we issued a consolidated public notice announcing the acceptability for filing of a major amendment to the Radio License Application and Petition for Declaratory Ruling and establishing a three-round pleading cycle to permit interested parties an opportunity to comment on this

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<sup>53</sup> Comments of XO Communications, Inc., IB Docket No. 02-286 (filed June 26, 2003) (“XO Comments”), at 1 (XO, a competing bidder for the Global Crossing assets, opposes the transfer of control of New GX to ST Telemedia and the resulting foreign ownership by ST Telemedia). XO also filed an earlier letter to “correct the record with respect to the nature of its bid.” See XO Comments at 1; see also Letter from Brian D. Oliver, Executive Vice President, Strategy and Corporate Development, and Douglas W. Kinkoph, Vice President, Regulatory and External Affairs, XO Communications, Inc. (filed June 12, 2003) (“XO Letter”). The XO Letter responds to an *ex parte* letter from the Official Committee of Unsecured Creditors in the Global Crossing bankruptcy proceeding addressed to the Department of Justice and the Committee on Foreign Investment in the United States (“CFIUS”) and copied to IB Docket No. 02-286. See Letter from Thomas J. Weber, Special Counsel to the Official Committee of Unsecured Creditors, to U.S. Department of Justice and Committee on Foreign Investment in the United States (dated June 9, 2002). We do not consider the letter from the unsecured creditors or the XO Letter as the position of creditors and alternative bidders in the bankruptcy proceeding is not relevant to our decision in this docket, which considers only the bid approved by the bankruptcy court and before us in the Applications. Neither the unsecured creditors nor XO becomes a party as a result of these filings. See 47 C.F.R. § 1.1202(d) (a party is a person filing a written submission *referencing and regarding* a pending filing and serving the written submission on the filer). We caution the Special Counsel, in the future, to ensure that he serves all parties to any Commission proceeding in which he files a letter or pleading.

<sup>54</sup> Opposition to Amended Applications and Petition for Declaratory Ruling . IB Docket No. 02-286 (filed June 26, 2003) (“ACNI Reply to Third Amendment”) at 1 n.2. It appears, from the service list attached to the pleading, that ACNI did not serve all parties. See *supra* note 41. The ACNI Reply to Third Amendment merely states that pleadings filed in the U.S. Bankruptcy Court for the Southern District of New York “put into question whether the Commission has only a hypothetical proposal before it.” and attaches copies of the pleadings. See ACNI Reply to Third Amendment at 1. In fact, the bankruptcy court denied the relief sought in the pleadings and approved the extension of the exclusivity period. See *infra* ¶ 15 and note 60. We disagree with ACNI that the Applications are a “hypothetical proposal.” Rather, as discussed *infra*, the Applications reflect the transaction approved by the bankruptcy court.

<sup>55</sup> Global Crossing Reply to XO Comments, *supra* note 14. Applicants also filed, on May 23, 2003, a letter of clarification in response to some of the general public correspondence associated with the record. See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed May 23, 2003) (“May 23 Letter”); see also *infra* note 59 (general public correspondence). The May 23 Letter states that ST Telemedia does not own a significant stake in Asia Global Crossing, expects to lose its 0.14% share once Asia Global Crossing completes its restructuring, and has no equity or voting interest in Asia Netcom, the entity acquiring the assets of Asia Global Crossing. See May 23, 2003 Letter at 2.

<sup>56</sup> Reply of IDT Corporation, IB Docket No. 02-286 (filed July 3, 2003) (“IDT Reply to Third Amendment”). As noted, see *supra* note 47, the IDT Reply to Third Amendment appears to be a prohibited *ex parte* filing that in any case causes no harm because we deny the relief sought.

Fourth Amendment.<sup>57</sup> We received no record comments in response to the public notice.

14. Appendix A to this Order and Authorization lists the parties and the record in this proceeding, including five letters from Members of the U.S. Congress.<sup>58</sup> In addition to the record filings, the Commission has received approximately 170 pieces of correspondence from the general public.<sup>59</sup>

#### 4. Bankruptcy Court Action

15. On December 26, 2002, the U.S. Bankruptcy Court for the Southern District of New York approved Global Crossing's plan of reorganization, which, among other things, includes the proposed transaction involving ST Telemedia and the Creditor Shareholders that is the subject of the Applications.<sup>60</sup> Two related bankruptcy cases, involving PC Landing and Asia Global Crossing, Ltd.

<sup>57</sup> *Public Notice, Global Crossing Ltd. and GC Acquisition Limited File June 30, 2003 Amendment to Applications*, IB Docket No. 02-286, DA 03-2179, 18 FCC Rcd 13075 (Int'l Bur. 2003) (providing the following filing dates: August 1, 2003 for first-round petitions; August 11, 2003 for second-round oppositions; and August 18, 2003 for third-round replies); Fourth Amendment, *supra* note 1 (requesting transfer of control of wireless licensee EAN). *See also* 47 C.F.R. §§ 1.45, 1.939(e).

<sup>58</sup> *See* Letter from Frank R. Wolf, U.S. House of Representatives (dated Apr. 8, 2003) ("Cong. Wolf *Ex Parte*") (stating concern about national security implications of Hutchison Telecommunications Ltd. investment); Letter from Mark Dayton, United States Senate (dated Apr. 22, 2003) ("Sen. Dayton *Ex Parte*") (stating concern about national security); Letter from Conrad Burns and Ernest F. Hollings, United States Senate (dated May 15, 2003) ("Sen. Burns and Sen. Hollings *Ex Parte*") (stating serious concern about sale to companies owned and controlled by foreign governments); Letter from Curt Weldon, U.S. House of Representatives (dated June 12, 2003) ("Cong. Weldon *Ex Parte*") (urging strict scrutiny review of foreign government ownership); Letter from Charles Schumer, U.S. Senate (dated June 24, 2003) ("Sen. Schumer *Ex Parte*") (supporting transfer to maintain over 1000 U.S. jobs). *See also* Letter from Dana Rohrabacher, U.S. House of Representatives (dated Feb. 19, 2002) (requesting, in letter dated prior to initiation of IB Docket No. 02-286, stringent review of economic and national security ramifications of joint investment by ST Telemedia and Hutchison Whampoa's subsidiary Hutchison Telecommunications Ltd.).

<sup>59</sup> This *ex parte* public correspondence, primarily from individual shareholders and former or current employees of Global Crossing, is available for public review through the Commission's Electronic Comment Filing System. *See* 47 C.F.R. § 1.1212(h). Most of the public correspondence is in the form of emails and form letters. One shareholder, Karl Schwarz of CommAxxess f/k/a Global Axxess, filed multiple rounds of informal comments, and various other members of the general public filed more than once. The public correspondence, by and large, raises concerns about the post-transaction value of shareholder and employee investments in Global Crossing and about the national security implications of foreign ownership, although it also includes correspondence from companies that use the services of Global Crossing and support the proposed transaction. We note that complaints about shareholder or employee investments more appropriately are addressed in other *fora*, such as at the U.S. Securities and Exchange Commission or in shareholder lawsuits. *See, e.g., Application of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Memorandum Opinion, Order and Authorization, IB Docket 02-50, DA 02-2512, 17 FCC Rcd 19212, 19215 n.31 (Int'l Bur., WTB & WCB 2002). We address national security and foreign ownership issues, also raised by the parties, in our public interest analysis, *infra* at Section III of this Order and Authorization.

<sup>60</sup> *See Confirmation Order, supra* note 8. *See also In re Global Crossing Ltd., et al., Bench Decision on Motion for Authority to Amend Purchase Agreement, for Authority to Grant Releases, and for Extension of Exclusivity*, Chap. 11 Case No. 02-401888 (REG) (Bankr. S.D.N.Y., July 1, 2003).

(Debtor-in-Possession) (“Asia Global Crossing”), will affect Global Crossing assets: (1) on July 19, 2002, submarine cable licensee PC Landing and certain of its affiliates commenced voluntary proceedings under Chapter 11 in the U.S. Bankruptcy Court for the District of Delaware;<sup>61</sup> and (2) on November 17, 2002, Global Crossing’s majority-owned subsidiary Asia Global Crossing, an indirect majority owner of licensee PC Landing, and one of its subsidiaries filed voluntary petitions under Chapter 11 in the U.S. Bankruptcy Court for the Southern District of New York.<sup>62</sup> Although the Applicants expect that the two bankruptcy proceedings eventually will eliminate Global Crossing’s equity interests in Commission licensee PC Landing, they continue to seek authority to transfer control of their interests in the Pacific Crossing-1 (“PC-1”) cable landing license because these interests have not yet been extinguished.<sup>63</sup>

<sup>61</sup> See *In re PC Landing Corp., et al.*, Chap. 11 Case No. 02-12086 (PJW) (Bankr. D.Del., July 19, 2002). PC Landing is one of the FCC-Licensed Subsidiaries. See *supra* note 21; see also Appendix C to this Order and Authorization for a chart that sets out PC Landing’s ownership structure. On June 3, 2003, the U.S. Bankruptcy Court for the District of Delaware approved the sale of substantially all of the assets of PC Landing to Pivotal Telecom, LLC (“Pivotal”). See *In re PC Landing Corp., et al., Order Authorizing (1) Sale of Substantially All of the Debtors’ Assets Free and Clear of Certain Liens, Claims, Rights, Interests and Encumbrances, (2) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases and the Transfer of Certain Licenses and Permits, (3) Determining That the Sale Will be Subject to Bankruptcy Code § 1164, and (4) Granting Related Relief*, Chap. 11 Case No. 02-12086 (PJW) (Bankr. D.Del., June 3, 2003). On August 19, 2003, PC Landing filed an application to assign PC Landing’s cable landing license to Pivotal. See *Pivotal Telecom, LLC, Assignment*, File No. SCL-ASG-20030819-00024, Public Notice, Non Streamlined International Applications Accepted for Filing, Report No. TEL-00714NS (Int’l Bur., rel. Sept. 22, 2003).

<sup>62</sup> See *In re Asia Global Crossing Ltd., et al.*, Chap. 11 Case Nos. 02-15749 through 02-15750 (SMB) (Bankr. S.D.N.Y., Nov. 17, 2002). On December 17, 2002, attorneys for PC Landing notified the Commission of the *pro forma* transfer of control, to Asia Global Crossing as debtor-in-possession, of Asia Global Crossing’s interest in PC Landing’s submarine cable landing license. See Letter from Martin Stern, Attorney for PC Landing, to Secretary, Federal Communications Commission (filed Dec. 17, 2002). On January 29, 2003, the U.S. Bankruptcy Court for the Southern District of New York approved the sale of substantially all of Asia Global Crossing’s assets, but excluding the equity interest indirectly held by Asia Global Crossing in PC Landing, to Asia Netcom. See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Feb. 6, 2003) (“February 6 Letter”), at 10; see also *In re Asia Global Crossing Ltd., et al., Order Pursuant to Sections 105(a), 363(b), (f) and (m), 365 and 1146(c) of the Bankruptcy Code and Fed. R. Bankr. P. 6004 and 6006, (1) Approving the Terms and Conditions of Agreement Providing for the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests, (2) Authorizing and Approving the Assumption and Assignment of Related Executory Contracts, (3) Authorizing Debtor to Consummate the Transactions Contemplated in Sale Agreement and (4) Determining that Sale is Exempt from Stamp Taxes and Section 1146(c) of the Bankruptcy Code*, Chap. 11 Case Nos. 02-15749 through 02-15750 (SMB) (Bankr. S.D.N.Y., Jan. 29, 2003). Applicants advise that following the sale to Asia Netcom, Asia Global Crossing’s Chapter 11 reorganization converted to a Chapter 7 liquidation, which will result in the sale of the remaining assets and distribution of proceeds to Asia Global Crossing’s creditors. See Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Aug. 18, 2003) (“August 18 Letter”), at 2.

<sup>63</sup> In December 2002, Applicants stated that, upon completion of Asia Global Crossing’s reorganization pursuant to the Chapter 11 proceeding, and upon PC Landing’s successful restructuring under its bankruptcy proceeding, they expect the equity interests currently held by Global Crossing in Asia Global Crossing and PC Landing to be eliminated. See December 18 Letter, *supra* note 10, at 3. See also February 6 Letter, *supra* note 62, at 10-11. Applicants asked the Commission to approve the transfer to New GX of Global Crossing’s indirect interests in the PC-1 submarine cable license held by PC Landing, advising that appropriate application (continued....)

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework for Analysis

16. In considering the Applications, the Commission must determine, pursuant to section 214(a) and section 310(d) of the Act, whether the proposed transfers of control will serve the public interest.<sup>64</sup> In addition, because Global Crossing seeks to transfer ultimate control of its ownership interests in cable landing licenses, we review the proposed transaction under the Cable Landing License Act.<sup>65</sup> Finally, because of the foreign ownership interests presented in this case, we also must determine whether the proposed transfer of control of wireless licensees GCNAN and EAN is permissible under the foreign ownership provisions of section 310 of the Act.<sup>66</sup>

17. The legal standards that govern our public interest analysis for transfer of control of authorizations and licenses under sections 214(a) and 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.<sup>67</sup> Our analysis considers the likely

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will be made to the Commission should subsequent events warrant the further transfer of the cable landing license. See December 18 Letter, *supra* note 10, at 4. On August 18, 2003, Applicants further advised that PC Landing's asset sale has not yet closed and, although Asia Global Crossing has completed the sale of substantially all of its operating subsidiaries, the Asia Global Crossing transaction has not yet affected Global Crossing's ownership interest in PC Landing, which interest will remain intact until either the PC Landing reorganization concludes or the AGCL Chapter 7 trustee abandons its equity interests in PC Landing. See August 18 Letter, *supra* note 62, at 2-3; see also Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Mar. 20, 2003) ("March 20 Letter"), at 1; Global Crossing Reply to XO Comments, *supra* note 14, at 4-5. Thus, Applicants state that Commission approval to transfer control of Global Crossing's interest in the PC-1 cable landing license held by PC Landing continues to be required. See March 20 Letter at 1; Global Crossing Reply to XO Comments, *supra* note 14, at 4; August 18 Letter, *supra* note 62, at 3.

<sup>64</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>65</sup> See also Executive Order No. 10530, Exec. Ord. No. 10530, § 5(a), reprinted as amended in 3 U.S.C. §301 ("Executive Order 10530"); *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167, 22169-70, ¶ 5 (2001) ("*Submarine Cable Report and Order*"); 47 C.F.R. § 1.767(b); *Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests*, Media Note (Revised) (Dec. 20, 2001), available at [www.state.gov/r/pa/prs/ps/2001](http://www.state.gov/r/pa/prs/ps/2001) (visited March 28, 2003). Pursuant to section 1.767(b) of the Commission's rules, the Cable Landing License Act, and Executive Order 10530, we informed the Department of State of the Submarine Cable Application.

<sup>66</sup> 47 U.S.C. § 310(a), (b).

<sup>67</sup> See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9789, ¶ 17 (2001) ("*VoiceStream/Deutsche Telekom Order*"). See also *AT&T Corp., British Telecommunications, PLC, VLT Co. LLC, Violet License Co. LLC, and TNV (Bahamas) Limited, Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, PLC*, Memorandum Opinion and Order, FCC 99-313, 14 FCC Rcd 19140, 19147, ¶ 15 (1999) ("*AT&T/BT Order*"); *Motient Services Inc. and TMI Communications and* (continued...)

competitive effects of the proposed transfers and whether such transfers raise significant anti-competitive issues.<sup>68</sup> In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transfers of control of the licenses and authorizations.<sup>69</sup> Further, we consider any national security, law enforcement, foreign policy or trade policy concerns brought to our attention by the Executive Branch.<sup>70</sup> Similarly, our review pursuant to the Cable Landing License Act considers the competitive effects and public interest benefits of the proposed transaction, as well as any national security, law enforcement, foreign policy or trade policy concerns raised by the Executive Branch.<sup>71</sup>

## B. Qualifications of Applicants

18. As a threshold matter, we must determine whether the Applicants have the requisite qualifications to hold and transfer control of licenses under section 310(d) of the Act and Commission rules.<sup>72</sup> In making this determination, we do not, as a general rule, re-evaluate the qualifications of a transferor unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>73</sup> We conclude that no such issues have been raised here that would require us to designate a hearing to re-evaluate the basic qualifications of the transferor, Global Crossing.<sup>74</sup> Conversely, the analysis of every

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*Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20473, ¶ 11 (Int'l Bur. 2001).*

<sup>68</sup> See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148, ¶ 15.

<sup>69</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, ¶ 17.

<sup>70</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, FCC 97-398, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration*, FCC 00-339, 15 FCC Rcd 18158 (2000).

<sup>71</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23933-35, ¶¶ 93-96, 23919-21, 61-66.

<sup>72</sup> 47 C.F.R. § 310(d), 47 C.F.R. § 1.948 (transfer of control of wireless licenses).

<sup>73</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, ¶ 19.

<sup>74</sup> CWA alleges that Global Crossing's "knowledge and expertise" resulted in the company's bankruptcy and losses to Global Crossing's employees, investors, and creditors. See *CWA Comments, supra* note 36, at 3. ACNI alleges that Global Crossing refuses to honor the contract laws of the United States. See *ACNI Statement, supra* note 39, at 20. In evaluating character qualifications of applicants, the Commission considers misconduct that violates the Communications Act or a Commission rule or policy and certain adjudicated non-FCC-related behavior that allows the Commission to predict whether an applicant has or lacks the character traits of truthfulness and reliability. See *Policy Regarding Character Qualifications in Broadcast Licenses, Report, Order and Policy Statement*, FCC 85-648, 102 F.C.C. 2d 1179, 1190-91, ¶ 23, 1195, ¶ 34 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 21 (1986), *appeal dismissed sub. nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. 1978), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992). See also *MCI Telecommunications Corp, Petition for Revocation of Operating Authority, Order and Notice of Apparent Liability*, FCC 88-24, 3 FCC Rcd 509, 515 n.14 (1988) (character qualification standards adopted in broadcast context can provide guidance in common carrier context); *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation, Applications for Transfer of Control of COMSAT Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses and Holders of International Section 214 Authorizations, Order on Reconsideration*, FCC 02-197, 17 FCC Rcd 13160, 13167, ¶ (continued....)



transfer application requires that we determine whether the proposed transferee is qualified to hold Commission licenses.<sup>75</sup> Section 310(d) requires the Commission to consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.<sup>76</sup> Although IDT argues that the Applicants have failed to file the requisite information for the Commission to make a determination, we disagree.<sup>77</sup> No other party has challenged the basic qualifications of the transferee in this transaction, New GX, and our independent review finds no evidence to suggest that New GX lacks the requisite financial, technical, legal, or other basic qualifications to control GCNAN and EAN.<sup>78</sup> Thus, we find that New GX possesses the basic

(Continued from previous page) \_\_\_\_\_

17 (2002) (Commission has recognized that prior misconduct can have material bearing on qualifications for non-broadcast as well as broadcast licensees and has assessed the relevance of such matters consistent with its broadcast character policy statement). Under this line of policy guidance, the allegations raised by CWA fall short of giving rise to an issue of Global Crossing's qualifications to hold and transfer wireless authorizations. We are not aware of adjudicated non-FCC-related behavior that would bear upon the qualifications of Global Crossing to hold and transfer the wireless authorizations involved in this docketed proceeding. Likewise, as discussed below, see ¶¶ 52-54, we deny ACNI's request that we modify the contracts with GC Bandwidth, and do not reach ACNI's argument that Global Crossing refused to honor contract law.

<sup>75</sup> See 47 U.S.C. §§ 310(d), 308(b) (applications must set forth such facts as the Commission may require as to citizenship, character, and financial, technical and other qualifications); see also *Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, PLC, Transferee, For Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, File Nos. 0000003690 *et al.*, DA 99-1200, 14 FCC Rcd 9430, 9432-34, ¶¶ 5-9 (WTB 1999).

<sup>76</sup> See 47 U.S.C. § 310(d).

<sup>77</sup> Our review of the Applications finds no basis to conclude that the ownership information submitted by the Applications is either insufficient or otherwise incomplete for purposes of evaluating New GX's qualifications. Specifically, IDT alleges that the Applicants' Form 603 ownership filings do not contain "required attributable ownership information regarding officers and directors." See IDT Reply to Third Amendment, *supra* note 56, at 5 n.13. We note, however, that our rules do not require the disclosure of "attributable ownership information" for officers and directors in this context. Rather, what is required is the disclosure of the real party (or parties) in interest to an application, including a disclosure of those persons or entities directly or indirectly owning or controlling the applicant or licensee. We believe that the Applications satisfy this requirement. Similarly, with respect to IDT's argument that Applicants must provide the names of the officers and directors of each of the Singapore entities—including ST Telemedia, Singapore Technologies, Temasek and SingTel—in order to determine the extent of interlocking directorates, see IDT Petition to Deny Third Amendment, *supra* note 49, at 6, we note that the Commission's foreign carrier affiliation rules require the Applicants to provide information on any interlocking directorates between the transferee, New GX, and foreign carriers, not among the various Singapore companies and not with respect to the two domestic wireless licensees at issue here. In any case, this Order and Authorization conditions the transfer of control of the international section 214 authorizations and submarine cable licenses on a requirement that New GX provide an updated interlocking directorate certification, pursuant to parts 63 and 1 of the rules, within five business days after appointment of its board of directors and the boards of directors of the international section 214 and submarine cable subsidiaries or within five business days of release of this Order and Authorization, whichever occurs later. See 47 C.F.R. §§ 63.24(e)(2), 63.18(h), 63.09(g), 1.767(a)(8), (11); see also *Williams Communications, LLC, Licensee, Williams Communications Group, Inc., Transferor, and Williams Communications Group Inc. (Debtor-in-Possession), Transferee and Transferor, Nunc Pro Tunc Pro Forma Transfer of Control and Transfer of Control*, DA 02-3246, 17 FCC Rcd 23808, 23809 (Int'l Bur. 2002) (interlocking directorate certification condition). See also *infra* ¶ 63.

<sup>78</sup> We address elsewhere in this Order and Authorization the argument that foreign investment in New GX raises potential foreign ownership or national security concerns. See *infra* at ¶¶ 19-35, 46-51.

qualifications to control wireless licensees GCNAN and EAN.

### C. Foreign Ownership Review

19. In this section, we address issues relevant to our public interest inquiry under the foreign ownership provisions of section 310 of the Act. New GX requests a ruling, pursuant to section 310(b)(4) of the Act, that it would not serve the public interest for the Commission to prohibit ST Telemedia from acquiring, through New GX, indirect ownership interests in common carrier wireless licensees GCNAN and EAN in excess of the statutory 25 percent foreign ownership benchmark. Specifically, New GX asks that the ruling: (1) permit the “unlimited” indirect foreign ownership of GCNAN and EAN by ST Telemedia; and (2) allow GCNAN and EAN to accept up to and including additional, aggregate 25 percent indirect equity and voting interests from other unnamed foreign investors, except that no single foreign investor, with the exception of ST Telemedia, may acquire indirect foreign ownership of GCNAN and EAN in excess of 25 percent without prior Commission approval under section 310(b)(4).<sup>79</sup> In support of the requested ruling, New GX asserts that the proposed investment by ST Telemedia is attributable to a World Trade Organization (“WTO”) Member – Singapore – and, therefore, ST Telemedia is entitled to a rebuttable presumption that the proposed investment in New GX does not raise competitive concerns.<sup>80</sup>

20. Based on the record before us, we conclude that it would not serve the public interest to deny the transfer of control of the licenses held by GCNAN and EAN because of the proposed indirect foreign ownership interests that would be held by and through New GX and its wholly-owned subsidiary GC Holdings. We therefore grant New GX’s petition for declaratory ruling under section 310(b)(4) to the extent specified below. Relying on Commission precedent, we find that we should not consider the proposed transfers of control under section 310(a) and 310(b)(1)-(b)(3) of the Act.<sup>81</sup> Given Commission

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<sup>79</sup> See Petition for Declaratory Ruling, *supra* note 1, at 25-26, as amended by Third Amendment, *supra* note 1, at 3 n.6, and as further amended by the Fourth Amendment, *supra* note 1, at 1.

<sup>80</sup> See Petition for Declaratory Ruling, *supra* note 1, at 16-18 and 26, as amended by Third Amendment, *supra* note 1, at 7 (asserting that, as company from WTO Member country, ST Telemedia is entitled to presumption that proposed investment in New GX is in the public interest and nothing in the record raises exceptional circumstances that would rebut presumption). Applicants also state that Singapore is one of the largest trading partners of the United States and is a key strategic U.S. ally in the Asia-Pacific Region. See Third Amendment, *supra* note 1, at 8 & 8 nn.18-20. Applicants contend that the proposed transaction is the kind of investment envisioned by the U.S.-Singapore Free Trade Agreement signed on May 6, 2003. See *id.* at 8 & 8 n.19.

<sup>81</sup> Section 310(a) of the Act prohibits any radio license from being “granted to or held by” a foreign government or its representative. See 47 U.S.C. § 310(a). The ownership structure proposed by New GX is such that no foreign government or its representative will hold any of the radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or *en route* radio licenses from being “granted to or held by” aliens, or their representatives, or foreign corporations. See 47 U.S.C. § 310(b)(1), (b)(2). According to the Applications, no alien, representative, or foreign corporation will hold any of the common carrier licenses. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) and 310(b)(1)-(b)(2) of the Act. See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9804-9809, ¶¶ 38-48 (issues related to indirect foreign ownership of common carrier licensees are addressed under section 310(b)(4)). Additionally, because the proposed transaction does not involve direct foreign investment in GCNAN and EAN, the common carrier wireless licensees, it does not trigger section 310(b)(3) of the Act, which places a 20 percent limit on direct alien, foreign corporate or government ownership of entities that hold common carrier, broadcast and aeronautical fixed or *en route* Title III licenses. See 47 U.S.C. § 310(b)(3).

precedent, we dismiss the arguments of ACNI and IDT that we must consider the transfer of control of the wireless licenses under section 310(a).<sup>82</sup>

### 1. Legal Standard for Foreign Ownership of Radio Licensees

21. Section 310(b)(4) of the Act establishes a 25 percent benchmark for indirect, attributable investment by foreign individuals, corporations, and governments in U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>83</sup> The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's parent.<sup>84</sup> The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.<sup>85</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>86</sup> Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."<sup>87</sup> Applicants identify proposed foreign ownership, through New GX, of Global Crossing North American Holdings, Inc., the U.S. parent of GCNAN and EAN, that would exceed the 25 percent benchmark set by

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<sup>82</sup> See ACNI Objections to Third Amendment, *supra* note 50, at 5 (stating that Third Amendment fails to certify that ST Telemedia is not a foreign government or representative thereof); IDT Petition to Deny Third Amendment, *supra* note 49, at 10-16 (arguing that Commission precedent is erroneous); IDT Reply to Third Amendment, *supra* note 56, at 22 (arguing that "past Commission decisions do not provide a solid basis on which to confirm the distinction between Sections 310(a) and 310(b)"); *but see* Global Crossing Opposition to Petitions to Deny Third Amendment, *supra* note 52, at 3 (GCNAN and EAN are U.S. companies that clearly are not foreign governments and will not become representatives of a foreign government). See also Sen. Burns and Sen. Hollings *Ex Parte*, *supra* note 58, at 1-2 (urging Commission to give thorough consideration to Congressional intent regarding foreign ownership).

<sup>83</sup> See 47 U.S.C. § 310(b)(4) (providing that "No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.").

<sup>84</sup> See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, DA 95-364, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) ("*BBC License Subsidiary*").

<sup>85</sup> See *id.* at 10972, ¶ 20, 10973-74, ¶¶ 22-25.

<sup>86</sup> See, e.g., *Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, Declaratory Ruling and Order, FCC 95-498, 11 FCC Rcd 1850, 1857, ¶ 47 (1995) ("*Sprint Ruling*"). See also *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶ 25.

<sup>87</sup> See *Sprint Ruling*, 11 FCC Rcd at 1857, ¶ 47 (quoting section 310(b)(4)). It is the licensee's obligation to inform the Commission before its indirect foreign ownership exceeds the 25% benchmark set forth in section 310(b)(4). See *Fox Television Stations, Inc.*, Order, FCC 95-188, 10 FCC Rcd 8452, 8474, ¶ 52 (1995).

section 310(b)(4).<sup>88</sup> In addition, New GX itself is a foreign company, as is its wholly-owned subsidiary GC Holdings, which will be the direct parent of Global Crossing North American Holdings, Inc. Thus, the 100 percent direct and indirect ownership interest that would be held by GC Holdings and New GX in Global Crossing North American Holdings, Inc. also would exceed the 25 percent benchmark. We therefore must consider the transfer of control to New GX of the common carrier licenses held by GCNAN and EAN under section 310(b)(4) of the Act.

22. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and *en route* licensees.<sup>89</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its “effective competitive opportunities,” or “ECO,” test with a rebuttable presumption that such investment generally raises no competitive concerns.<sup>90</sup> In evaluating an applicant’s request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.<sup>91</sup>

23. In light of the policies adopted in the *Foreign Participation Order*, we begin our evaluation of the proposed transaction under section 310(b)(4) by calculating the proposed attributable foreign equity and voting interests in Global Crossing North American Holdings, Inc., the U.S. parent of the wireless licensees. We then determine whether these foreign interests properly are ascribed to

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<sup>88</sup> GCNAN and EAN are common carrier wireless licensees. GCNAN has 25 common carrier licenses and one private carrier wireless license. EAN has 20 common carrier point-to-point microwave licenses. We note that section 310(b)(4) governs only common carrier, broadcast, and aeronautical *en route* or fixed radio licenses. Therefore, we do not consider specifically in our discussion here the proposed transfer of the private radio license held by GCNAN. Our findings with respect to competitive effects, *see infra* ¶¶ 36-41, our public interest determination for the common carrier licenses, *see infra* ¶¶ 25-35, and the Executive Branch’s resolution of any national security and law enforcement concerns, *see infra* ¶¶ 46-51, collectively suffice to resolve any public interest implications, outside our review under section 310(b)(4), to the extent there are any, for the non-common carrier license.

<sup>89</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, and 23940, ¶¶ 111-12.

<sup>90</sup> *See id.* at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶ 111-12.

<sup>91</sup> To determine a foreign entity’s home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity’s incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *See Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951, ¶ 207 (1995)). For examples of cases applying the five-factor “principal place of business” test, *see Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, FCC 01-369, 16 FCC Rcd 22897 (2001), *erratum*, DA 02-266, 17 FCC Rcd 2147 (Int’l Bur. 2002), *recon. denied*, FCC 02-207, 17 FCC Rcd 14030 (2002) (“*Telenor Order*”); *Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, et al.*, Memorandum Opinion, Order and Authorization, DA 02-307, 17 FCC Rcd 2271 (Int’l Bur. 2002).

individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries. The Commission has stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.<sup>92</sup>

24. In this case, the foreign equity and voting interests in Global Crossing North American Holdings, Inc. would be held by and through New GX and GC Holdings. In *Wilner & Scheiner* and its progeny, the Commission has set forth a standard for calculating both alien equity and voting interests held in a licensee, or, as here, in the licensee's parent Global Crossing North American Holdings, Inc., where such interests are held through intervening entities.<sup>93</sup> In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.<sup>94</sup> Once the *pro rata* equity interests of each alien investor are calculated, these interests then are aggregated to determine whether the sum of the interests exceeds the statutory benchmark.<sup>95</sup> By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.<sup>96</sup>

## 2. Attribution of Foreign Ownership Interests

25. As discussed in Section II above, the proposed transaction contemplates that New GX will succeed to the assets of Global Crossing, which include one hundred percent of the equity and voting interests in Global Crossing North American Holdings, Inc., a Delaware corporation that indirectly wholly owns GCNAN and indirectly controls, and owns 86.7 percent equity and voting interests in, EAN.<sup>97</sup> In addition, New GX will acquire the remaining 13.3 percent minority equity and voting interests

<sup>92</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131.

<sup>93</sup> See generally *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, FCC 85-295, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner I*"), *recon. in part*, FCC 86-406, 1 FCC Rcd 12 (1986); *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 22-25; *Amendment of Parts 20, 21, 22, 24, 26, 80, 87, 90, 100, and 101 of the Commission's Rules to Implement Section 403(k) of the Telecommunications Act of 1996*, Order, FCC 96-396, 11 FCC Rcd 13072 (1996).

<sup>94</sup> See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

<sup>95</sup> See *id.* at 10973-74, ¶ 25.

<sup>96</sup> See *id.* at 10973, ¶ 23; see also *Wilner & Scheiner I*, 103 F.C.C. 2d at 522, ¶ 19.

<sup>97</sup> Global Crossing currently holds its interests in Global Crossing North American Holdings, Inc. through its Bermuda subsidiary Global Crossing Holdings Ltd. Applicants state they expect Global Crossing Holdings Ltd. to be dissolved upon the consummation of the proposed transaction, and thus do not provide a principal place of business showing for Global Crossing Holdings Ltd. See December 18 Letter, *supra* note 10, at 4. Appendix C to this Order and Authorization presents the post-closing ownership structure.

in EAN currently held by two individuals, and thus will own one hundred percent of EAN.<sup>98</sup> Like Global Crossing, New GX is itself organized under the laws of Bermuda, a WTO Member.<sup>99</sup> Applicants state that New GX, a newly-formed company, does not yet have commercial operations and will not have such operations until consummation of the proposed transaction.<sup>100</sup> Applicants assert that New GX will have substantially the same principal places of business as Global Crossing.<sup>101</sup> Specifically, Applicants state that New GX, like Global Crossing, will not have a single principal place of business, but, once it succeeds to Global Crossing's assets and operations, will carry out its global business principally in countries that are WTO Members.<sup>102</sup> On balance we find that New GX, like Global Crossing, principally will conduct its business in countries that are WTO Members.<sup>103</sup> Therefore, pursuant to the *Foreign Participation Order*, New GX and GC Holdings are entitled to a rebuttable presumption that their proposed foreign ownership of Global Crossing North American Holdings, Inc., the U.S. parent of the Title III licensees, does not pose a risk to competition in the U.S. market that would justify denial of the Applications. This presumption could be rebutted only if we were to find that grant of the Applications would pose a very high risk to competition in the U.S. market, where our general safeguards and other conditions would be ineffective at preventing harm to U.S. consumers.<sup>104</sup>

26. We next calculate the foreign equity and voting interests in Global Crossing North American Holdings, Inc. that would be attributable to ST Telemedia and the Creditor Shareholders. As discussed in Section II.C above, following consummation of the proposed transaction contemplated in the Purchase

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<sup>98</sup> See August 18 Letter, *supra* note 62, at 2.

<sup>99</sup> See *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, DA 00-311, 15 FCC Rcd 3050, 3052, ¶ 7 (Int'l Bur. 2000) (relying on an opinion provided by the U.S. Department of State that the 1994 Marrakash Agreement Establishing the World Trade Organization applies to Bermuda, a dependent territory of the United Kingdom).

<sup>100</sup> See December 18 Letter, *supra* note 10, at 4.

<sup>101</sup> See *id.* at 4-7 & 5 n.6, citing to *Global Crossing Ltd. and Frontier Corporation, Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as amended*, CC Docket No. 99-264, DA 99-1930, 14 FCC Rcd 15911, 15919, ¶ 16 (WTB, Int'l Bur. & CCB 1999) (finding that Global Crossing principally conducts business in countries that are WTO Members).

<sup>102</sup> In providing a principal place of business showing for New GX, Applicants state that: (1) Global Crossing and New GX both are formed under the laws of Bermuda; (2) the principal shareholders are entities from the United States or Singapore, both WTO Members, and most or all of the directors and officers of New GX are expected to be citizens of the United States or other WTO Members; (3) Global Crossing's Bermuda office is the headquarters for Global Crossing's holding company activities, although most of the senior executives and key employees of Global Crossing and its subsidiaries, and approximately 67% of employees, are based in the United States; (4) the great majority of property is located in the United States and other WTO Member countries or in international waters and connecting WTO Members; and (5) the single largest source of Global Crossing's revenue is the United States. See December 18 Letter, *supra* note 10, at 4-7; Third Amendment, *supra* note 1, at 7, 9-10.

<sup>103</sup> As noted above, see *supra* note 10, New GX will hold its interests in Global Crossing North American Holdings, Inc. through GC Holdings. Based on Applicants' representation that GC Holdings will not engage in commercial operations, we find that GC Holdings will principally conduct its business in Bermuda or generally in countries that are WTO Members.

<sup>104</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶ 51.

Agreement, ST Telemedia, a Singapore company, would acquire common and preferred stock equal to 61.5 percent of New GX's equity and voting interests, and the Creditor Shareholders would acquire common stock equal to 38.5 percent of New GX's equity and voting interests.<sup>105</sup>

27. *ST Telemedia*. We turn first to the proposed investment in New GX by ST Telemedia, a Singapore company. The Commission's attribution principles require that we attribute ST Telemedia's 61.5 percent equity and voting interests in New GX fully to Global Crossing North American Holdings, Inc., because Global Crossing North American Holdings, Inc. would be wholly owned and controlled by New GX. ST Telemedia is a direct wholly-owned subsidiary of Singapore Technologies, a Singapore-based conglomerate that, in turn, is a direct wholly-owned subsidiary of Temasek, a Singapore investment company that is wholly owned by the Government of Singapore.<sup>106</sup> Applying the five-factor principal place of business test, we find that ST Telemedia and its parent companies have their principal place of business in Singapore, a WTO Member.<sup>107</sup> ST Telemedia, Singapore Technologies, and Temasek are organized under the laws of the Republic of Singapore and headquartered in Singapore.<sup>108</sup> Seven out of eight of ST Telemedia's directors, and six out of its seven senior officers, are citizens of Singapore, which also is the country in which the majority of its tangible property is located, and the country from which it derives the greatest sales and revenues.<sup>109</sup> All of the directors and senior officers of Singapore Technologies, and all of the directors and four of the five senior officers of Temasek, are citizens of Singapore.<sup>110</sup> A majority of the property of each of Singapore Technologies and Temasek is located in Singapore, and both companies derive the largest portion of their revenues from their Singapore operations.<sup>111</sup> Therefore, ST Telemedia, Singapore Technologies, Temasek, and the Government of Singapore are entitled to a rebuttable presumption that their proposed indirect foreign ownership of Global Crossing North American Holdings, Inc. does not pose a risk to competition in the U.S. market that would justify denial of the Applications.<sup>112</sup>

28. The Commission also considers any relevant factors and evidence that might tend to rebut

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<sup>105</sup> See *supra* ¶ 4.

<sup>106</sup> See Petition for Declaratory Ruling, *supra* note 1, at 17.

<sup>107</sup> As noted above, *see supra* note 27, ST Telemedia will hold its interest in New GX through Singapore and Mauritius subsidiaries. Applicants advise that the only business activity of STT Crossing Ltd. will be to hold the investments of ST Telemedia in New GX. See December 18 Letter, *supra* note 10, at 6 n.8; September 18 Letter, *supra* note 10, at 1. Based on this representation, we find that STT Crossing Ltd. will have its principal place of business in Singapore or Mauritius. Mauritius is a WTO Member. See, e.g., [www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (visited March 28, 2003).

<sup>108</sup> See Petition for Declaratory Ruling, *supra* note 1, at 12; Third Amendment, *supra* note 1, at 7 n.12.

<sup>109</sup> See Petition for Declaratory Ruling, *supra* note 1, at 17-18.

<sup>110</sup> See Third Amendment, *supra* note 1, at 7 n.12.

<sup>111</sup> See *id.*

<sup>112</sup> We find that, because Singapore is a Member of the WTO, the Government of Singapore's indirect investment in Global Crossing North American Holdings, Inc. is properly treated as an investment from a WTO Member country.

the presumption that investment by individuals or entities from WTO Member countries generally raises no risk to competition in the U.S. market.<sup>113</sup> IDT contends that the transfer of control of Commission licenses to New GX would raise “precisely the sort of ‘exceptional circumstances’ that rebut the presumption” because New GX would be “affiliated with carriers possessing market power in [Singapore and Indonesia], themselves affiliated with [the Government of Singapore].”<sup>114</sup> In the *VoiceStream/Deutsche Telekom Order*, the Commission stated that the existence and degree of control by a foreign government is relevant to determining the public interest under section 310(b)(4).<sup>115</sup> Here, for the reasons discussed below at paragraphs 31-32, we conclude that the Government of Singapore’s indirect ownership interest in ST Telemedia, which will control transferee New GX, will not confer a unique financial advantage, or otherwise create a high risk to competition or consumers in the United States, that warrants conditions under section 310(b)(4) other than those adopted in this Order and Authorization.

29. The Applicants contend that government ownership of ST Telemedia poses no threat to competition in the United States.<sup>116</sup> Applicants advise that the Government of Singapore does not have the right to consent to or veto the decisions of, or to hold a “golden share” in, ST Telemedia.<sup>117</sup> Applicants further advise that ST Telemedia functions as a competitive, commercial enterprise with a profit-maximizing objective.<sup>118</sup> Applicants state that the Government of Singapore provides no subsidies or grants to ST Telemedia, but that ST Telemedia finances its investment activities through traditional commercial means.<sup>119</sup> Applicants also state that ST Telemedia’s workforce and the workforces of ST Telemedia’s subsidiaries are not and never have been civil servants.<sup>120</sup> Finally, the Applicants note that ST Telemedia’s operational subsidiaries in Singapore are subject to the regulatory oversight of the Info-

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<sup>113</sup> See *Telenor Order*, 16 FCC Rcd at 22909, ¶ 27. In this instance, four Congressional letters urge us to undertake a thorough review. See Cong. Wolf *Ex Parte*, *supra* note 58, at 2 (urging full and complete review of Hutchison Telecommunications Ltd.’s then-proposed investment); Sen. Dayton *Ex Parte*, *supra* note 58, at 1 (asking Commission to consider issues very carefully and to seriously consider any information provided in the record by the Department of Defense and Federal Bureau of Investigation); Sen. Burns and Sen. Hollings *Ex Parte*, *supra* note 58, at 1-2 (urging Commission not to expedite its review but to thoroughly probe the transaction, giving thorough consideration to Congressional intent regarding foreign ownership); Cong. Weldon *Ex Parte*, *supra* note 58, at 1 (stating that proposed transaction must be reviewed with the strictest of scrutiny).

<sup>114</sup> See IDT Petition to Deny Third Amendment, *supra* note 49, at 20.

<sup>115</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9813, ¶ 56; see also *Telenor Order*, 16 FCC Rcd at 22909, ¶ 28.

<sup>116</sup> See Global Crossing Opposition to Petitions to Deny Third Amendment, *supra* note 52, at 7, 11-14. Applicants state that the FCC-Licensed Subsidiaries participate as non-dominant providers in U.S. markets that are highly competitive. They state that consummation of the proposed transaction will not change the situation, because there will be no consolidation of U.S. network assets or of the U.S. interstate telecommunications market and because the Applicants have agreed to accept dominant treatment on the U.S.-Singapore route. See *id.* at 7-8.

<sup>117</sup> See *id.* at 11.

<sup>118</sup> See *id.* at 11.

<sup>119</sup> See *id.* at 12.

<sup>120</sup> See *id.*



communications Development Authority of Singapore (the "IDA") and that the IDA has issued over 600 licenses to provide facilities-based and services-based telecommunications, including licenses held by subsidiaries of U.S. telecommunications carriers.<sup>121</sup>

30. IDT replies that ST Telemedia's status as an indirect wholly-owned subsidiary of Temasek confers significant advantages not available to ST Telemedia's competitors.<sup>122</sup> IDT states that Temasek is willing to use the assets of one of its companies to benefit another Temasek company.<sup>123</sup> IDT also suggests that the exercise of shareholder rights, including the right to appoint board members to the Temasek companies, results in government influence over ST Telemedia's commercial policy.<sup>124</sup>

31. For the reasons outlined below, we decline to adopt special conditions in this case. First, as the Commission stated in the *Foreign Participation Order*, the commitments made by WTO Members, the Commission's regulatory safeguards, and antitrust law should adequately address competitive concerns resulting from participation by foreign carriers from WTO Member countries in the U.S. telecommunications market.<sup>125</sup> The Commission has confirmed that the presumption in favor of market entry for private entities from WTO Member countries also applies to an analysis of whether the denial of indirect investment by a WTO Member government would serve the public interest.<sup>126</sup> Upon review of the competitive issues raised by this transaction, we conclude that IDT has not provided sufficient evidence to rebut the presumption favoring investment by WTO Members. The Applicants state, in a

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<sup>121</sup> See *id.*

<sup>122</sup> See IDT Reply to Third Amendment, *supra* note 56, at 7. IDT states that Temasek is a "massive investment holding company" wholly owned by the Ministry of Finance. See *id.*

<sup>123</sup> See *id.* at 8 (citing to a February 2002 press release about Temasek's exercise of its rights of mandatory exchange of guaranteed bonds issued by one Temasek subsidiary for shares of a second subsidiary). IDT contends that the use of the equity of one company to pay the debt of another company is a valuable financial advantage not available to ST Telemedia's competitors. See *id.*

<sup>124</sup> See *id.* at 9-10. IDT contends that Temasek and the Government of Singapore exercise influence over ST Telemedia through the appointment of board members, including persons who are family members of government officials and including at least one key government official. See *id.* at 10-11. In particular, IDT states that Mr. Tan Guong Ching is Permanent Secretary of the Ministry of Home Affairs and Chairman of the boards of directors of ST Telemedia and Singapore Technologies. See *id.* at 11. IDT also argues that links between the Temasek companies and the Government of Singapore raise the question whether there exist persons and entities that "are 'representatives' of the Singapore government for purposes of the Commission's foreign ownership analysis." See *id.* at 10. In this regard, if IDT is making an argument that any government officials holding office in the Temasek companies are "representatives" under section 310(a), this argument fails because any such officials are not Commission licensees. The Commission consistently has construed the term "representative," as applied to 47 U.S.C. § 310(a), to prohibit individuals acting on behalf of or in conjunction with a foreign government from holding licenses under Title III of the Act. See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9808, ¶ 47 ("The Commission consistently has construed 'representative' of an alien or foreign government to apply to individuals 'acting on behalf of' or 'in conjunction with' the foreign entity," not to companies in which a government "allegedly influences management decisions.").

<sup>125</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9810-11, ¶ 51; see also *Telenor Order*, 16 FCC Rcd at 22909, ¶ 30.

<sup>126</sup> See *Telenor Order*, 16 FCC Rcd at 22909, ¶ 30; see also *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9810-11, ¶ 51.

pleading certified under penalty of perjury as true, complete and correct by the Senior Vice President – General Counsel of ST Telemedia, that the Government of Singapore does not provide subsidies or grants to ST Telemedia, does not influence ST Telemedia’s commercial policy, and will not influence the commercial policy of New GX and the FCC-Licensed Subsidiaries.<sup>127</sup> Notwithstanding IDT’s allegations, we find no credible evidence that ST Telemedia receives any special benefits or has preferential access to capital by virtue of government ownership.<sup>128</sup>

32. Second, and perhaps most important, we are not persuaded that the indirect foreign corporate and government ownership of ST Telemedia raises in itself competitive concerns with respect to any of the product markets served by the FCC-Licensed Subsidiaries. Although IDT cites to a web page describing the corporate background of Temasek for the proposition that the Government of Singapore exercises its shareholder rights to influence the strategic direction of the Temasek investments, the record does not support a finding that the exercise of these shareholder rights would harm competition in the United States.<sup>129</sup> As we note in the Competitive Effects section below, the acquisition of the FCC-Licensed Subsidiaries will not reduce competition within the U.S. market.<sup>130</sup> Rather than decreasing competition, the acquisition likely will result in the continued provision of interstate services by GCNAN and EAN. Given these realities, it is highly unlikely that GCNAN or EAN could achieve market power in any U.S. product market, and any attempt by the Government of Singapore to aid GCNAN or EAN in

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<sup>127</sup> See Global Crossing Opposition to Petitions to Deny Third Amendment, *supra* note 52, at 11-12 & Certification of Pak Siok Lan, Senior Vice President – General Counsel, ST Telemedia (certifying that the statements with respect to ST Telemedia and its affiliates and subsidiaries are true, complete and correct). Moreover, although there is no record evidence that the proposed transaction will affect competition adversely in any input market essential for the provision of international services, including the market for international transport services, *see infra* ¶¶ 39-41, we note in passing that the government shares in Temasek are administered by the Ministry of Finance, an agency separate from Singapore’s telecommunications regulator, the IDA.

<sup>128</sup> In fact, some equity investors and credit agencies cite government ownership as a negative factor in the cost of raising capital. Government ownership can be a competitive disadvantage, particularly in the United States where efficiency is a key determinant of success, because government-owned firms can be less efficient and less profitable. *See VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9816-17, ¶ 62 & n.185.

<sup>129</sup> See IDT Reply to Third Amendment, *supra* note 56, at 9, citing “Corporate Backgrounder” (available at [http://www.temasekholdings.com.sg/temasek\\_news/corp\\_backgrounder/corporate\\_backgrounder-Jul03.htm](http://www.temasekholdings.com.sg/temasek_news/corp_backgrounder/corporate_backgrounder-Jul03.htm) (visited Sept. 5, 2003) and attached as Attachment 2 of IDT’s pleading). *See also VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9820, ¶ 68 (under the *Foreign Participation Order*, the Commission focuses its analysis on competitive effects in U.S. markets). IDT also argues that the record is insufficient to provide a basis for concluding that the Government of Singapore will not influence the commercial policy of New GX and the FCC-Licensed Subsidiaries, and suggests that the Commission designate the Applications for hearing to establish a more complete record. *See IDT Reply to Third Amendment, supra* note 56, at 12. IDT’s pleading does not contain specific allegations of fact (or any supporting affidavit) sufficient to show that a grant of the Applications would be *prima facie* inconsistent with the public interest, convenience and necessity. Based on the record, we conclude that there are no substantial and material questions of fact to warrant the designation of a hearing. *See Astroline Communications Company Limited Partnership v. F.C.C.*, 857 F.2d 1556, 1561-62 (D.C. Cir. 1988). *See also* 47 U.S.C. § 309(d)(1), (2) of the Act.

<sup>130</sup> GCNAN holds 25 common carrier point-to-point microwave licenses. *See* Petition for Declaratory Ruling, *supra* note 1, at 25. EAN, which holds 20 common carrier point-to-point microwave licenses, provides voice and data services to business customers in western Massachusetts and New Hampshire. *See* Fourth Amendment, *supra* note 1, at 2. As noted, *see infra* ¶ 38, the transaction will not result in the concentration of market power in the U.S. domestic interstate markets served by GCNAN and EAN.

such an endeavor would be likely to fail. Anti-competitive activity succeeds if the market that is the object of such activity is susceptible to consolidation and maintenance of market power. To consolidate and maintain market power, a company would need to force the exit of competitors from a market and prevent the entry of new competitors. Attempts at such exclusion would be unlikely to succeed.<sup>131</sup> Accordingly, we cannot find that the transfer of control of GCNAN and EAN to New GX as controlled by ST Telemedia presents a high risk to competition that warrants additional conditions under this section 310(b)(4) analysis.

33. *Creditor Shareholders.* We next calculate the attributable foreign equity and voting interests in New GX that would be held by the Creditor Shareholders. Applicants advise that the identities of the Creditor Shareholders and the amount of New GX common stock that each Creditor Shareholder would receive have not been fully determined.<sup>132</sup> Nonetheless, Applicants provide a best effort estimate of anticipated creditor shareholdings.<sup>133</sup> Applicants: (1) identified creditors of record for each of the four classes of creditors set out in the plan of reorganization approved by the bankruptcy court's *Confirmation Order*; (2) reviewed the names and business addresses of the creditors of record to determine which creditors in each class are from the United States, other WTO Members, or non-WTO countries; (3) divided the total dollar amount of the claims submitted by the non-U.S. WTO Member creditors and non-WTO creditors in each class by the total dollar amount of the total claims for that class, to determine the approximate percentage of claims held by non-U.S. WTO Member and non-WTO foreign persons; and (4) multiplied that percentage by the percentage of New GX common stock to be granted to that class of creditors.<sup>134</sup> The result is an estimate of the percentage of New GX common stock that would be issued to the non-U.S. Creditor Shareholders (from WTO and non-WTO countries) in each of the four classes of creditors.<sup>135</sup> These calculations lead us to conclude that the vast majority of the creditor shares are likely to be held by individuals or entities from the United States or other WTO Member countries.<sup>136</sup> Applicants state that no Creditor Shareholder is expected to obtain a ten-percent-or-greater voting or

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<sup>131</sup> A company seeking to drive out competitors by lowering price must have sufficient supply capacity to provide services to the bulk of its rivals' customers. Otherwise rivals will not need to match price reductions to preserve their customer base. GCNAN and EAN are only two of many common carriers that offer interstate voice and data services in the United States,

<sup>132</sup> See February 6 Letter, *supra* note 62, at 2.

<sup>133</sup> See *id.*

<sup>134</sup> See *id.*

<sup>135</sup> See *id.* at 2-3. Applicants acknowledge that this methodology is not precise because it assumes that all currently existing claims in a given class will be allowed, and advise that the process of objecting to certain claims and negotiating settlements with various creditors effectively will result in their removal as creditors and an increase in shares available to remaining creditors whose claims are allowed. See *id.* at 3 n.5.

<sup>136</sup> The information provided by Applicants in their February 6 Letter, see *supra* note 62, and in the Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed Feb. 24, 2003) ("February 24 Letter"), suggests that all but 0.196% of the shares would be held by individuals or entities from the United States and other WTO Member countries. See February 6 Letter, *supra* note 62, at Exhibits 1A-1D, as updated by February 24 Letter at Exhibit 1A (Revised) and Exhibit 1D (Revised).

equity interest in New GX.<sup>137</sup>

34. In summary, virtually all of the indirect foreign equity and voting interests that would be held in Global Crossing North American Holdings, Inc. by and through New GX and GC Holdings are properly ascribed to individuals and entities from WTO Member countries.<sup>138</sup> Therefore, Applicants are entitled to a rebuttable presumption that the proposed indirect foreign ownership of GCNAN and EAN would not pose a risk to competition in the U.S. market that would justify denial of the Radio License Application and Fourth Amendment seeking to transfer control of the Title III common carrier licenses held by GCNAN and EAN. As discussed above, there is no credible evidence in the record that would rebut this presumption and, as we explain more fully in Section III.D below, the proposed transaction does not raise any significant competitive concerns.<sup>139</sup> We also determine in Section III.F below that the agreement between the Applicants and the Executive Branch addresses any national security and law enforcement concerns.<sup>140</sup>

35. We do not grant ST Telemedia's request for "unlimited" indirect investment in GCNAN and EAN.<sup>141</sup> We require GCNAN and EAN to request specific Commission approval pursuant to section 310(b)(4) before ST Telemedia (through STT Communication Limited and STT Crossing Ltd.) and ST Telemedia's Singapore shareholders can acquire any additional equity or voting interest in New GX. We otherwise conclude that it will not serve the public interest to prohibit the proposed indirect foreign ownership of GCNAN and EAN, the Title III licensees. Specifically, this ruling permits GCNAN and EAN to be owned indirectly by: (1) New GX (through GC Holdings) (up to and including 100 percent of the equity and voting interests); (2) ST Telemedia (through STT Communication Limited and STT Crossing Ltd.) and ST Telemedia's Singapore shareholders, including Singapore Technologies, Temasek, and the Government of Singapore (up to and including 61.5 percent of the equity and voting interests);

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<sup>137</sup> See February 6 Letter, *supra* note 62, at 6. See also Third Amendment, *supra* note 1, at Attachment H (no Creditor Shareholder will hold a 5% or greater interest in New GX).

<sup>138</sup> Based on Applicants' data, approximately 0.196% of New GX's equity and voting interests would be attributed to individuals or entities from non-WTO Member countries. See *supra* note 136 (0.196% non-WTO equity and voting interests from the Creditor Shareholders).

<sup>139</sup> See *infra* at ¶¶ 36-41. See also OII Comments, *supra* note 51, at 7 (contending that the proposed indirect foreign investment by ST Telemedia will benefit U.S. employees and consumers as New GX deploys new services and builds out its network).

<sup>140</sup> We note that ACNI and IDT assert that transfer of control of the FCC-Licensed Subsidiaries from Global Crossing to New GX raises national security concerns because of the foreign citizenship of ST Telemedia. See ACNI Statement, *supra* note 39, at 17-20; IDT Petition to Deny Third Amendment, *supra* note 49, at 31-35. See also Sen. Dayton *Ex Parte* at 1, Sen. Burns and Sen. Hollings *Ex Parte* at 1, Cong. Weldon *Ex Parte* at 1. We find that the agreement between the Executive Branch and the Applicants addresses these concerns. See *infra* at ¶¶ 46-51.

<sup>141</sup> See Third Amendment, *supra* note 1, at 3 n.6 (seeking to amend the Petition for Declaratory Ruling to permit ST Telemedia "to hold an unlimited indirect interest" in GCNAN); Fourth Amendment, *supra* note 1, at 1 (requesting that the Petition for Declaratory Ruling be modified to permit EAN to have the foreign ownership described in the Third Amendment). Our approval in this Order and Authorization of indirect foreign investment in GCNAN and EAN pursuant to section 310(b)(4) shall not modify any requirement imposed on the licensees by other provisions of the Act or the Commission's rules to obtain prior approval for, or to notify the Commission of, changes in their ownership.

and (3) various WTO Member Creditor Shareholders, each of which is permitted to hold a less-than-ten-percent equity and/or voting interest as finally determined under the plan of reorganization (up to and including an aggregate 38.5 percent of the equity and voting interests). In addition to these approved interests, New GX may accept up to and including an aggregate 25 percent indirect equity and/or voting interest from the WTO Member Creditor Shareholders, and from other foreign investors, without seeking prior Commission approval under section 310(b)(4), subject to the following conditions: (1) GCNAN and EAN shall obtain prior approval before any foreign individual or entity other than New GX (through GC Holdings), ST Telemedia (through STT Communication Ltd. and STT Crossing Ltd.), Singapore Technologies, Temasek, and the Government of Singapore acquires individually a greater-than-25-percent indirect equity and/or voting interest in GCNAN or EAN; and (2) GCNAN and EAN shall seek approval under section 310(b)(4) before they accept any additional indirect investment, other than that approved here, from ST Telemedia, Singapore Technologies, Temasek and the Government of Singapore.<sup>142</sup> We emphasize that, as Commission licensees, GCNAN and EAN have an affirmative duty to continue to monitor attributable foreign equity and voting interests and to calculate attributable interests consistent with the attribution principles enunciated by the Commission.<sup>143</sup>

#### D. Competitive Effects

36. Our public interest analysis includes an evaluation of the competitive effects of the proposed transaction in both the relevant product markets and the relevant geographic markets. For telecommunications service providers, the Commission has determined that the relevant product and geographic markets can include both U.S. domestic telecommunications services markets and telecommunications services between the United States and foreign points.<sup>144</sup> We determine that the

<sup>142</sup> In response to the ACNI Objections to Third Amendment, *supra* note 50, at 3 & 3 n.5, suggesting that Hutchison Telecommunications Ltd. may seek to acquire a 25% investment in New GX at some future date despite Executive Branch objections, we observe that the network security agreement between the Executive Branch and the Applicants, the provisions of which are incorporated as a condition to this Order and Authorization, may not permit a 25% investment by Hutchison Telecommunications Ltd. or another foreign entity. *See infra* ¶ 47 & notes 190-91 (requiring New GX to give notice to the Executive Branch of any 10% or greater foreign investment and reserving an Executive Branch right to object under certain circumstances). *See also* Global Crossing Opposition to Petitions to Deny Third Amendment, *supra* note 52, at 16 n.44 (stating that Hutchison Telecommunications Ltd. "will have no interest in New GX following consummation of the transaction").

<sup>143</sup> *See, e.g., Vodafone Americas Asia Inc., Transferor, and Globalstar Corporation, Transferee, Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, DA 02-1557, 17 FCC Rcd 12849, 12866, ¶ 53 (Int'l Bur. 2002).

<sup>144</sup> *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9823, ¶ 78, 9825, ¶ 81, 9833, ¶ 97. *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, FCC 98-225, 13 FCC Rcd 18025 (1998) ("*WorldCom/MCI Order*"); *Lockheed Martin Corporation, Comsat Governmental Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station, Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization, File Nos. SAT-T/C-20000323-00078 and SAT-STA-20000323-00078, FCC 00-277, 15 FCC Rcd 22910, 22915, ¶ 16 (2000) ("*Comsat/Lockheed Order*"), *erratum*, DA 00-1789, 15 FCC Rcd 23506 (Int'l Bur. 2000), *recon. denied*, FCC 02-197, 17 FCC Rcd 13160 (2002); and *Application of General Electric Capital Corporation and SES Global S.A. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214(a) and 310(d) of the Communications Act and* (continued...)

proposed transfer is not likely to result in harm to competition in any relevant market and likely will yield tangible public interest benefits.

37. We find that the instant case does not pose a threat of a reduction in the number of potential competitors in the geographic and product markets served by the FCC-Licensed Subsidiaries. Indeed, the Applicants submit that consummation of the proposed transaction would enable the FCC-Licensed Subsidiaries to continue to compete in the U.S. domestic and international telecommunications markets and to provide telecommunications services and facilities, including submarine cable capacity, to other telecommunications carriers and service providers.<sup>145</sup> CWA argues that the Applicants have not demonstrated a verifiable public benefit to competition from the continued viability of these subsidiaries.<sup>146</sup> However, we find that the continued operation of the FCC-Licensed Subsidiaries will benefit competition by preventing discontinuance of service and providing consumers choices among providers of telecommunications services. We give no weight to ACNI's suggestion that, because other entities have expressed an interest in acquiring Global Crossing's assets, the FCC Licensed-Subsidiaries are not in danger of disappearing.<sup>147</sup> The *Confirmation Order* of the bankruptcy court approved the proposed transaction currently before us, and we will not speculate on what other transactions the court might or might not have approved.

38. No anti-competitive effects will result from this decision. As the Applicants observe, the operating subsidiaries and affiliates of ST Telemedia do not provide U.S. interstate services, and thus the proposed transaction would not result in any increase in concentration of market power in the U.S. domestic interstate markets.<sup>148</sup> Further, the activities of the FCC-Licensed Subsidiaries and those of the

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*Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, DA 01-2100, 16 FCC Rcd 17575 (Int'l Bur. & WTB 2001), Supplemental Order, DA 01-2482, 16 FCC Rcd 18878 (Int'l Bur. & WTB 2001).

<sup>145</sup> See *Petition for Declaratory Ruling*, *supra* note 1, at 21-22; *Third Amendment*, *supra* note 1, at 6-7. Additionally, the Applicants advise that stabilizing the financial status of the FCC-License Subsidiaries will be beneficial to approximately 5000 employees. See *Third Amendment*, *supra* note 1, at 10.

<sup>146</sup> See *CWA Comments*, *supra* note 36, at 4; see also *ACNI Statement*, *supra* note 39, at 14-15.

<sup>147</sup> See *ACNI Second Supplemental Letter*, *supra* note 46, at 4.

<sup>148</sup> See *Petition for Declaratory Ruling*, *supra* note 1, at 22-23; *Third Amendment*, *supra* note 1, at 7. With respect to domestic telecommunications services, the Commission separately analyzes the impact on competition in the product market for local exchange and exchange access services, and the product market for interexchange services. See, e.g., *MCI/WorldCom Order*, 13 FCC Rcd at 18040 n.61. Budget Call, Global Crossing Bandwidth, Global Crossing Local Services, GCNAN, and Global Crossing Telecommunications (collectively, the "Domestic 214 Subsidiaries") provide domestic resold and facilities-based local exchange, intrastate, and interstate telecommunications services on a retail and wholesale basis in all fifty states and the District of Columbia. See *Section 214 Application*, *supra* note 1, at Exhibit A; see also *December 18 Letter*, *supra* note 10, at 12. Each of the five Domestic 214 Subsidiaries provides both interstate and intrastate services, but only Global Crossing Local Services provides local exchange services, which it provides as a competitive facilities-based carrier in 26 states. See *December 18 Letter*, *supra* note 10, at 13. The Commission further distinguishes between domestic interstate interexchange services provided to: (1) residential consumers and small businesses (mass market); and (2) medium-sized and large business customers (large business market). See *WorldCom/MCI Order*, 13 FCC Rcd at 18040, ¶ 24. The Applicants estimate that the Domestic 214 Subsidiaries collectively have a small percentage of the domestic mass market, on the order of less than one percent nationwide. See *December 18 Letter*, *supra* note 10, at 12. In the large business market, the Applicants state that the Domestic 214 Subsidiaries are important competitive providers of telecommunications services to large enterprise customers, and provide service to over

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subsidiaries of ST Telemedia and its affiliates largely do not overlap in the U.S. international market.<sup>149</sup> Neither ST Telemedia's subsidiary StarHub, Inc. nor SingTel's subsidiary Singapore Telecom USA, Inc. has a significant market share on any U.S. route.<sup>150</sup> Moreover, the subsidiaries and affiliates of ST Telemedia outside the United States would not pose a risk of competitive harm on any U.S. route sufficient to warrant denial of the Applications. These subsidiaries and affiliates either do not control bottleneck facilities and otherwise do not have the ability to affect competition in the U.S. telecommunications services market, or, in the case of the U.S.-Singapore and U.S.-Indonesia routes, their market power will be constrained by the Commission's dominant carrier regulation of the International 214 Subsidiaries on these routes.<sup>151</sup>

39. Our conclusion that the proposed transaction will not impact in any significant way the market for international long distance services is further supported by the absence of any evidence in the record to demonstrate that the proposed transaction would affect competition adversely in any input market that is essential for the provision of international services, including the market for international transport services.<sup>152</sup> For purposes of determining whether the transaction would affect competition

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450 carriers in the United States. *See id.* at 13. In addition, as noted, wireless licensees GCNAN and EAN hold common carrier microwave licenses used to provide voice and data services. *See supra* note 130.

<sup>149</sup> *See* Petition for Declaratory Ruling, *supra* note 1, at 23; Third Amendment, *supra* note 1, at 7. The Commission has distinguished between international services provided to mass market and larger business customers. *See WorldCom/MCI Order*, 13 FCC Rcd at 18095, ¶ 122. For the international telecommunications market, the Commission also has evaluated the competitive effects on a country-by-country basis, for service between the United States and specific foreign countries, where service to each foreign country from the United States represents a separate geographic market. *See Comsat/Lockheed Order*, 15 FCC Rcd at 22916, ¶ 18.

<sup>150</sup> *See* Petition for Declaratory Ruling, *supra* note 1, at 23 (stating neither StarHub, Inc. nor Singapore Telecom USA, Inc. has a "remotely cognizable market share on any U.S. international route"); Third Amendment, *supra* note 1, at 7 (stating that StarHub, Inc. has a "very small participation" in the U.S. telecommunications market). *See also, e.g., 2001 International Telecommunications Data*, Industry Analysis & Technology Division, Wireline Competition Bureau, Federal Communications Commission (Jan. 2003), at Tables A1, A28 (reporting that StarHub, Inc. billed only 499,046 of the 33.3 billion minutes of international message telephone service billed in the United States for year 2001, or less than 0.002%). We note that Singapore Telecom USA, Inc.'s section 43.61(a) filing for year 2001, submitted subsequent to publication of *2001 International Telecommunications Data*, reported 53,631,738 billed minutes, representing less than 0.2% of total U.S. billed international message telephone service minutes.

<sup>151</sup> *See* Petition for Declaratory Ruling, *supra* note 1, at 23-25. The Global Crossing subsidiaries that hold international section 214 authority are: Budget Call; GC Bandwidth; Global Crossing Government Markets; Global Crossing Holdings USA; GCNAN; Global Crossing Telecommunications; International Optical Networks, L.L.C.; and Racal Telecommunications Inc. (collectively, the "International 214 Subsidiaries"). *See* Section 214 Application, *supra* note 1, at 2 n.1. *See also infra* ¶¶ 42-45 of this Order and Authorization, concerning our regulatory treatment of the International 214 Subsidiaries to the extent that they are authorized to serve the U.S.-Singapore and U.S.-Indonesia routes.

<sup>152</sup> *See WorldCom/MCI Order*, 13 FCC Rcd at 18071, ¶ 81 (stating that the "Commission appropriately has tended to focus its analysis on particular inputs in considering competitive effects on international routes"); *see also Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, FCC 00-221, 15 FCC Rcd 14032, 14211, ¶ 395 (2000) ("*Bell Atlantic/GTE Order*").

adversely in any input market that is essential for the provision of international services, we focus our analysis on submarine cable facilities.<sup>153</sup> Here, we analyze both capacity owned on cables landing in the United States and cable landing station ownership at the foreign end of U.S. international service routes.<sup>154</sup>

40. First, with respect to capacity owned on cables landing in the United States, we find that the proposed transaction will result in no appreciable increase in concentration of market power.<sup>155</sup> In the Atlantic Ocean and Americas regions, ST Telemedia and its affiliates do not own significant capacity on cables landing in the United States, and thus there is no appreciable post-transaction increase in concentration in either of those regions.<sup>156</sup> Similarly, in the Pacific Ocean region, we find no risk of

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<sup>153</sup> See *WorldCom/MCI Order*, 13 FCC Rcd at 18072-73, ¶¶ 82-83 (finding submarine cable capacity, but not satellite capacity, to be the transport medium that warranted review in that proceeding). See also *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14211, ¶ 396 (focusing on submarine cable facilities).

<sup>154</sup> We note that ST Telemedia is not a cable landing station licensee at the U.S. end. We find that there will be no increase in concentration of power in the ownership of cable landing stations in the United States.

<sup>155</sup> The facilities operated by the Submarine Cable Subsidiaries of Global Crossing represent a significant, but not majority, share of cable capacity for cables landing in the United States. The FCC-Licensed Subsidiaries that hold U.S. cable landing licenses are: GC Pacific Landing; Global Crossing Latin America & Caribbean; GT Landing; GT Landing II; MAC Landing; PAC Landing; and PC Landing (collectively, the "Submarine Cable Subsidiaries"). See *Submarine Cable Application*, *supra* note 1, at 2 n.1. Global Crossing Telecommunications, although initially listed in the Applications as a submarine cable landing licensee, subsequently has relinquished its interests in the Japan-U.S. ("JUS") cable landing license. See *Global Crossing Telecommunications, Inc. (Debtor-in-Possession)*, File No. SCL-MOD-20020522-00057, Public Notice, Actions Taken Under Cable Landing License Act, DA 02-2431, 17 FCC Rcd 18389, 18390-91 (Int'l Bur. 2002) (modifying the JUS submarine cable landing license to remove Global Crossing Telecommunications as a licensee). As a result, we will dismiss as moot File No. SCL-T/C-20020822-00070, which seeks to transfer control of Global Crossing's interests in the JUS cable landing license to New GX.

<sup>156</sup> In the Atlantic Ocean region, capacity in the Atlantic Crossing ("AC-1") and Atlantic Crossing-2 ("AC-2") cables represented approximately 26% of capacity available in 2001 on 17 transatlantic cables landing in the United States. See *International Bureau Report, 2001 Section 43.82 Circuit Status Data* (rel. Nov. 2002), at 34, Table 7, available on the Commission's website at [www.fcc.gov/ib/pd/pf/csmanual.html](http://www.fcc.gov/ib/pd/pf/csmanual.html) (AC-1 and AC-2 cables had 3.6 million of the total 13.9 million 64 Kbps circuits in service in the transatlantic region). ST Telemedia's affiliate SingTel is an original capacity owner with 2,128 64 Kbps circuits on the Columbus II, TAT-12/13 and TAT-14 cables, or less than 0.02% of total transatlantic capacity for year 2001, not an appreciable post-transaction increase in market concentration. See, e.g., *American Telephone and Telegraph Company et al., Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire Capacity in and Operate a High Capacity Digital Submarine Cable System Between and Among the United States Mainland, Mexico, U.S. Virgin Islands, Spain, Italy and Portugal*, File No. ITC-93-029, Memorandum Opinion, Order and Authorization, DA 93-910, 8 FCC Rcd 5263, 5382, Appendix A Schedule E-3 (Columbus II section 214 authorization); *AT&T, et al., Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Operate and Acquire Capacity in a High Capacity Digital Submarine Cable Network Between and Among the United States Mainland, the United Kingdom and France*, File No. ITC-93-062, Memorandum Opinion, Order and Authorization, DA 93-893, 8 FCC Rcd 4810, 4816, Appendix A (CCB 1993) (TAT-12/13 section 214 authorization), as updated by Revised Schedules, WDM Update Program (filed Aug. 26, 1998 and available in File No. ITC-93-062); *AT&T et al., Joint Application for a License to Land and Operate in the United States a Submarine Cable System Extending Between the United States, Denmark, Germany, the Netherlands, France and the United Kingdom*, File No. SCL-LIC-19990303-00004, Cable Landing License, DA 99-2042 (Int'l Bur., rel. Oct. 1, 1999) (TAT-14 cable landing license), at (continued....)



harm to competition. We therefore disagree with IDT's contention that the transaction will result in "consolidation of control of much of the undersea cable capacity in Southeast Asia by dominant carriers in that region" and thus "is likely to result in a substantial decrease in competition and an opportunity for the Applicants to restrict output and raise prices on certain Southeast Asian routes."<sup>157</sup> In 2001, capacity in PC-1 represented 20.2 percent of cable capacity that was available on 13 transpacific cables landing in the United States.<sup>158</sup> ST Telemedia's affiliate SingTel is an original owner of capacity on three transpacific cables that land in the United States.<sup>159</sup> Further, SingTel's subsidiary SingTelOptus owns

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Appendix B. In the Americas region in 2001, capacity in the Mid-Atlantic Crossing ("MAC"), Pan American Crossing ("PAC"), and South American Crossing ("SAC") cables represented approximately 30% of submarine cable capacity that was available on 15 intra-Americas cables landing in the United States. *See International Bureau Report, 2001 Section 43.82 Circuit Status Data* at 34 (MAC, PAC, and SAC cables had 967,680 of the total 3.2 million 64 Kbps circuits in service in the Americas region). SingTel owns 30 64 Kbps circuits on the Americas I cable, or approximately 0.0009% of year 2001 total Americas region capacity. *See American Telephone and Telegraph Company et al., Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire Capacity in and Operate a High Capacity Digital Submarine Cable System Between and Among the United States Mainland, U.S. Virgin Islands, Brazil, Trinidad and Venezuela*, File No. ITC-93-030, Memorandum Opinion, Order and Authorization, DA 93-911, 8 FCC Rcd 5287, 5295, Appendix A Schedule D-3 (CCB 1993) (Americas I section 214 authorization).

<sup>157</sup> See IDT Petition to Deny Third Amendment, *supra* note 49, at 18-21. IDT's contention rests in part on the faulty premise that Global Crossing "currently controls five undersea cable systems in the Pacific region." *Id.* at 23. As noted below, *see infra* 158, GC Pacific Landing, a subsidiary of Global Crossing, has licenses to construct four small-capacity Pacific region cables, but the facilities remain unbuilt although the licenses transferred to GC Pacific Landing in 1999. *See Asia Direct Communications, L.L.C., et al., Application for Authority, Pursuant to the Submarine Cable Landing License Act, to Assign Cable Landing Licenses and to Transfer Control of the Entity Holding Such Licenses*, 14 FCC Rcd 11316, DA 99-1325 (Int'l Bur. 1999). A second, majority-owned indirect subsidiary of Global Crossing, PC Landing, owns the U.S. end of the PC-1 cable linking the United States and Japan. As noted, *see supra* note 63, consummation of the PC Landing bankruptcy reorganization is expected to divest the Applicants of any interest in PC-1.

<sup>158</sup> See *International Bureau Report, 2001 Section 43.82 Circuit Status Data*, *supra* note 156, at 35 (PC-1 cable had 967,680 of the total 4.8 million 64 Kbps circuits in service in the transpacific region). IDT argues that capacity in four unbuilt transpacific cables licensed to GC Pacific Landing must be included in the Commission's analysis of Pacific Ocean region capacity. *See* IDT Reply to Third Amendment, *supra* note 56, at 15. Contrary to IDT's assertion, an analysis of licensed, as opposed to operational, capacity in the Pacific Ocean region derives a significantly lower capacity percentage, for year 2001 and later, for the Submarine Cable Subsidiaries. Aggregate transpacific submarine cable capacity licensed to the Global Crossing subsidiaries, including the four unbuilt cables, represents less than 10% of the capacity on transpacific cables licensed to land in the United States (Asia Direct, Guam Telecom, Hawaii Express and Orient Express cables are authorized at 10 Gbps each with an aggregate capacity of 483,840 64 Kbps circuits, which, along with the PC-1 capacity, equals less than 1.5 million of 15.4 million licensed circuits, including circuits licensed on the Flag Pacific-1, 360pacific, and Tycom Pacific cables that also were not yet operational in 2001). *See International Bureau Report, 2001 Section 43.82 Circuit Status Data*, *supra* note 156, at 37. This suggests that additional capacity, provided by several suppliers, will mitigate against an increase in concentration and prevent any anti-competitive effects in the Pacific Ocean region market.

<sup>159</sup> SingTel owns capacity on: TPC-5, a common carrier cable landing in the continental United States, Hawaii, Guam, and Japan, *see American Telephone and Telegraph Company, et al., Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire Capacity in and Operate a High Capacity Digital Submarine Cable Network Between and Among the United States Mainland, the State of Hawaii, the Island of Guam and Japan*, File No. ITC-92-179, Memorandum Opinion, Order and Authorization, DA 92-1559, 7 FCC Rcd 7758, 7765, Appendix 2 Schedule C (CCB 1992) (continued....)

capacity on Southern Cross, a common carrier cable between the United States and Australia, New Zealand and Fiji.<sup>160</sup> We find that the approximately 5.5 percent increase in the concentration ratio resulting from the proposed transaction, for transpacific cables landing in the United States, is not likely to have anti-competitive effects in the provision of U.S. international services.<sup>161</sup>

41. Second, with respect to cable landing stations at the foreign end of U.S. routes, the Applicants advise that all of Global Crossing's cable landing station subsidiaries have substantially less than a 50 percent share of the cable landing station market in their respective countries and do not control bottleneck facilities.<sup>162</sup> In Singapore, ST Telemedia's affiliate SingTel, the dominant provider of domestic and international telecommunications services, owns three of the four cable landing stations, and therefore also is dominant in that input market.<sup>163</sup> In Indonesia, ST Telemedia-controlled subsidiary Indosat, the dominant telecommunications provider, and its subsidiary PT Satelit Palapa Indonesia have

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(TPC-5 section 214 authorization), as updated in TPC-5 CN Revised Schedules Effective 1 June 1998, Schedule G-4 (memorandum and attachments from J. Eric Stein, TPC-5 MC Coordinator, filed Aug. 5, 1998 and available in File No. ITC-92-179); China-U.S., a private cable landing in the continental United States, Guam, China, Taiwan, Japan, and South Korea, see *AT&T et al., Joint Application for a License to Land and Operate in the United States a Digital Submarine Cable System Extending Between the United States, China, Taiwan, Japan, South Korea, and Guam*, File No. SCL-98-002, DA 98-1711, 13 FCC Rcd 16232 (Int'l Bur. 1998) (China-U.S. cable landing license) and China-US Cable Network Amendatory Agreement No. 1 to the Construction and Maintenance Agreement, at Schedule C (available in File No. SCL-98-002); and JUS, a private cable between the United States and Japan, see *AT&T Corp. et al., Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan*, File No. SCL-LIC-19981117-00025, Cable Landing License, FCC 99-167, 14 FCC Rcd 13066, 13086, Appendix B Schedule B (1999) (JUS cable landing license). SingTel's ownership capacity, as described in the applications for the three cables, approximates 68,464 64 Kbps circuits (4,980 circuits on TPC-5, 56,914 circuits on China-U.S., and 6,570 circuits on JUS), which represents 1.43% of capacity on transpacific cables landing in the United States in 2001 (68,464 of 4,787,370 circuits). See *International Bureau Report, 2001 Section 43.82 Circuit Status Data, supra* note 156, at 35.

<sup>160</sup> SingTelOptus, an Australian subsidiary of SingTel that does not possess market power in Australia, owns 39.99% of Southern Cross wet link capacity, or 193,488 circuits in 2001, representing 4% of transpacific capacity in year 2001 (193,488 of 4,787,370 circuits). See, e.g., *MFS International, Inc., MFS Globenet, Inc. and Pacific Carriage Limited, Application for Modification of License to Land and Operate in the United States a Submarine Cable System Extending Among the United States and Australia and New Zealand*, Modification of Cable Landing License, DA 99-1713, 14 FCC Rcd 13912, 13913, ¶ 4 (Int'l Bur. 1999); see also *International Bureau Report, 2001 Section 43.82 Circuit Status Data, supra* note 156, at 35. IDT refers to seven other Pacific Ocean region cables, none of which lands in the United States. See *IDT Petition to Deny Third Amendment, supra* note 49, at Attachment A.

<sup>161</sup> Attributing to ST Telemedia, solely for the purpose of this analysis, the capacity held by SingTel and SingTel Optus for year 2001, or 261,952 circuits, see *supra* notes 159-60, and adding that capacity to PC-1's 967,680 circuits would result in a combined post-transaction ownership, by SingTel and New GX, of approximately 25.7% of operational transpacific cable capacity for year 2001 (1,229,632 of 4,787,370 circuits). This is not an appreciable increase over the 20.2% of operational capacity represented by PC-1. Moreover, as noted, see *supra* note 158, substantial additional capacity that has come on line since 2001, provided by several suppliers, mitigates against any market concentration from the proposed transaction.

<sup>162</sup> See December 18 Letter, *supra* note 10, at 11. Each of these cable landing station providers is located in a WTO Member country. See *id.*

<sup>163</sup> See *id.* at 11.

market power in the cable landing station input market.<sup>164</sup> As we discuss further below, the Applicants have agreed to accept dominant treatment of the International 214 Subsidiaries on the U.S.-Singapore and U.S.-Indonesia routes.<sup>165</sup> We find that, with the dominant carrier safeguards we impose in this Order and Authorization, the proposed transaction will not affect competition adversely in any input market that is essential for the provision of international services, including the input market for international transport services.<sup>166</sup>

### E. Dominant Carrier Safeguards

42. As part of our public interest analysis under section 214(a) of the Act, we also consider whether, upon consummation of the proposed transfers of control, the international section 214 authorization holders will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that the international section 214 authorization holders have authority to serve pursuant to the international section 214 authorizations that will be transferred.<sup>167</sup> In addition, under section 1.767(a)(8) and (a)(11) of the Commission's rules, a submarine cable licensee that proposes to transfer control of an interest in a submarine cable landing license granted pursuant to the Cable Landing License Act and Executive Order 10530 is required to disclose if it will become affiliated with a foreign carrier as a result of the transfer of control.<sup>168</sup> Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.<sup>169</sup> With

<sup>164</sup> See January 30 Letter, *supra* note 32, at 2; see also First Amendment, *supra* note 1, at 2.

Applicants also state that C2C (Hong Kong) Limited, a company owned 59.5% by SingTel, controls one of several cable landing stations in Hong Kong, but, because there are several other providers of cable landing stations in Hong Kong, C2C (Hong Kong) Limited does not have market power in the provision of cable landing stations in Hong Kong. See December 18 Letter, *supra* note 10, at 11.

<sup>165</sup> See Section 214 Application, *supra* note 1, at 19; Petition for Declaratory Ruling, *supra* note 1, at 24; December 18 Letter, *supra* note 10, at n.17; First Amendment, *supra* note 1, at 4.

<sup>166</sup> Additionally, we find no merit in IDT's argument that we must consider the transfer of the assets of Global Marine Systems, Ltd. an unregulated Global Crossing subsidiary that plans and installs submarine cables, as a "new and substantial vertical risk" in our analysis of this transaction. See IDT Petition to Deny Third Amendment, *supra* note 49, at 33-34. As Applicants state, IDT has failed to explain how the transfer of these unregulated assets would affect competition in the U.S. telecommunications market. See Global Crossing Opposition to Petitions to Deny Third Amendment, *supra* note 52, at 8 n.27.

<sup>167</sup> 47 U.S.C. § 214(a).

<sup>168</sup> 47 C.F.R. §§ 1.767(a)(8), (a)(11); see also 47 U.S.C. §§ 34-39; Exec. Order No. 10530, § 5(a), *reprinted as amended* in 3 U.S.C. § 301.

<sup>169</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23987, ¶ 215, 23991-99, ¶¶ 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. See 47 C.F.R. § 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates (*i.e.*, vertical harms). In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market -- where the standard safeguards and additional conditions would be ineffective -- (continued...)

respect to submarine cable licensees, the Commission similarly applies competitive safeguards to a licensee that is, or is affiliated with, a carrier with market power in foreign input markets that could result in harm to competition in the U.S. market.<sup>170</sup>

43. The Applicants state that neither Global Crossing nor New GX has received authority under section 214 of the Act.<sup>171</sup> The Applicants certify that neither the Applicants, the International 214 Subsidiaries, nor the Submarine Cable Subsidiaries are foreign carriers within the meaning of sections 63.09(d) of the Commission's rules.<sup>172</sup> The Applicants advise that Global Crossing, the International 214 Subsidiaries, and the Submarine Cable Subsidiaries currently are affiliated with foreign carriers in the following countries: Argentina, Belgium, Brazil, Canada, Chile, Denmark, France, Germany, Ireland, Italy, Mexico, The Netherlands, Norway, Panama, Peru, Spain, Sweden, Switzerland, the United Kingdom, Uruguay and Venezuela.<sup>173</sup> The Applicants further state that ST Telemedia is not a foreign carrier but has operating subsidiaries or affiliates that are foreign carriers. As a result of the proposed transaction, Applicants advise that the International 214 Subsidiaries and Submarine Cable Subsidiaries will acquire new affiliations with foreign carriers. The proposed investment by ST Telemedia would result in foreign carrier affiliations in the following countries: Australia, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mauritius, Philippines, Singapore, Sri Lanka, Taiwan and the United Kingdom.<sup>174</sup>

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the Commission reserves the right to deny the application. See *Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶ 51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the ECO test, see *supra* ¶ 22, as part of its public interest inquiry under section 214(a). See *Foreign Participation Order*, 12 FCC Rcd at 23944, ¶ 124.

<sup>170</sup> See *Submarine Cable Report and Order*, 16 FCC Rcd at 22180, ¶ 25. Relevant foreign carrier input markets include those facilities or services necessary for the landing, connection, or operation of submarine cables. See *id.* at 22180, ¶ 23. In the *Submarine Cable Report and Order*, the Commission found that these competitive safeguards should be sufficient in all but the most exceptional of circumstances to detect and deter any anti-competitive behavior associated with market power in WTO Member markets where U.S.-licensed cable systems land and operate. See *id.*; see also *id.* at 22174, ¶ 12, n. 32 (noting that, pursuant to the *Foreign Participation Order*, 12 FCC Rcd at 23944-46, ¶¶ 124-130, an applicant proposing to acquire an interest in a U.S. cable landing license that is affiliated with a foreign carrier that possesses market power in a non-WTO destination market of the cable is required to meet the ECO test as a prerequisite to grant of the cable landing license application).

<sup>171</sup> See Section 214 Application, *supra* note 1, at 5.

<sup>172</sup> See *id.* at 7; Submarine Cable Application, *supra* note 1, at 8. See also 47 C.F.R. § 1.767(a)(8) (certification includes an entity that owns or controls a cable station in any of the cable's destination markets); Note to § 1.767 (for submarine cable applicants, the terms "affiliated" and "foreign carrier" are defined as in § 63.09 except the term "foreign carrier" shall include any entity that owns or controls a cable landing station in a foreign market).

<sup>173</sup> See Section 214 Application, *supra* note 1, at 7-8 and Exhibit C; Submarine Cable Application, *supra* note 1, at 8; Third Amendment, *supra* note 1, at 8 n.17 and Attachment G (removing Asia Global Crossing's affiliates in Hong Kong, Japan, Korea, Singapore, and Taiwan); Letter from Jean L. Kiddoo and Paul O. Gagnier, Counsel for Applicants, to Secretary, Federal Communications Commission (filed May 22, 2003) ("May 22 Letter"), at Exhibit 1 Attachment G (Revised).

<sup>174</sup> See Section 214 Application, *supra* note 1, at 8 and Exhibit C; Submarine Cable Application, *supra* note 1, at 9 and Exhibit B; January 30 Letter, *supra* note 32, at 1-2; First Amendment, *supra* note 1, at 3-5 (continued...)

44. The Applicants certify that they seek authority for the International 214 Subsidiaries to continue to provide international telecommunications services to all of the countries in which they have foreign carrier affiliates or with which they will have foreign carrier affiliates as a result of the proposed transaction.<sup>175</sup> Similarly, New GX certifies that it seeks authority for the Submarine Cable Subsidiaries to continue to provide international telecommunications services to all of the countries in which they currently have foreign carrier affiliates or with which they will have foreign carrier affiliates following consummation of the proposed transaction.<sup>176</sup> The Applicants advise that each country is a WTO Member.<sup>177</sup> The Applicants state that, following the consummation of the proposed transaction, the International 214 Subsidiaries and Submarine Cable Subsidiaries would qualify for a presumption of non-dominance under section 63.10(a)(3) of the Commission's rules with respect to the provision of service on all authorized routes except the U.S.-Singapore and U.S.-Indonesia routes, because their affiliates would lack 50 percent market share in the international transport and the local access markets on the foreign ends of these routes.<sup>178</sup> At the same time, the Applicants advise that, upon consummation of the proposed transaction, the International 214 Subsidiaries and Submarine Cable Subsidiaries would become affiliated with SingTel, a foreign carrier in Singapore, and with Indosat, a foreign carrier in Indonesia.<sup>179</sup> With respect to the U.S.-Singapore and U.S.-Indonesia routes, New GX agrees to have the International 214 Subsidiaries classified as dominant pursuant to section 63.10 of the Commission's rules, and to file quarterly traffic reports pursuant to section 43.61(c) of the Commission's rules.<sup>180</sup>

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(including Indonesia following ST Telemedia's acquisition, through its subsidiary Indonesia Communications Limited, of a 41.94% controlling stake in Indosat); Third Amendment, *supra* note 1, at 8 n.17 and Attachment G (removing affiliations of Hutchison Telecommunications Ltd.); May 22 Letter, *supra* note 173, at Exhibit 1 Attachment G (Revised) (adding Philippines).

<sup>175</sup> See Section 214 Application, *supra* note 1, at 8; First Amendment, *supra* note 1, at 3-4; Third Amendment, *supra* note 1, at Attachment G; May 22 Letter, *supra* note 173, at Attachment G (Revised).

<sup>176</sup> See Submarine Cable Application, *supra* note 1, at 9; First Amendment, *supra* note 1, at 5; Third Amendment, *supra* note 1, at Attachment G; May 22 Letter, *supra* note 173, at Attachment G (Revised).

<sup>177</sup> See Section 214 Application, *supra* note 1, at 9; Submarine Cable Application, *supra* note 1, at 9; January 30 Letter, *supra* note 32, at 1-2; First Amendment, *supra* note 1, at 4 (advising that Indonesia is a WTO Member); May 22 Letter, *supra* note 173, at Exhibit 1 (advising that Philippines is a WTO Member).

<sup>178</sup> See Section 214 Application, *supra* note 1, at 9; Submarine Cable Application, *supra* note 1, at 10; December 18 Letter, *supra* note 10, at 10-11; January 30 Letter, *supra* note 32, at 2; First Amendment, *supra* note 1, at 3-5; May 22 Letter, *supra* note 173, at 1 (new affiliates of ST Telemedia, including Philippines affiliate Globe Telecom, Inc., are non-dominant providers). See also 47 C.F.R. § 63.10(a)(3).

<sup>179</sup> See Section 214 Application, *supra* note 1, at 9; Submarine Cable Application, *supra* note 1, at 10; December 18 Letter, *supra* note 10, at 11; January 30 Letter, *supra* note 32, at 2; First Amendment, *supra* note 1, at 3-5; May 22 Letter, *supra* note 173, at 1.

<sup>180</sup> See Section 214 Application, *supra* note 1, at 9; January 30 Letter, *supra* note 32, at 2; First Amendment, *supra* note 1, at 4; Third Amendment, *supra* note 1, at 7-8. See also 47 C.F.R. § 43.61(c). ACNI suggests that "the dominant position of applicants in the markets will jeopardize competition." See ACNI Statement, *supra* note 39, at 16-17. IDT asserts that ST Telemedia's affiliate SingTel might coordinate with ST Telemedia and New GX to maintain high termination rates for Singapore and Indonesia. See IDT Petition to Deny Third Amendment, *supra* note 49, at 26. In the *Foreign Participation Order* the Commission carefully considered the ability and incentive of a foreign affiliate with market power to discriminate against rivals of its U.S. affiliates, and adopted specific international dominant carrier safeguards designed to address the possibility that a foreign carrier with control over essential inputs for the provision of U.S. international services would discriminate against (continued....)

Further, New GX agrees to have the Submarine Cable Subsidiaries accept and abide by the reporting requirements set out in section 1.767(l) of the Commission's rules.<sup>181</sup> These reporting requirements apply only to licensees affiliated with carriers with market power in a cable's destination market. None of the cables covered by the submarine cable licenses at issue in this docket lands in Singapore or Indonesia, the only two markets where the Submarine Cable Subsidiaries will become affiliated with a carrier having market power. Thus, because there is no basis in the record to impose special safeguards in this case, the Submarine Cable Subsidiaries need not file the reports required by section 1.767(l).

45. We find that the Section 214 Application and Cable Landing Application, seeking to transfer control of international section 214 authorizations and interests in submarine cable licenses to New GX, are consistent with Commission policies on foreign carrier entry adopted in the *Foreign Participation Order*. The dominant carrier safeguards in section 63.10(c) will protect sufficiently against any potential harms to U.S. customers on the two routes where the International 214 Subsidiaries will become affiliated with foreign carriers that possess market power. Accordingly, and taking into account our findings below with respect to issues raised by the Executive Branch, we conclude that the proposed transfers of control of the international section 214 authorizations and submarine cable landing licenses from Global Crossing to New GX are consistent with our foreign carrier affiliation rules.

#### F. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

46. When analyzing a transfer of control or assignment application in which foreign investment is an issue, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.<sup>182</sup> In their Applications, the Applicants stated that there were national security, law enforcement and public safety issues that Executive Branch agencies wanted to review and requested that Commission action be deferred until "all issues identified by the Executive Branch have or have not resolved" and appropriate action" is requested.<sup>183</sup> In addition, as noted, on October 21, 2002, the DOJ/FBI filed the DOJ/FBI Motion requesting that the Commission defer dispositive action on the Applications until the Executive Branch had notified the Commission that the national security, law enforcement, and public safety issues under review by the Executive Branch agencies had or had not been resolved. The DOJ/FBI now advises that the Executive Branch agencies have no objection to grant of the Applications provided that the Commission conditions the grant on compliance with the terms of an agreement between the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security, on one hand, and Global Crossing, New GX and ST Telemedia, on the other ("the New GX/Executive Branch Agreement"). Specifically, on September 26, 2003, the DOJ/FBI filed, with the concurrence of the Department of Defense and Department of Homeland Security, a Petition to Adopt Conditions to Authorizations and

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rivals of its U.S. affiliates. See *supra* note 169. We find that the remedy prescribed by the Commission's *Foreign Participation Order*, that of employing dominant carrier safeguards on routes where a carrier's affiliate at the foreign end of the route holds market power, resolves the stated concerns of ACNI and IDT.

<sup>181</sup> See Submarine Cable Application, *supra* note 1, at 10; Petition for Declaratory Ruling, *supra* note 1, at 24; December 18 Letter, *supra* note 10, at 11 n.17; First Amendment, *supra* note 1, at 3 n.2. See also 47 C.F.R. § 1.767(l) (reporting requirements applicable to licensees affiliated with a carrier with market power in a cable's WTO destination market).

<sup>182</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 59.

<sup>183</sup> See Petition for Declaratory Ruling, *supra* note 1, at 20. See also *infra* note 184.

Licenses (“Petition to Adopt Conditions”) that attaches the New GX/Executive Branch Agreement.<sup>184</sup> The New GX/Executive Branch Agreement is intended to ensure that the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security and other entities with responsibility for enforcing the law, protecting the national security and preserving public safety can proceed in a legal, secure and confidential manner to satisfy these responsibilities.<sup>185</sup> The DOJ/FBI represents that the Applicants and ST Telemedia do not object to the grant of the petition.<sup>186</sup>

47. The New GX/Executive Branch Agreement includes, *inter alia*, provisions for information storage, access to facilities and data, security, auditing, reporting and notice. The New GX/Executive Branch Agreement is attached as Appendix D to this Order and Authorization. In part, the New GX/Executive Branch Agreement provides that New GX and its subsidiaries will ensure that all “domestic communications infrastructure” will be located in the United States and directed, controlled, supervised and managed by a “domestic communications company.”<sup>187</sup> The New GX/Executive Branch Agreement also requires New GX to maintain a full and complete record of every electronic or written communication -- related to interconnection agreements, security procedures and policy, major equipment purchases, and joint venture provisions -- by the New GX directors, officers, employees and agents with the ST Telemedia directors, officers, employees and agents.<sup>188</sup> Further, it requires the

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<sup>184</sup> Petition to Adopt Conditions, IB Docket No. 02-286 (filed Sept. 26, 2003). The agreement, which the parties entered on September 24, 2003, is the result of discussions between Applicants and the Executive Branch to resolve national security and other concerns highlighted in the Petition for Declaratory Ruling, *see supra* note 1, at 20 (asking Commission to defer dispositive action on the Applications pending notification that all issues raised by the Executive Branch had or had not been resolved), and by the DOJ/FBI Motion filed on October 21, 2002, *see supra* note 38 (seeking deferral of Commission action for review of national security, law enforcement and public safety issues); Third Amendment, *supra* note 1, at 10 (reiterating Applicants’ request for prompt review but no dispositive action until after DOJ/FBI notification). *See also* Letter from James L. Ball, Chief, Policy Division, International Bureau, Federal Communications Commission to Andrew D. Lipman, Jean L. Kiddoo, and Paul O. Gagnier, Counsel for Applicants (dated Apr. 22, 2003) (advising that review of the Applications could not be finalized by the requested date of April 30, 2003 without receipt of Executive Branch notification withdrawing the DOJ/FBI Motion in sufficient time to complete this review) (“Policy Division Letter”). The Petition to Adopt Conditions advises the Commission that those Executive Branch agencies “have no objection to the FCC granting” the Applications “provided that the Commission conditions the grant” on compliance with the New GX/Executive Branch Agreement. *See* Petition to Adopt Conditions at 1-2.

<sup>185</sup> *See* Petition to Adopt Conditions at 5. *See also id.* at 3 (stating concern that foreign involvement in the provision of U.S. communications must not be permitted to impair the ability of the U.S. government to satisfy its obligations to U.S. citizens).

<sup>186</sup> *See id.*

<sup>187</sup> *See* New GX/Executive Branch Agreement at Art. 2. “Domestic communications infrastructure” does not include, among other things, equipment dedicated to the termination of international undersea cables, provided that such equipment is utilized solely to effectuate the operation of undersea transport network(s) outside of the United States and in no manner controls land-based transport network(s) or their associated systems in the United States. *See id.* at Art. 1.11. A “domestic communications company” means a subsidiary or other component of New GX, or any entity over which New GX has *de facto* or *de jure* control, that provides domestic communications. *See id.* at Art. 1.10. Domestic communications is wire communications or electronic communications, whether stored or not, from one U.S. location to another U.S. location as well as the U.S. portion of a wire or electronic communication that originates or terminates in the United States. *See id.* at Art. 1.9.

<sup>188</sup> *See id.* at Art. 3.3.

establishment of a security committee of the New GX Board, as well as other security provisions including establishment of a visitation policy.<sup>189</sup>

48. The notice provisions include a requirement that New GX promptly notify the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security of any foreign entity or individual, other than ST Telemedia, that obtains or likely will obtain a direct or indirect ownership interest above ten percent in New GX or a domestic communications company, or gains or likely will gain "control" of New GX or a domestic communications company.<sup>190</sup> The New GX/Executive Branch Agreement provides for suspension of the agreement with respect to New GX and all domestic communications companies thirty days after receipt from New GX of notice and documentation reasonably satisfactory to the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security that neither ST Telemedia nor any other foreign entity either controls New GX or a domestic communications company or holds, directly or indirectly, a ten percent or greater interest in New GX or a domestic communications company, unless these agencies notify New GX within thirty days that the agreement will not be suspended to protect U.S. national security, law enforcement and public safety concerns.<sup>191</sup> Finally, the New GX/Executive Branch Agreement states that the Attorney General, Secretary of Defense, and Secretary of Homeland Security shall not make any objection to CFIUS or the President concerning ST Telemedia's investment in New GX or grant of the applications filed with the Commission in IB Docket No. 02-286, provided that the Commission conditions grant of the Applications on compliance, by Global Crossing, New GX and ST Telemedia, with the provisions of the New GX/Executive Branch Agreement.<sup>192</sup> In conclusion of the CFIUS process, on September 19, 2003, the President sent a letter to Congress attaching a classified report "on my decision to take no action to suspend or prohibit the proposed 61.5 percent investment by [ST Telemedia], a company indirectly owned by the Government of Singapore, in [New GX]."<sup>193</sup>

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<sup>189</sup> See *id.* at Art. 3 (including provisions, *inter alia*, on the development and maintenance of an information security plan, the qualifications of the principal network and security officers, general counsel and head of human resources, and the establishment of a security committee of the New GX Board). Articles 3.15-3.16 provide that 50% of the members of the New GX Board nominated by ST Telemedia must be security directors, that is, directors who are U.S. citizens, have or acquire U.S. security clearances, and satisfy the independent director requirements of the New York Stock Exchange. See *id.* at Art. 3.15-3.16. Within 30 days of receiving notice of the proposed appointment of an individual as a security director, the Department of Justice, Federal Bureau of Investigation, Department of Defense, or Department of Homeland Security may object to the appointment, requiring rescission of the appointment and appointment of another candidate. See *id.* at Art. 3.16.

<sup>190</sup> See *id.* at Art. 5.2. See also *id.* at Art. 1.3 (which defines "control" to include the power to reach certain decisions as well as *de facto* and *de jure* control) and at Art. 1.5 (defining *de facto* and *de jure* control).

<sup>191</sup> See *id.* at Art. 8.19.

<sup>192</sup> See *id.* at Art. 7.3. Article 7.3 reserves a right to object if, *inter alia*, there is a material increase in the authority of a foreign entity to exercise control of New GX or other material change in the circumstances associated with the proposed transaction. See *id.* at Art. 7.3. In addition, Article 7.2 reserves a right to object to the grant of applications or petitions of a domestic communications company for a license or other authorization under Title II or III of the Communications Act. See *id.* at Art. 7.2.

<sup>193</sup> See Letter from the President to the Speaker of the House of Representatives and the President of the Senate (dated Sept. 19, 2003), available on [www.whitehouse.gov/news/releases/2003/09/20030919-4.html](http://www.whitehouse.gov/news/releases/2003/09/20030919-4.html) (visited Sept. 22, 2003).



49. In assessing the public interest, we take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.<sup>194</sup> As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.<sup>195</sup> In presuming that an application from a WTO Member applicant does not pose a risk of anti-competitive harm that would justify denial of the application, the Commission does not, however, presume that an application poses no national security, law enforcement, foreign policy, or trade concerns.<sup>196</sup> In the context of this particular proceeding, we considered these concerns independent of our competition analysis, and, at the request of the DOJ/FBI, we deferred action on the Applications.<sup>197</sup> The Executive Branch, after raising national security and law enforcement concerns, now has resolved these concerns through the negotiation of the New GX/Executive Branch Agreement. Therefore, on the record before us, we will not need to consider these particular concerns as a part of our own independent analysis of whether grant of the Applications is in the public interest.<sup>198</sup> We recognize that, separate from our licensing process, New GX has entered into the New GX/Executive Branch Agreement, and that the agreement expressly states that the Department of Justice, Federal Bureau of Investigation, Department of Defense, and Department of Homeland Security will not object to grant of the pending Applications, provided that the Commission conditions grant of the Applications on compliance with the New GX/Executive Branch Agreement.<sup>199</sup> The Executive Branch has not otherwise commented on this proceeding.

50. In addition, the resolution of the Executive Branch's concerns regarding national security and law enforcement addresses the concerns stated in the letters from Senator Dayton, Senators Burns and Hollings, and Congressman Weldon that the amended Applications might raise U.S. national security issues.<sup>200</sup> Similarly, Executive Branch resolution of national security and law enforcement concerns also

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<sup>194</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66.

<sup>195</sup> See 12 FCC Rcd at 23919, ¶ 62.

<sup>196</sup> See 12 FCC Rcd at 23920-21, ¶ 65.

<sup>197</sup> See, e.g., Policy Division Letter, *supra* note 184 (advising Applicants we would defer final review of the Applications until we received Executive Branch notification withdrawing the request to defer Commission action). XO and IDT argue that we should obtain public comment on the Executive Branch's national security and law enforcement findings before acting on the Applications. See XO Comments, *supra* note 53, at 2 (arguing for new 180-day clock or additional comment period); IDT Petition to Deny Third Amendment, *supra* note 49, at 31-35. We disagree. We have provided four sets of public comment periods in this proceeding, including a three-round comment period on the Third Amendment. See *supra* ¶¶ 9, 11, 12, and 13. It has not been the Commission's policy or practice to seek public comment on the Executive Branch's national security and law enforcement determinations and XO and IDT fail to provide a compelling reason for doing so in this instance. See *Foreign Participation Order*, 12 FCC Rcd at 23920, ¶ 63 (Commission accords deference to Executive Branch on national security); see also Global Crossing Reply to XO Comments, *supra* note 14, at 3 ("XO fails to identify a single transaction in which the Commission has proceeded as XO suggests.").

<sup>198</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919, ¶ 62.

<sup>199</sup> See New GX/Executive Branch Agreement at Article 7.1.

<sup>200</sup> See Sen. Dayton *Ex Parte* at 1, Sen. Burns and Sen. Hollings *Ex Parte* at 1, Cong. Weldon *Ex Parte* at 1.

addresses the arguments of ACNI and IDT that the proposed foreign ownership of New GX could implicate national security issues.<sup>201</sup>

51. We note that the New GX/Executive Branch Agreement contains certain provisions relevant to this transaction that, if broadly applied, would have significant consequences for the telecommunications industry. These provisions, if viewed as precedent for other service providers and potential investors, would warrant further inquiry on our part, and we will consider any subsequent agreements on a case-by-case basis. Notwithstanding these concerns about the broader implications of the New GX/Executive Branch Agreement, we see no reason to modify or disturb the agreement of the parties on these matters. Therefore, in accordance with the request of the DOJ/FBI, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Applications on compliance with the New GX/Executive Branch Agreement.<sup>202</sup>

## G. Other Issues

### 1. ACNI

52. ACNI states that, as a reseller of telecommunications services in the United States and abroad, it would be adversely impacted by the proposed transaction.<sup>203</sup> ACNI advises that Global Crossing, through its subsidiary GC Bandwidth, is an ACNI investor that owns all of ACNI's Series A

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<sup>201</sup> See ACNI Statement, *supra* note 39, at 17-20. ACNI contends that the DOJ/FBI Motion "clearly calls into question the ability of the Commission to rule favorably on any public interest test under Sections 214(a) and 310(d) of the Act." See *id.* at 18. IDT argues that the Commission should not approve the transaction before receiving Executive Branch findings regarding national security and comment of interested parties on those findings. See IDT Petition to Deny Third Amendment, *supra* note 49, at 31-35. We agree that it was correct to defer action in this proceeding until we received Executive Branch notification. We do not agree that yet another round of public comments is required. See *supra* note 197.

Furthermore, ACNI argues that installation of an oversight panel composed of U.S. citizens does not preclude the Commission from rejecting the transfer of control of the common carrier licenses. See ACNI Second Supplemental Letter at 2, citing *Cellwave Telephone Services v. F.C.C.*, 30 F.3d 1533 (D.C. Cir. 1994) and *Moving Phones Partnership v. F.C.C.*, 998 F.2d 1051 (D.C. Cir. 1993), *cert. denied*, 511 U.S. 1004. The cited cases involved partnership arrangements in a proposed licensee that the Commission found to violate alien ownership requirements of section 310(b)(3) of the Act. See *Cellwave Telephone Services*, 30 F.3d at 1534-35; *Moving Phones Partnership*, 998 F.2d at 1055. No such statutory violation exists here. See *supra* note 81 (section 310(b)(3) is inapplicable to the Applications).

<sup>202</sup> We note that the New GX/Executive Branch Agreement provides first for informal resolution of any disputes. See New GX/Executive Branch Agreement at Art. 4.1. If any of the parties to the New GX/Executive Branch Agreement determines that further negotiation would be fruitless, Article 4.1 authorizes the party to resort to the remedies of Article 4.2 to enforce the New GX/Executive Branch Agreement. See *id.* Article 4.2 includes the right of a party to bring action for appropriate judicial relief and expressly does not limit the right of a U.S. government agency, *inter alia*, to request the Commission to modify, condition, revoke, cancel or render null and void any license, permit, or other authorization granted or given by the Commission to a domestic communications company, or request the Commission to impose other appropriate sanction such as a forfeiture. See *id.* at Art. 4.2

<sup>203</sup> See ACNI Statement, *supra* note 39, at 3.

convertible Preferred Stock.<sup>204</sup> ACNI states that its stockholders' agreement reserves to ACNI a right of first refusal should GC Bandwidth seek to sell its interests in ACNI pursuant to a *bona fide* offer from a third party, but that Applicants have failed to offer the ACNI shares held by GC Bandwidth to ACNI.<sup>205</sup> ACNI further states that this is "not a mere contractual dispute," but rather that its stockholder, carrier service, and security agreements with GC Bandwidth constrain ACNI's ability to compete freely in the marketplace, "thereby precluding the Commission's unqualified finding that the transfer proposed by Global Crossing is in the public interest."<sup>206</sup> ACNI seeks a Commission ruling that ACNI's authorization to provide service will not be affected by grant of the Applications, and urges the Commission either to deny the Petition for Declaratory Ruling or to declare that the exercise, by Global Crossing or its successors, of "any of the powers and options granted Global Crossing in connection with its purchase of preferred stock in ACNI, Inc., and transactions of this nature with other resellers," is not in the public interest.<sup>207</sup>

53. Global Crossing replies that ACNI is using the proceeding in an attempt to exert pressure with respect to a dispute over unrelated contractual agreements, and contends that the Commission is not the proper venue for ACNI's contractual claims.<sup>208</sup> Global Crossing also contends that ACNI mischaracterizes the agreements between the parties, because, although ACNI has a right of first refusal if GC Bandwidth sells its holdings in ACNI, the proposed transaction will not result in the sale of the ACNI shares owned by GC Bandwidth and therefore will not trigger any right of first refusal.<sup>209</sup> Finally, Global Crossing agrees that approval of the proposed transaction will not affect the authorization previously granted to ACNI.<sup>210</sup>

54. This proceeding is not the proper forum for interpreting the commercial contracts between Global Crossing and ACNI.<sup>211</sup> We also clarify, as requested by ACNI and supported by Global Crossing,

<sup>204</sup> See *id.* at 5. ACNI states that Series A is a voting stock that currently represents 10% of ACNI's voting shares, see *id.* at 7, and that GC Bandwidth holds one of nine ACNI board of director seats and has the right to designate one of three members of an audit committee of the board. See *id.* at 7-8. GC Bandwidth has the right to convert its preferred shares to common stock or debt. See *id.* at 8. A security agreement associated with the stock purchase agreement grants GC Bandwidth a security interest in the property of ACNI and its subsidiaries, and a carrier service agreement commits ACNI to purchasing capacity from Global Crossing. See *id.* The stock agreement also gives GC Bandwidth veto power over certain non-telecommunications business activities. See *id.*

<sup>205</sup> See *id.*

<sup>206</sup> See *id.* at 5-6; see also *id.* at 20 (alleging that "the disinclination of [Global Crossing] to honor the right of first refusal by [ACNI] may be read as a reflection of the Applicant's refusal to honor or recognize the contract laws of the United States").

<sup>207</sup> See *id.* at 3, 21-24; see also ACNI Objections to Third Amendment, *supra* note 50, at 9-10 (arguing that Commission should qualify any declaratory ruling to prohibit Global Crossing from exercising any of the powers or options).

<sup>208</sup> See Global Crossing Further Reply to ACNI, *supra* note 47, at 1-2.

<sup>209</sup> See *id.* at 2.

<sup>210</sup> See *id.* at 4.

<sup>211</sup> See, e.g., *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contractual disputes between licensees and others); *In re* (continued....)

that grant of the instant Applications does not purport to affect ACNI's international section 214 authorization.<sup>212</sup> In all other respects, we deny the relief ACNI requests. In this regard, we deny ACNI's suggestion that we inquire further into the proceedings conducted by the U.S. bankruptcy court and CFUS, as well as the alternative suggestion that we dismiss the Applications for failure to meet section 1.65 or 1.747 of the Commission's rules.<sup>213</sup> We find without merit ACNI's arguments against the First Amendment filed by the Applicants.<sup>214</sup> Further, we find without merit ACNI's argument that the Second Amendment filed by Applicants, now moot, was a major amendment requiring additional notice and comment.<sup>215</sup> Additionally, we find no merit in ACNI's argument that Applicants are in violation of the

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*Applications of Arecibo Radio Corporation, Memorandum Opinion and Order, 101 F.C.C. 2d 545, 548, ¶ 8 (1985)* (because the Commission does not possess the resources, expertise or jurisdiction to adjudicate breach of contract questions fully, the Commission normally defers to judicial decisions regarding the interpretation of contracts). The record before us suggests that the issues ACNI raises in fact are disputes over private contractual rights between two parties that do not give rise to more general public interest concerns under the Act.

<sup>212</sup> See *ACN Communication Services, Inc., International Telecommunications Certificate*, File No. ITC-214-20000203-00052, Public Notice, International Authorizations Granted, Report No. TEL-00194, DA 00-483, 15 FCC Rcd 4659, 4660 (Int'l Bur. 2000) (ACNI's international section 214 authorization). We do not grant ACNI's request that we broaden our clarification to include "any similarly situated carriers' certificates," see ACNI Statement, *supra* note 39, at 3 and ACNI Objections to Third Amendment, *supra* note 50, at 9-10, as the record does not include information about any such additional carriers, nor do we reach the question of whether any such carriers are "estopped on the merits in respect of any future transfer of their certificates," see *id.*, for the same reason.

<sup>213</sup> See ACNI Letter, *supra* note 46, at 1-2, 7; 47 C.F.R. §§ 1.65 (requiring applicants to furnish additional or corrected information in a timely fashion), 1.747 (disallowing inconsistent or conflicting applications); see also Global Crossing Reply to ACNI Letter, *supra* note 46, at 1 ("Applicants reaffirm that there have been no material changes to the information provided in the Application except as previously disclosed by Applicants.").

<sup>214</sup> ACNI seems to construe the First Amendment, involving the Submarine Cable Application and Section 214 Application, as somehow also involving Title III questions. See ACNI Further Comments, *supra* note 46, at 9-10, 12-15. ACNI also seems to suggest that, merely because the Commission sought further information from Applicants in a series of letters in this proceeding, Applicants failed to fully disclose, misrepresented, or deliberately concealed information. See *id.* at 11-12. Further, by focusing on Hutchison Telecommunications Ltd. and its major shareholder Hutchison Whampoa Ltd., see *id.* at 15-18, instead of commenting on the Indosat transaction described in the First Amendment, ACNI's comments are not responsive to the Commission's February 20, 2003 public notice. See also Global Crossing Further Reply to ACNI, *supra* note 47, at 1-2 (arguing Commission should reject ACNI Further Comments because they fail to raise any issue related to the affiliations placed on public notice). Finally, ACNI argues, with respect to each of Applicants' Anti-Drug Abuse Act certifications, that ACNI "would have difficulty in acknowledging its veracity" because Applicants cannot "certify under section 5301 that no officer or five percent (5%) owner is in violation of the Anti-Drug Abuse Act of 1988." See ACNI Further Comments at 20; see also *infra* note 216. In effect, the ACNI Further Comments are an untimely petition to deny the underlying Applications, unaccompanied by a motion to accept a late-filed pleading. See 47 C.F.R. §§ 1.45, 1.46. Although we have read and considered the ACNI Further Comments, we find nothing in the pleading that furthers our analysis of this transaction.

<sup>215</sup> See ACNI Second Supplemental Letter, *supra* note 46, at 2-3. We dismiss this argument and other arguments concerning the Second Amendment as mooted by the withdrawal of Hutchison Telecommunications Ltd. from the Purchase Agreement and the substitution of ST Telemedia for Hutchison Telecommunications, Ltd., as set out in the Third Amendment, *supra* note 1.

Anti-Drug Abuse Act.<sup>216</sup>

## 2. Pending Applications

55. Applicants request that the transfer of control of the wireless licenses include authority for New GX, upon consummation of the proposed transaction, to control the following authorizations and filings: (1) authorizations issued to GCNAN and EAN subsequent to the filing of the Applications but prior to consummation of the proposed transfers; (2) licenses held by GCNAN and EAN for facilities that have been constructed and are operational by the time the transfer is consummated and that may have been omitted from the Applications; and (3) applications, notifications of minor modifications, and amendments thereto filed by GCNAN and EAN and pending at the time of consummation of the transfers.<sup>217</sup> We conclude that any authorizations issued during the pendency of this proceeding or filed after the Applications and still pending at the time of the release of this Order and Authorization, any licenses that have been constructed and are operational by the time the transfer is consummated, and any applications, notifications of minor modifications, and amendments thereto pending at the time of consummation should be deemed to be covered by this Order and Authorization to the extent that they are listed in Appendix B. Consistent with section 1.65 of the Commission's rules, Applicants should amend any current pending applications to reflect the transactions approved by this Order and Authorization.<sup>218</sup>

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<sup>216</sup> See ACNI Further Comments, *supra* note 46, at 20 (alleging that any certification as to the investment by Hutchison Telecommunications Ltd., now moot, would be insufficient); see also ACNI Second Supplemental Letter at 3 (arguing Applicants must certify compliance by Hutchison Whampoa Ltd. directors); ACNI Objections to Third Amendment, *supra* note 50, at 7-8 (arguing that Applicants have not certified that all officers, directors and persons holding 5% or more of stock are eligible); Letter from William Malone, Gerard Lavery Lederer, and James R. Hobson, Counsel for ACNI, to Secretary, Federal Communications Commission (filed July 2, 2003) ("ACNI Fifth Supplemental Letter"), at 1 (arguing that Applicants must identify every individual subject to certification). We note that Applicants have filed anti-drug abuse statements. See Section 214 Application, *supra* note 1, at 10; Submarine Cable Application, *supra* note 1, at 9; Radio License Application, *supra* note 1, at Form 603; Third Amendment, *supra* note 1, at Attachment H (providing certifications from Global Crossing, New GX, and ST Telemedia and advising that no Creditor Shareholder will hold a 5% or greater interest in New GX); Fourth Amendment, *supra* note 1, at Form 603, Assignee/Transferee Certification Statements; see also Global Crossing Further Reply to ACNI, *supra* note 47, at 1-4 (stating that Applicants have provided anti-drug abuse certifications). Moreover, we disagree with ACNI that the anti-drug abuse certifications are deficient because they do not identify specifically each officer and director of New GX and the Singapore companies that would control New GX. See ACNI Fifth Supplemental Letter at 1 (arguing that the Commission is treating U.S. and foreign applicants differently). Applicants' certifications are consistent with those provided by both U.S. and foreign applicants seeking to transfer control of the kinds of authorizations and licenses at issue in this proceeding. See also Global Crossing Opposition to Petitions to Deny Third Amendment, *supra* note 52, at 2 n.5 (stating that the certifications "are consistent with the certifications submitted in similar proceedings and routinely accepted by the Commission in both paper and electronic filings"). Finally, it appears from the service list attached to the ACNI Fifth Supplemental Letter that ACNI did not serve all of the parties. See *supra* note 41.

<sup>217</sup> See Radio License Application, *supra* note 1, at Form 603, Exhibit C. Applicants have provided updated information on this request. See February 6 Letter, *supra* note 62, at 11. See also August 18 Letter, *supra* note 62, at 2.

<sup>218</sup> 47 C.F.R. § 1.65.

#### IV. CONCLUSION

56. Based on the foregoing findings, we conclude, pursuant to section 310(b)(4) of the Act and Commission's precedent for indirect investment by WTO Members in U.S. common carrier licensees, that it would not serve the public interest to prohibit the proposed indirect foreign ownership, by and through New GX, of GCNAN and EAN, the Title III licensees. Specifically, this ruling permits GCNAN and EAN to be owned indirectly by: New GX (through GC Holdings) (up to and including 100 percent of the equity and voting interests); ST Telemedia (through STT Communication Limited and STT Crossing Ltd.) and ST Telemedia's Singapore shareholders, including Singapore Technologies, Temasek, and the Government of Singapore (up to and including 61.5 percent of the equity and voting interests); and various WTO Member Creditor Shareholders, each of which is permitted to hold a less-than-ten-percent equity and/or voting interest as finally determined under the plan of reorganization (up to and including an aggregate 38.5 percent of the equity and voting interests). In addition to these approved interests, New GX may accept up to and including an aggregate 25 percent indirect equity and/or voting interest from the WTO Member Creditor Shareholders, and from other foreign investors, without seeking prior Commission approval under section 310(b)(4), subject to the following conditions: (1) GCNAN and EAN shall obtain prior approval before any foreign individual or entity other than New GX (through GC Holdings), ST Telemedia (through STT Communication Limited and STT Crossing Ltd.), Singapore Technologies, Temasek, or the Government of Singapore acquires individually a greater-than-25-percent indirect equity and/or voting interest in GCNAN or EAN; and (2) GCNAN and EAN shall seek approval under section 310(b)(4) before they accept any additional indirect investment, other than that approved here, from ST Telemedia, Singapore Technologies, Temasek and the Government of Singapore. We emphasize that, as Commission licensees, GCNAN and EAN have an affirmative duty to continue to monitor attributable foreign equity and voting interests and to calculate attributable interests consistent with the attribution principles enunciated by the Commission.

57. We also conclude, pursuant to sections 214(a) and 310(d) of the Act, and section 2 of the Cable Landing License Act, that the transfers of control are not likely to result in harm to competition in any relevant markets and likely will result in public interest benefits. The amended reorganization plan, approved by the bankruptcy court, will allow the FCC-Licensed Subsidiaries to remain as valuable competitors and providers of telecommunications services. We determine that the agreement between the Applicants and the Executive Branch addresses any national security and law enforcement concerns related to foreign investment in the transferee.

58. Accordingly, we approve the requested transfer of the international section 214 authorizations, domestic section 214 authority, common carrier and non-common carrier wireless licenses, and submarine cable landing licenses listed in Appendix B, subject to the requirements and conditions specified in this Order and Authorization.

#### V. ORDERING CLAUSES

59. Accordingly, *IT IS ORDERED* that, pursuant to sections 4(i) and (j), 214(a), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), 214(a), 309, and 310(d), and section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order 10530, the Section 214 Application, Submarine Cable Application, and Radio License Application, as amended by the First Amendment, Third Amendment and Fourth Amendment filed by the Applicants in the above-captioned proceeding to transfer control of various licenses and authorizations listed in Appendix B to this Order and Authorization, *ARE GRANTED* to the extent specified in this Order and Authorization.

60. *IT IS FURTHER ORDERED* that, pursuant to section 310(b)(4) of the Communications Act

of 1934, as amended, 47 U.S.C. § 310(b)(4), the Petition for Declaratory Ruling IS GRANTED to the extent specified in paragraph 35 of this Order and Authorization.

61. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214(a) and (c), 309 and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), 214(a), (c), 309, and 310(b), (d), and section 2 of the Cable Landing License Act, 47 U.S.C. § 35, the Petition to Adopt Conditions to Authorizations and Licenses filed by the DOJ/FBI on September 26, 2003, IS GRANTED, and the declaratory ruling, authorizations and licenses granted herein are SUBJECT TO COMPLIANCE WITH the provisions of the New GX/Executive Branch Agreement attached hereto between Global Crossing, New GX and ST Telemedia on the one hand and the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security on the other, dated September 24, 2003, effective on the date when the transfers have closed, which New GX/Executive Branch Agreement is designed to address national security, law enforcement, and public safety issues of the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security regarding the authority granted herein. Nothing in the New GX/Executive Branch Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, section 222(a) and (c)(1) of the Communications Act, 47 U.S.C. § 222(a) and (c)(1), and the Commission's implementing regulations.

62. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, the International 214 Subsidiaries SHALL BE CLASSIFIED as dominant international carriers in their provision of services on the U.S.-Singapore and U.S.-Indonesia routes, and SHALL FILE the reports required by section 43.61(c), 47 C.F.R. § 43.61(c), as applicable.

63. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and sections 63.24(e)(2), 63.18(h), 63.09(g), and 1.767(a)(8) and (11) of the Commission's rules, 47 C.F.R. § 63.24(e)(2), 63.18(h), 63.09(g), 1.767(a)(8), (11), New GX SHALL FILE an updated interlocking directorate certification with the Commission within five business days after appointment of its board of directors and the boards of the International 214 Subsidiaries and Submarine Cable Subsidiaries or within five business days of the release of this Order and Authorization, whichever occurs later.

64. IT IS FURTHER ORDERED that File No. SCL-T/C-20020822-00070, to transfer control of interests held by Global Crossing Telecommunications in the JUS cable landing license, IS DISMISSED AS MOOT for the reason stated herein at note 155.

65. IT IS FURTHER ORDERED that ACNI's motion to extend the deadline to file replies IS DENIED in all respects for the reasons stated herein at paragraph 10.

66. IT IS FURTHER ORDERED that the Gehman Letter and Newbridge Capital's pleadings ARE DISMISSED with prejudice for the reason stated herein at paragraph 10.

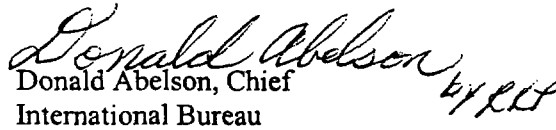
67. IT IS FURTHER ORDERED that the petitions to deny the transfers of control and oppositions to the petition for declaratory ruling, as amended, filed by CWA, ACNI, IDT, and XO ARE DENIED in all respects.


68. IT IS FURTHER ORDERED that, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants are afforded 30 days from the date of release of this Order and Authorization to amend all pending applications in connection with the instant Applications to reflect the

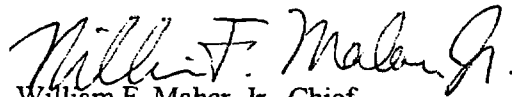
transfer of control approved in this Order and Authorization.

69. This Order and Authorization is issued pursuant to authority delegated by sections 0.261, 0.291, and 0.331, 47 C.F.R. §§ 0.261, 0.291, 0.331, and is effective upon release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order and Authorization. See 47 C.F.R. § 1.4(b)(2).

## FEDERAL COMMUNICATIONS COMMISSION

  
Donald Abelson, Chief  
International Bureau

  
John Muleta, Chief  
Wireless Telecommunications Bureau

  
William F. Maher, Jr., Chief  
Wireline Competition Bureau



## APPENDIX A

LIST OF PARTIES AND RECORD DOCUMENTS  
(Restricted Proceeding)Parties

Global Crossing Ltd. (Debtor-in-Possession); GC Acquisition Limited  
Communications Workers of America  
American Communications Network, Inc.  
IDT Corporation  
Organization for International Investment  
XO Communications, Inc.

Record Documents<sup>219</sup>

1. Applications (Aug. 22, 2002)
2. Public Notice (Sept. 19, 2002)
3. CWA Comments (Oct. 21, 2002)
4. DOJ/FBI Motion (Oct. 21, 2002)
5. Global Crossing Response (Nov. 5, 2002)
6. ACNI Statement (Nov. 5, 2002)
7. ACNI Letter (Nov. 18, 2002) (*ex parte*)
8. Global Crossing Reply to ACNI (Nov. 18, 2002)
9. Letter from Applicants (Nov. 22, 2002)
10. Letter from Julian P. Gehman (Dec. 3, 2002)
11. Letter from Policy Division to Applicants (Dec. 4, 2003)
12. December 18 Letter (Dec. 18, 2002)
13. Letter from Applicants (Jan. 16, 2003)
14. Letter from Policy Division to Applicants (Jan. 23, 2003)
15. Applicants' correction to service list for December 18 Letter (Jan. 27, 2003)
16. Newbridge Capital Motion to Accept Late-Filed Pleading and Petition to Deny (Jan. 28, 2003)
17. January 30 Letter (Jan. 30, 2003)
18. February 6 Letter (Feb. 6, 2003)
19. Applicants' Opposition to Motion to Accept Late-Filed Pleading and Petition to Deny (Feb. 7, 2003)
20. First Amendment (Feb. 13, 2003)
21. Letter from Policy Division to Applicants (Feb. 14, 2003)
22. Public Notice (Feb. 20, 2003)
23. February 24 Letter (Feb. 24, 2003)
24. Letter from Policy Division to Applicants (Feb. 26, 2003)
25. Newbridge Capital Reply to Opposition to Motion to Accept Late-Filed Pleading (Feb. 26, 2003)

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<sup>219</sup> In addition to the record, the Commission received numerous pieces of *ex parte* correspondence, mostly emails and form letters, from the general public. See 47 C.F.R. § 1.1212(h) (general public correspondence is placed in a public file and made available for public inspection).

26. ACNI Further Comments (Mar. 6, 2003)
27. Letter from Applicants (Mar. 13, 2003)
28. Global Crossing Further Reply to ACNI (Mar. 13, 2003)
29. IDT Reply (Mar. 13, 2003) (*ex parte*)
30. ACNI Letter (Mar. 18, 2003)
31. March 20 Letter (Mar. 20, 2003)
32. ACNI Supplement to Letter (Mar. 24, 2003)
33. Global Crossing Reply to ACNI Letter (Mar. 25, 2003)
34. Letter from Policy Division to Applicants (Mar. 27, 2003)
35. Second Amendment (Apr. 7, 2003)
36. Cong. Wolf *Ex Parte* (Apr. 8, 2003)
37. ACNI Second Supplemental Letter (Apr. 16, 2003)
38. ACNI Third Supplemental Letter (Apr. 18, 2003)
39. Letter from Policy Division to Applicants (Apr. 22, 2003)
40. Letter from David Albalah, Counsel for IDT (Apr. 22, 2003)
41. Sen. Dayton *Ex Parte* (Apr. 22, 2003)
42. Letter from Applicants (Apr. 30, 2003)
43. Applicants' correction to service list for April 30 Letter (May 6, 2003)
44. Letter from E. Ashton Johnston, Counsel for IDT (May 7, 2003)
45. Third Amendment (May 13, 2003)
46. Letter from E. Ashton Johnston, Counsel for IDT, to Secretary, FCC (May 14, 2003)
47. Sen. Burns and Sen. Hollings *Ex Parte* (May 15, 2003)
48. Public Notice (May 16, 2003)
49. ACNI Fourth Supplemental Letter (May 16, 2003)
50. May 22 Letter (May 22, 2003)
51. May 23 Letter (May 23, 2003)
52. Letter from Julian Gehman, Counsel for Newbridge Capital (June 9, 2003)
53. Letter from Official Committee of Unsecured Creditors (June 10, 2003) (*ex parte*)
54. XO Letter (June 12, 2003)
55. Cong. Weldon *Ex Parte* (June 12, 2003)
56. IDT Petition to Deny Third Amendment (June 16, 2003)
57. OII Comments (June 16, 2003)
58. ACNI Objections to Third Amendment (June 16, 2003)
59. Sen. Schumer *Ex Parte* (June 24, 2003)
60. Global Crossing Opposition to Petitions to Deny Third Amendment (June 26, 2003)
61. XO Comments (June 26, 2003)
62. ACNI Reply to Third Amendment (June 26, 2003) (*ex parte*)
63. Fourth Amendment (June 30, 2003)
64. Public Notice (July 2, 2003)
65. ACNI Fifth Supplemental Letter (July 2, 2003) (*ex parte*)
66. Global Crossing Reply to XO Comments (July 3, 2003)
67. IDT Reply to Third Amendment (July 3, 2003) (*ex parte*)
68. *Errata* to Global Crossing Reply to XO Comments (July 7, 2003)
69. August 18 Letter (Aug. 18, 2003)
70. September 18 Letter (Sept. 18, 2003)
71. DOJ/FBI Petition to Adopt Conditions (Sept. 26, 2003)
72. Letter from Policy Division to Applicants (Oct. 2, 2003)
73. Order and Authorization (released Oct. 8, 2003)

**APPENDIX B  
LIST OF FILE NUMBERS**

**Petition for Declaratory Ruling:**

ISP-PDR-20020822-00029	New GX (GCNAN and EAN)
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**Transfer of Control of International Section 214 Authorizations:**

File No.	Authorization Holder	Authorizations
ITC-T/C-20020822-00406	Budget Call	ITC-94-031
ITC-T/C-20020822-00443	GC Bandwidth	ITC-91-193
ITC-T/C-20020822-00444	Global Crossing Government Markets	ITC-214-20011106-00560
ITC-T/C-20020822-00445	Global Crossing Holdings USA	ITC-214-19990412-00202
ITC-T/C-20020822-00446	GCNAN	ITC-94-381; ITC-94-320; ITC-91-077; ITC-93-186
ITC-T/C-20020822-00447	Global Crossing Telecommunications	ITC-85-126; ITC-87-179; ITC-88-152; ITC-88-013; ITC-87-113; ITC-95-295; ITC-214-19960530-00220; ITC-214-19960621-00265; ITC-214-19960715-00309; ITC-214-19960729-00351
ITC-T/C-20020822-00448	International Optical Networks, L.L.C.	ITC-214-19980520-00334
ITC-T/C-20020822-00449	Racal Telecommunications Inc.	ITC-214-19970717-00410

**Transfer of Control of Domestic Section 214 Authority:**

Budget Call
GC Bandwidth
Global Crossing Local Services
GCNAN
Global Crossing Telecommunications

**Transfer of Control of Interests in Submarine Cable Landing Licenses<sup>220</sup>:**

File No.	Licensee	Licenses
SCL-T/C-20020822-00068	GT Landing	SCL-LIC-19970506-00003 (Atlantic Crossing Cable, or AC-1)
SCL-T/C-20020822-00071	MAC Landing	SCL-LIC-19981030-00023 (Mid-Atlantic Crossing Cable, or MAC)
SCL-T/C-20020822-00072	PAC Landing	SCL-LIC-19981103-00022 (Pan American Crossing Cable, or

<sup>220</sup> Since filing the Applications, Global Crossing Telecommunications has relinquished its interests in the JUS cable landing license (File No. SCL-LIC-19981117-00025). See *Global Crossing Telecommunications, Inc. (Debtor-in-Possession)*, File No. SCL-MOD-20020522-00057, Public Notice, Actions Taken Under Cable Landing License Act, DA 02-2431, 17 FCC Rcd 18389, 18390 (Int'l Bur. 2002). Therefore, its interests in that license are no longer listed here, and this Order and Authorization dismisses as moot File No. SCL-T/C-20020822-00070 to transfer control of the interests of Global Crossing Telecommunications in the JUS cable landing license. See *supra* ¶ 64.

		PAC)
SCL-T/C-20020822-00073	Global Crossing Latin America & Caribbean	SCL-LIC-19990823-00015 (South American Crossing Cable, or SAC)
SCL-T/C-20020822-00074	GC Pacific Landing	SCL-ASG-19981204-00029 and SCL-T/C-19981204-00030 <sup>221</sup> (Asia Direct Cable, Atlantic Express I and II Cables, Bahamas Express Cable, Guam-Hawaii Cable, Hawaii Express Cable, Orient Express Cable)
SCL-T/C-20020822-00075	GT Landing II	SCL-MOD-20000511-00018 (Atlantic Crossing-2 Cable, or AC-2)
SCL-T/C-20020822-00077	PC Landing	SCL-LIC-19980807-00010 (Pacific Crossing Cable, or PC-1)

**Transfer of Control of Common Carrier and Non-Common Carrier Radio Licenses Held by GCNAN:**

File No.	Call Sign(s)
0001001014 <sup>222</sup>	WHO323, WHO324, WHO325, WHO326, WHO327, WHO328, WHO329, WHO330, WHO331, WHO332, WHO333, WHO335, WHO336, WHO337, WHO339, WHO340, WHO341, WHO344, WHO345, WHO346, WHO347, WHQ999, WKL999, WLA738, WPMP453, WPRT617

**Transfer of Control of Common Carrier Radio Licenses Held by EAN:**

File No.	Call Sign(s)
0001366194 <sup>223</sup>	WPQT835, WPQT846, WPQT847, WPQT858, WPQT878, WPQW538, WPQW551, WPQY984, WPQW986, WPRU925, WPRU931, WPRU932, WPRV200, WPRV201, WPTN207, WPTN208, WPTN209, WPTN211, WPTN775, WPXB290

<sup>221</sup> Assignment/transfer of control to GC Pacific Landing of interests in cable landing licenses previously granted to various entities. The underlying file numbers for the referenced cables are, respectively, SCL-95-013, SCL-95-005, SCL-95-006, SCL-95-004, SCL-94-003, SCL-95-010, and SCL-95-011.

<sup>222</sup> On August 20, 2002, Global Crossing filed an application for the *pro forma* assignment of WPRT617, a private land mobile license held in its name, to GCNAN. See ULS File No. 0001002830. This transaction was approved by the Commission on September 3, 2002, and was consummated on September 4, 2002. ULS File No. 0001001014 was amended on September 6, 2002, to include WPRT617. On January 16, 2003, GCNAN filed an application to cancel WLT711, effective upon filing, and updated Form 603 accordingly. See February 6 Letter, *supra* note 62, at 11.

<sup>223</sup> On June 17, 2003, EAN filed a Form 603 requesting the transfer of control of EAN to Global Crossing. See ULS File No. 0001351238. On June 18, 2003, EAN filed a Form 601 requesting Special Temporary Authority ("STA") for that transaction. See ULS File No. 0001352905. The Wireless Telecommunications Bureau granted the STA on June 24, 2003, and EAN filed Form 603 requesting the *pro forma* assignment of its common carrier radio licenses to EAN as debtor-in-possession. See ULS File No. 0001359746. On June 26, 2003, the Wireless Telecommunications Bureau granted the assignment, which was consummated on June 27, 2003. See Fourth Amendment, *supra* note 1, at 2 n.2.

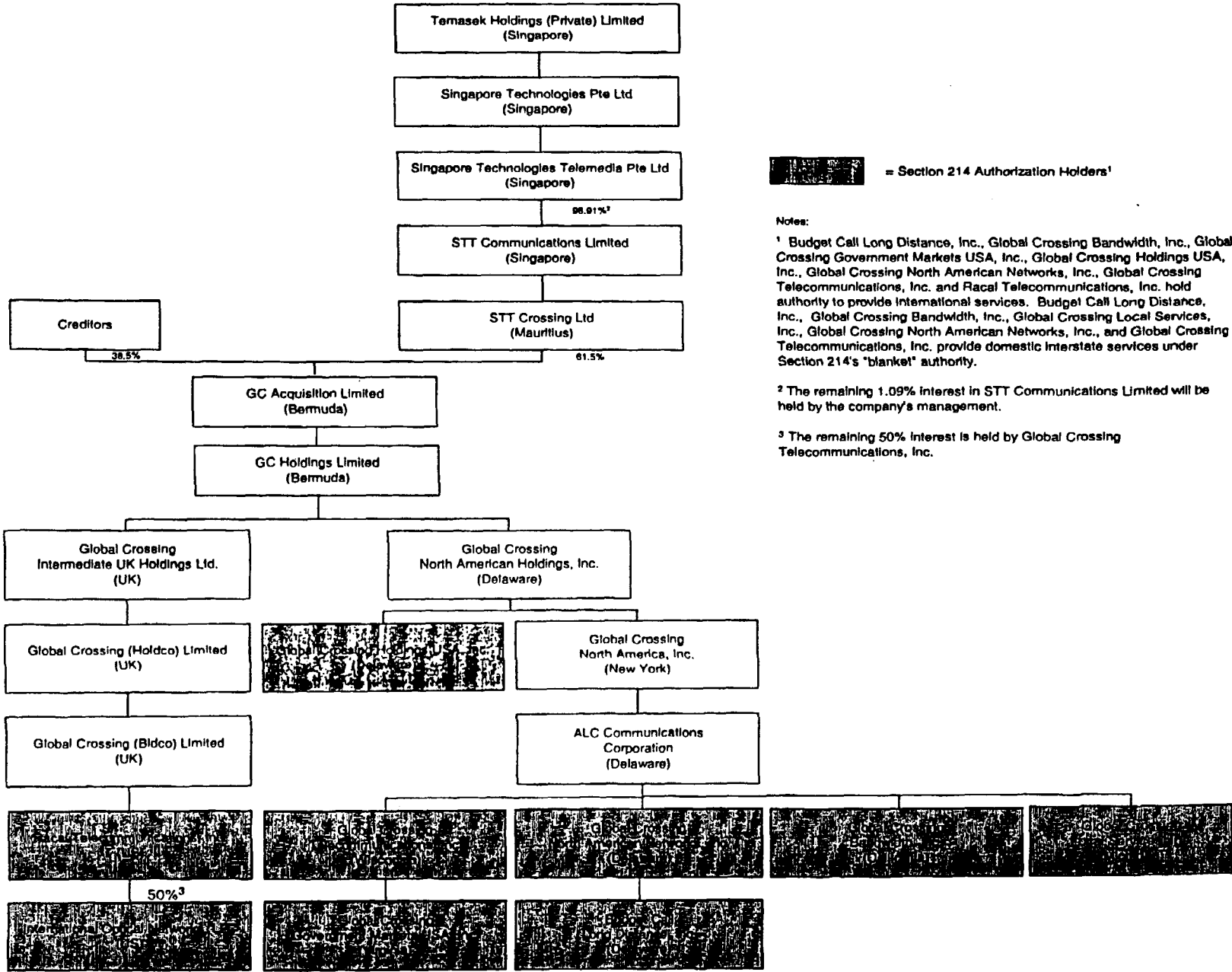
APPENDIX C

ORGANIZATIONAL CHARTS<sup>1</sup>

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<sup>1</sup> See September 18 Letter, *supra* note 10, at Organizational Charts for GCL's FCC-Licensed Subsidiaries.

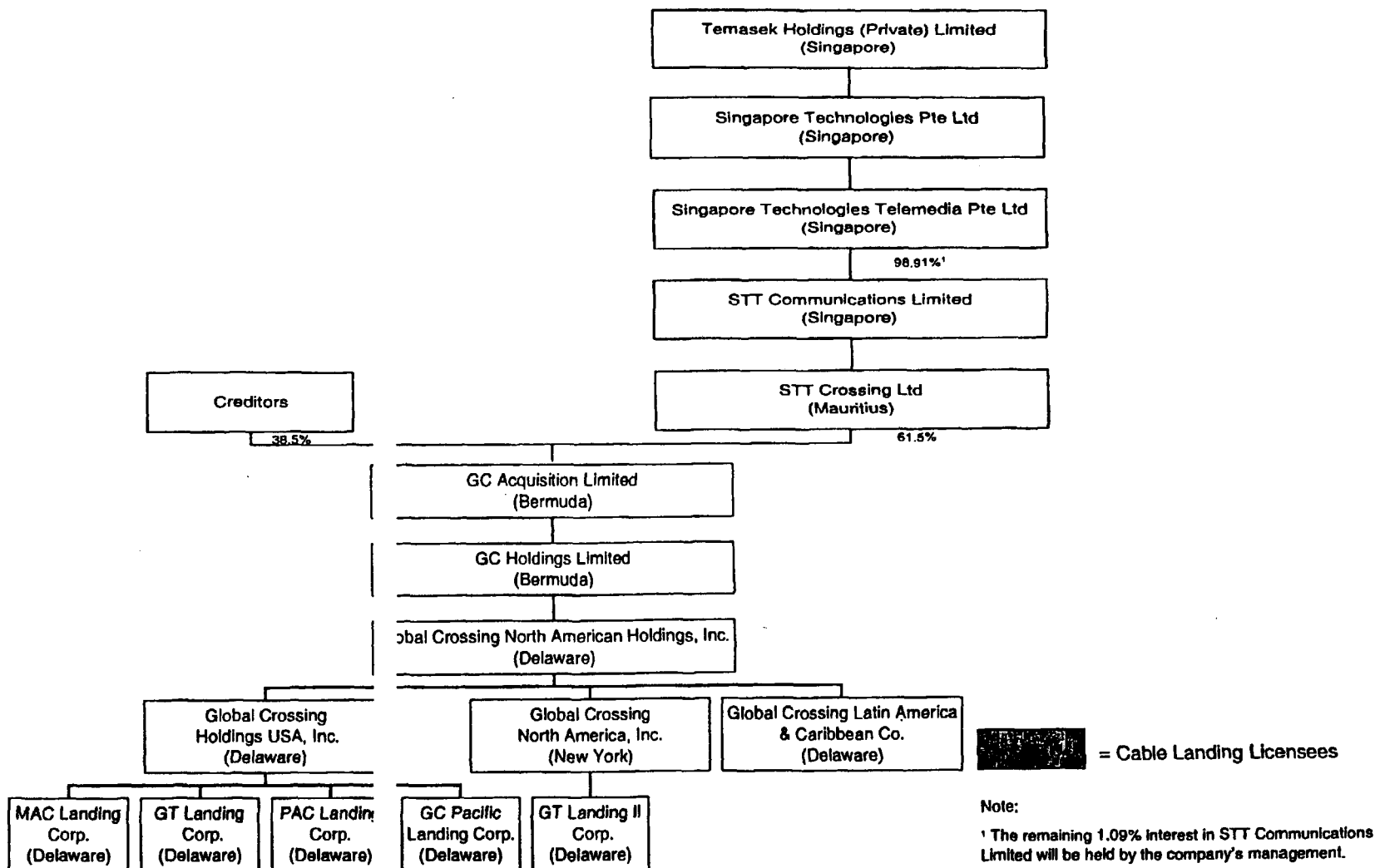
**Ownership Structure of Holders of Domestic and International Section 214 Authorizations**

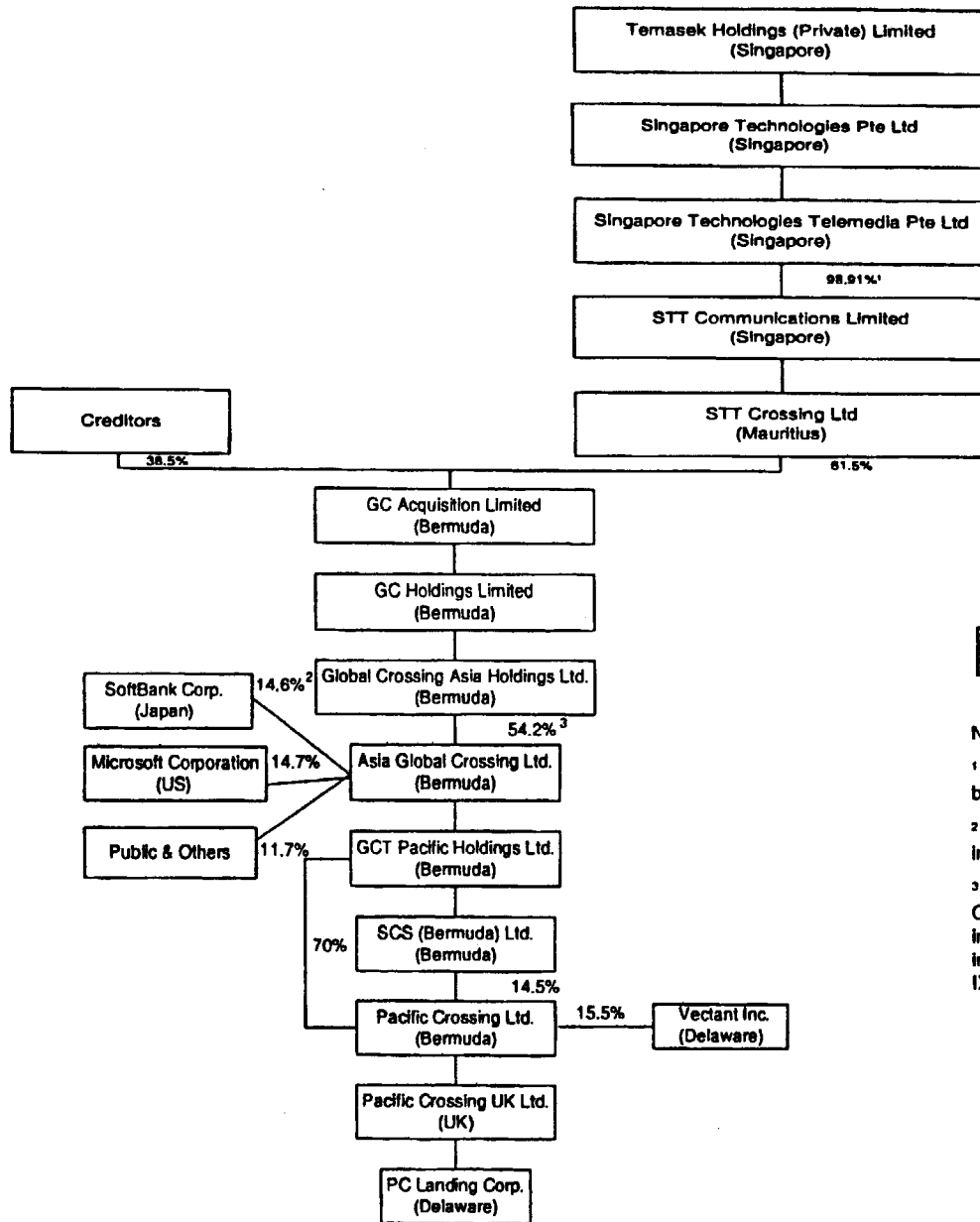


= Section 214 Authorization Holders<sup>1</sup>

- Notes:
- <sup>1</sup> Budget Call Long Distance, Inc., Global Crossing Bandwidth, Inc., Global Crossing Government Markets USA, Inc., Global Crossing Holdings USA, Inc., Global Crossing North American Networks, Inc., Global Crossing Telecommunications, Inc. and Racal Telecommunications, Inc. hold authority to provide international services. Budget Call Long Distance, Inc., Global Crossing Bandwidth, Inc., Global Crossing Local Services, Inc., Global Crossing North American Networks, Inc., and Global Crossing Telecommunications, Inc. provide domestic interstate services under Section 214's "blanket" authority.
  - <sup>2</sup> The remaining 1.09% interest in STT Communications Limited will be held by the company's management.
  - <sup>3</sup> The remaining 50% interest is held by Global Crossing Telecommunications, Inc.

## Post-Closing Ownership Structure of Cable Landing Licensees (Except PC Landing Corp.)





= Cable Landing Licensee

Notes:

<sup>1</sup> The remaining 1.09% interest in STT Communications Limited will be held by the company's management.

<sup>2</sup> Softbank Corp.'s stake in AGCL is held through two wholly-owned intermediate holding companies.

<sup>3</sup> In addition to New GX's 54.2% interest to be held through Global Crossing Asia Holdings, Ltd., New GX will hold a 1.2% direct interest in Asia Global Crossing Limited and will hold indirect interests through two of its wholly-owned Delaware subsidiaries: IXNet, Inc. (0.3%) and International Exchange Networks Ltd. (3.2%).







**Federal Communications Commission**

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**APPENDIX D**

**NEW GX/EXECUTIVE BRANCH AGREEMENT**

## AGREEMENT

This AGREEMENT is made as of the date of the last signature affixed hereto by and among: Global Crossing Ltd. ("GCL"), GC Acquisition Limited ("New GX") and Singapore Technologies Telemedia Pte Ltd ("ST Telemedia"), on the one hand, and the Federal Bureau of Investigation ("FBI"), the U.S. Department of Justice ("DOJ"), the Department of Defense ("DOD"), and the Department of Homeland Security ("DHS"), on the other (referred to individually as a "Party" and collectively as the "Parties").

## RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see, e.g., Executive Order 13231, Critical Infrastructure Protection in the Information Age and Presidential Decision Directive 63, Critical Infrastructure Protection);

WHEREAS, protection of Classified, Controlled Unclassified, and Sensitive Information is also critical to U.S. national security;

WHEREAS, GCL and New GX have an obligation to protect from unauthorized disclosure the contents of wire and electronic communications;

WHEREAS, New GX, through one or more of its subsidiaries, provides or will provide the following services: (1) local, long distance and international voice services including IP-based voice services, calling card and toll free voice service, and international toll free service; (2) private data and virtual private networking services, including global ATM service, and frame relay service; (3) broadband fiber-optic capacity on a leased and IRU basis, including private line service and wavelength service; (4) Internet access services including IP peering and transit service, dedicated Internet access service and internet dial-up service; (5) audio and video conferencing services; (6) maintenance and installation services in connection with the above, including colocation service, remote access service and managed services; and (7) any other telecommunications service that New GX may offer in the future;

WHEREAS, New GX has or will have direct physical or electronic access to certain customer facilities, including servers, storage media, network connections, bandwidth transport, and firewalls, and thereby has access to a variety of customer and end-user information that is subject to U.S. privacy and electronic surveillance laws;

WHEREAS, GCL has entered into a Purchase Agreement dated August 9, 2002 and amended December 20, 2002 and May 13, 2003 (the "Purchase Agreement"), whereby GCL and its wholly-owned Bermuda subsidiary, Global Crossing Holdings, Ltd., will transfer all of their assets and operations, including ownership of their U.S. subsidiaries, to New GX, and ST Telemedia will acquire, directly or through a subsidiary, a 61.5 percent equity and voting interest in New GX in exchange for, *inter alia*, an investment of \$250 million in New GX, which Purchase Agreement has been approved by the United States Bankruptcy Court for the Southern District of New York; and GCL, New GX and ST Telemedia have represented that the proposed transaction does not involve, directly or indirectly, investment in GCL, its subsidiaries, assets and operations by any foreign company other than ST Telemedia;

WHEREAS, GCL and New GX have filed with the Federal Communications Commission ("FCC") applications (in FCC IB Docket No. 02-286) under Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "1996 Act"), 47 U.S.C. §§ 214 and 310(d), and the Act Relating to the Landing and Operation of Submarine Cables in the United States, as amended (the "Cable Landing License Act"), 47 U.S.C. §§ 34-39, seeking FCC approval of the transfer of control to New GX of GCL's subsidiaries that hold FCC authorizations and licenses, and in connection therewith have also filed with the FCC a petition pursuant to Section 310(b)(4) of the 1996 Act for a declaratory ruling that the proposed indirect foreign ownership interest of ST Telemedia in the FCC-licensed subsidiaries is in the public interest;

WHEREAS, ST Telemedia is a company organized and existing under the laws of Singapore that is a wholly-owned subsidiary of Singapore Technologies Pte Ltd, that in turn ultimately is wholly-owned by the government of the Republic of Singapore;

WHEREAS, the FCC's grant of the applications in FCC IB Docket No. 02-286 may be made subject to conditions relating to national security, law enforcement, and public safety, and whereas GCL, New GX and ST Telemedia have agreed to enter into this Agreement with the FBI, the DOJ, the DOD and the DHS to address issues raised by those departments and agencies and to request that the FCC condition the transfer of control approved by the FCC on their compliance with this Agreement;

WHEREAS, by Executive Order 12661, the President, pursuant to Section 721 of the Defense Production Act, as amended, authorized the Committee on Foreign Investment in the United States ("CFIUS") to review, for national security purposes, foreign acquisitions of U.S. companies;

WHEREAS, GCL, New GX and ST Telemedia have submitted a voluntary notice to CFIUS regarding ST Telemedia's proposed investment in New GX, and GCL, New GX and ST Telemedia have entered into this Agreement to resolve any national security issues that the DOJ, the FBI, the DOD and the DHS might raise, including in the CFIUS review process; and

WHEREAS, representatives of GCL, New GX and ST Telemedia have met with representatives of the FBI, the DOJ, the DOD and the DHS to discuss issues raised by those departments and agencies. In these meetings, GCL, New GX, and ST Telemedia represented that: (a) they have no present plans, and are not aware of present plans of any other entity, that

would result in a Domestic Communications Company providing Domestic Communications through facilities located outside the United States, except as otherwise provided in Section 2.1 of this Agreement, (b) ST Telemedia is an entity whose commercial operations are wholly separate from the government of the Republic of Singapore and whose activities are overseen by independent regulatory authorities in Singapore, (c) no government has or will have, as a direct or indirect shareholder of New GX, special voting or veto rights concerning the actions of New GX, and GCL and New GX are aware of no plans the result of which would confer special voting or veto rights to any government, and (d) except as otherwise provided in Section 3.22, there are no present plans, and GCL and New GX are aware of no present plans of any other entity, as a result of which GCL or New GX will provide, direct, control, supervise or manage Domestic Communications through facilities located outside the United States.

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety issues.

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#### ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1. "Call Associated Data" means any information related to a Domestic Communication or related to the sender or recipient of that Domestic Communication and, to the extent maintained by a Domestic Communications Company in the normal course of business, includes without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post cut-through dial digit extraction, in-band and out-of-band signaling, and party add, drop and hold.

1.2. "Classified Information" means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure.

1.3. "Control" and "Controls" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

- (i) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (ii) the dissolution of the entity;
- (iii) the closing and/or relocation of the production or research and development facilities of the entity;

- (iv) the termination or nonfulfillment of contracts of the entity;
- (v) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in subsections (i) through (iv) above;  
or
- (vi) New GX's and GCL's obligations under this Agreement.

1.4. "Controlled Unclassified Information" means unclassified information, the export of which is controlled by the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Chapter I, Subchapter M, or the Export Administration Regulations (EAR), 15 C.F.R., Chapter VII, Subchapter C.

1.5. "De facto" and "de jure" control have the meanings provided in 47 C.F.R. § 1.2110.

1.6. "DHS" means the U.S. Department of Homeland Security.

1.7. "DOD" means the U.S. Department of Defense.

1.8. "DOJ" means the U.S. Department of Justice.

1.9. "Domestic Communications" means (i) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

1.10. "Domestic Communications Company" means all those subsidiaries, divisions, departments, branches, other components of New GX and any other entity over which New GX has *de facto* or *de jure* control that provide Domestic Communications. If any subsidiary, division, department, branch, other component of New GX or any other entity over which New GX has *de facto* or *de jure* control provides Domestic Communications after the date that all the Parties execute this Agreement, then such entity shall be deemed to be a Domestic Communications Company. If any Domestic Communications Company enters into joint ventures under which a joint venture or another entity may provide Domestic Communications, and if a Domestic Communications Company has the power or authority to exercise *de facto* or *de jure* control over such entity, then New GX will ensure that entity shall fully comply with the terms of this Agreement. The term "Domestic Communications Company" shall not include acquisitions by New GX in the U.S. after the date this Agreement is executed by all parties only if the DOJ, FBI, DOD and DHS find that the terms of this Agreement are inadequate to address national security, law enforcement or public safety concerns presented by that acquisition and the necessary modifications to this Agreement cannot be reached pursuant to Section 8.10 below. Nothing in this definition shall exempt any Domestic Communications Company from its obligations under Section 5.3.

1.11. "Domestic Communications Infrastructure" means (a) transmission, switching, bridging and routing equipment (including software and upgrades) subject to control by a

Domestic Communications Company and in use to provide, process, direct, control, supervise or manage Domestic Communications, and (b) facilities and equipment in use by or on behalf of a Domestic Communications Company that are physically located in the United States; or (c) facilities in use by or on behalf of a Domestic Communications Company to control the equipment described in (a) and (b) above. Domestic Communications Infrastructure does not include equipment or facilities used by service providers that are not Domestic Communications Companies and that are:

- (i) interconnecting communications providers; or
- (ii) providers of services or content that are
  - (A) accessible using the communications services of Domestic Communications Companies, and
  - (B) available in substantially similar form and on commercially reasonable terms through communications services of companies other than Domestic Communications Companies.

Domestic Communications Infrastructure does not include equipment dedicated to the termination of international undersea cables, provided that such equipment is utilized solely to effectuate the operation of undersea transport network(s) outside of the United States and in no manner controls land-based transport network(s) or their associated systems in the United States.

1.12. "Effective Date" means the date on which the transactions contemplated by the Purchase Agreement are consummated.

1.13. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).

1.14. "Electronic Surveillance" means: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(4), (1), (2), and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) access to, or acquisition or interception of, or preservation of communications or information as described in (a) through (e) above and comparable State laws.

1.15. "FBI" means the Federal Bureau of Investigation.

1.16. "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.17. "GCL" means Global Crossing Ltd., a Bermuda corporation.



- 1.18. "Governmental Authority" or "Governmental Authorities" means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau, or political subdivision, and any court, tribunal, judicial, or arbitral body.
- 1.19. "Intercept" or "Intercepted" has the meaning defined in 18 U.S.C. § 2510(4).
- 1.20. "Lawful U.S. Process" means lawful U.S. Federal, state, or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. Federal, state, or local law for physical search or seizure, production of tangible things, or access to or disclosure of Domestic Communications or Call Associated Data, including Transactional Data or Subscriber Information.
- 1.21. "Network Management Information" means network management operations plans, processes and procedures, the placement of Network Operating Center(s) and linkages (for service off load or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures; descriptions of IP networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique/proprietary control mechanisms as well as operating and administrative software; and network performance information.
- 1.22. "New GX" means GC Acquisition Limited, a Bermuda corporation, and its subsidiaries and affiliates.
- 1.23. "New GX Board" means the board of directors of New GX.
- 1.24. "OPM" means the Office of Personnel Management of the U.S. Government.
- 1.25. "Party" and "Parties" have the meanings given them in the Preamble.
- 1.26. "Pro forma assignments" or "pro forma transfers of control" are transfers that do not involve a substantial change in ownership or control as provided by the FCC's Rules.
- 1.27. "Purchase Agreement" has the meaning given in the Recitals.
- 1.28. "Security Committee" means a committee of the New GX Board the mandate of which is to oversee security matters and implementation of this Agreement within New GX.
- 1.29. "Security Director" has the meaning given in Section 3.15.
- 1.30. "Security Officer" has the meaning given in Sections 3.10 and 3.13.
- 1.31. "Sensitive Information" means information that is not Classified Information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment

used to conduct Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, (f) information deemed to be Sensitive Information pursuant to Executive Order, decision or guidelines, and (g) other information that is not Classified Information designated in writing by an authorized official of a Federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information." Domestic Communications Companies may dispute pursuant to Article 4 whether information is Sensitive Information under this subparagraph. Such information shall be treated as Sensitive Information unless and until the dispute is resolved in the Domestic Communications Companies' favor.

1.32. "ST Telemedia" has the meaning given in the Preamble.

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1.33. "Subscriber Information" means information relating to subscribers or customers of Domestic Communications Companies of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.34. "Transactional Data" means:

- (i) "call identifying information," as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
- (ii) any information possessed by a Domestic Communications Company relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, IP addresses, Uniform Resource Locators ("URLs"), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (iv) below;
- (iii) the time, date, size or volume of data transfers, duration, domain names, MAC or IP addresses (including source and destination), URLs, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics associated with any Domestic Communication; and
- (iv) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

The term includes all records or other information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c)(1) and (d), but does not include the content of any communication.

1.35. "United States," "US," or "U.S." means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.36. "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(l).

1.37. Other Definitional Provisions. Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. ~~Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."~~

## ARTICLE 2: FACILITIES, INFORMATION STORAGE AND ACCESS

2.1. Domestic Communications Infrastructure. Except to the extent and under conditions concurred in by the FBI, DOJ, DOD, and DHS in writing:

- (i) all Domestic Communications Infrastructure that is owned, operated or controlled by a Domestic Communications Company shall at all times be located in the United States and will be directed, controlled, supervised and managed by a Domestic Communications Company; and
- (ii) all Domestic Communications that are carried by or through, in whole or in part, the Domestic Communications Infrastructure shall pass through a facility under the control of a Domestic Communications Company and physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. The Domestic Communications Company will provide technical or other assistance to facilitate such Electronic Surveillance.
- (iii) foreign connections to the domestic Global Crossing network shall be on a gateway basis using industry best practices (i.e., both signaling and traffic shall be monitored for unauthorized access, network intrusions and other malicious activity). Such practices will be jointly determined by New GX and the FBI, DOJ, DOD and DHS.

2.2. Compliance with Lawful U.S. Process. Domestic Communications Companies shall take all practicable steps to configure their Domestic Communications Infrastructure to be capable of complying, and Domestic Communications Company employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with:

- (i) Lawful U.S. Process;

- (ii) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, 47 U.S.C. § 606, and under § 302(e) of the Aviation Act of 1958, 49 U.S.C. § 40107(b) and Executive Order 11161 (as amended by Executive Order 11382); and
- (iii) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*

2.3. Information Storage and Access. Domestic Communications Companies shall store exclusively in the United States the following:

- (i) stored Domestic Communications, if such communications are stored by or on behalf of a Domestic Communications Company for any reason;

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- (ii) any Wire Communications or Electronic Communications (including any other type of wire; voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of a customer or subscriber of a Domestic Communications Company, if such communications are stored by or on behalf of a Domestic Communications Company for any reason;
- (iii) Transactional Data and Call Associated Data relating to Domestic Communications, if such data are stored by or on behalf of a Domestic Communications Company for any reason;
- (iv) Subscriber Information, if such information is stored by or on behalf of a Domestic Communications Company for any reason, concerning customers who are U.S.-domiciled, customers who hold themselves out as being U.S.-domiciled, and customers who make a Domestic Communication;
- (v) billing records of customers who are U.S.-domiciled, customers who hold themselves out as being U.S.-domiciled, and customers who make a Domestic Communication, for so long as such records are kept and at a minimum for as long as such records are required to be kept pursuant to applicable U.S. law or this Agreement; and
- (vi) Network Management Information.

2.4. Billing Records. Domestic Communications Companies shall store for at least 18 months all billing records described in Section 2.3(v) above. Nothing in this paragraph shall require a Domestic Communications Company to store such records for longer than 18 months.

2.5. Storage Pursuant to 18 U.S.C. § 2703(f). Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Governmental Authority in the United States to preserve any information in the possession, custody, or control of Domestic Communications Companies

that is enumerated in Section 2.3 above, Domestic Communications Companies shall store such information in the United States.

2.6. Compliance with U.S. Law. Nothing in this Agreement shall excuse a Domestic Communications Company from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of such information or data. Similarly, in any action to enforce Lawful U.S. Process, Domestic Communication Companies have not waived any legal right they might have to resist such process.

2.7. Routing of Domestic Communications. Except for routing of traffic (i) to U.S. states, territories and possessions outside the Continental United States, (ii) to avoid network disruptions, (iii) consistent with least-cost routing practices that are implemented pursuant to policies reviewed and approved by the third-party auditor selected pursuant to Section 5.8 of this Agreement, and (iv) as otherwise may be agreed by the DOJ, the FBI, DOD and the DHS, Domestic Communications Companies shall not route Domestic Communications outside the United States.

2.8. Interconnection Arrangements with ST Telemedia and Subsidiaries. Interconnection arrangements between Domestic Communications Companies, on the one hand, and ST Telemedia and its subsidiaries, on the other hand, shall be on an arms' length basis.

2.9. CPNI. Domestic Communications Companies shall comply, with respect to Domestic Communications, with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(h)(1).

2.10. Storage of Protected Information. The storage of Classified, Controlled Unclassified, and Sensitive Information by a Domestic Communications Company or its contractors at any location outside of the United States is prohibited, unless the storage is at a U.S. military facility, a U.S. Embassy or Consulate or other location occupied by a U.S. government organization.

2.11. Network Topography. No later than 30 days after the Effective Date of this Agreement, New GX will provide to the FBI, DOJ, DHS and DOD a comprehensive description of the New GX domestic telecommunications network to include location of servers, routers, switches, operational systems software, and network security appliances and software.

### ARTICLE 3: SECURITY

3.1. Measures to Prevent Improper Use or Access. Domestic Communications Companies shall take all reasonable measures to prevent the use of or access to the Domestic Communications Infrastructure to conduct Electronic Surveillance, or to obtain or disclose Domestic Communications, Classified Information, Sensitive Information, or Controlled Unclassified Information, in violation of any U.S. Federal, state, or local laws or the terms of this Agreement. These measures shall include creating and complying with

detailed technical, organizational, operational, and personnel controls, policies and written procedures, necessary implementation plans, and physical security measures.

3.2. Visitation Policy. No later than ninety (90) days after the Effective Date, New GX shall adopt and implement a visitation policy for Domestic Communications Companies, for all visits to Domestic Communications Infrastructure. New GX will consult with DOJ, DHS and DOD on the design and implementation of its visitation policy. The visitation policy shall differentiate between categories of visits based on the sensitivity of the information, equipment and personnel to which the visitors will have access. The visitation policy shall require that:

- (i) the Security Officer shall review and approve or disapprove requests for visits to Domestic Communications Infrastructure (provided that, with respect to carrier hotels and other shared facilities, this policy will apply solely to the ~~portion of the facility controlled by New GX~~) by all non-U.S. persons, organizations and entities. The Security Officer shall approve or deny visit requests on the basis of their compliance with the visitation policy; the Security Officer may specifically deny any visit request on security or related grounds, which grounds will be described more fully in the visitation policy.
- (ii) a written request for approval of a visit must be submitted to the Security Officer no less than seven (7) days prior to the date of the proposed visit. If a written request cannot be provided within seven (7) days of the proposed visit because of an unforeseen exigency, the request may be communicated via telephone to the Security Officer and immediately confirmed in writing; however, the Security Officer may refuse to accept any request submitted less than seven (7) days prior to the date of such proposed visit if the Security Officer determines that there is insufficient time to consider the request.
- (iii) the exact purpose and justification for the visit must be set forth in detail sufficient to enable the Security Officer to make an informed decision concerning the appropriateness of the proposed visit, and the Security Officer may refuse to accept any request that he or she believes lacks sufficient information. Each proposed visit and each individual visitor must be justified and a separate approval request must be submitted for each visit.
- (iv) the Security Officer evaluate the request as soon as practicable after receiving it. The Security Officer may approve or disapprove the request pending submittal of additional information by the requester. When practicable, the Security Officer's decision shall be communicated to the requester by any means at least one (1) day prior to the date of the proposed visit, and, in all cases, the decision shall be confirmed in writing as promptly as possible.
- (v) a record of all such visit requests, including the decision to approve or disapprove, and information regarding consummated visits, such as date and place, as well as the names, business affiliation and dates of birth of the visitors, and New GX personnel involved, be maintained by the Security Officer. In

addition, a chronological file of all documentation associated with such visits, together with records of approvals and disapprovals, shall be maintained for two (2) years by the Security Officer for provision at the request of the third party auditor identified pursuant to Section 5.8 below, or of the DOJ, FBI, DOD or DHS.

- (vi) visitors be escorted at all times by an employee, and within conditions, including appropriate restrictions on access, set forth by the Security Officer that are commensurate with the place and purpose of the visit.

The parties may agree in the visitation policy that certain visits of a routine and nonsensitive nature are exempt from one or more of the requirements above.

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~~3.3. Records of Communications with Non-U.S. Citizens and Non-U.S. Entities. New GX shall maintain a full and complete record of every electronic or written communication by the New GX directors, officers, employees and agents, with ST Telemedia directors, officers, employees and agents (including the names, business affiliations, and substance of the communications) that are related to interconnection agreements, Security Procedures and Policy, as well as major equipment purchases outlined in section 3.18, and Joint Venture provisions outlined in section 5.3, relating to Domestic Communications Companies. These records shall be maintained for a period of five (5) years by the Security Officer for provision at the request of the third party auditor identified pursuant to Section 5.8 below, or of the DOD, DOJ, FBI or DHS.~~

3.4. Access by Foreign Government Authority. Domestic Communications Companies shall not, directly or indirectly, disclose or permit disclosure of, or provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information stored by Domestic Communications Companies to any person if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, component or subdivision thereof without the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process described in this Section 3.4 of this Agreement shall be reported to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by and known to the Security Officer. Domestic Communications Companies shall take reasonable measures to ensure that the Security Officer will promptly learn of all such requests or submission of legal process described in this Section 3.4 of this Agreement.

3.5. Disclosure to Foreign Government Authorities. Domestic Communications Companies shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (i) Classified, Sensitive, or Controlled Unclassified Information, or

- (ii) Subscriber Information, Transactional Data or Call Associated Data, including a copy of any Wire Communications or Electronic Communication, intercepted or acquired pursuant to Lawful U.S. Process

to any foreign government, identified representative, component or subdivision thereof without satisfying all applicable U.S. Federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a foreign government, an identified representative, a component or subdivision thereof to Domestic Communications Companies for the communications, data or information identified in this Section 3.5 of this Agreement that is maintained by Domestic Communications Companies shall be referred to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by and known to the Security Officer unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Domestic Communications Companies shall take reasonable measures to ensure that the Security Officer will promptly learn of all such requests or submission of legal process described in this Section 3.5.

3.6. Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities. Within ninety (90) days of receipt, Domestic Communications Companies shall notify DOJ in writing of legal process or requests by foreign nongovernmental entities to Domestic Communications Companies for access to or disclosure of Domestic Communications unless the disclosure of the legal process or request would be in violation of an order of a court of competent jurisdiction within the United States.

3.7. Security of Lawful U.S. Process. Domestic Communications Companies shall protect the confidentiality and security of all Lawful U.S. Process served upon them and the confidentiality and security of Classified, Sensitive, and Controlled Unclassified Information in accordance with U.S. Federal and state law or regulation and this Agreement. Information concerning Lawful U.S. Process, Classified Information, Sensitive Information, or Controlled Unclassified Information shall be under the custody and control of the Security Officer.

3.8. Points of Contact. Within fourteen (14) days after the Effective Date, Domestic Communications Companies shall designate in writing to the FBI, DOJ, DOD and DHS at least three nominees already holding U.S. security clearances, or who are eligible to receive such clearances and whose applications for such clearances have been submitted to DOD, to serve as a primary and two secondary points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process. The points of contact shall be assigned to Domestic Communications Companies' office(s) in the United States, shall be available twenty-four (24) hours per day, seven (7) days per week and shall be responsible for accepting service and maintaining the security of Classified, Sensitive, and Controlled Unclassified Information and any Lawful U.S. Process in accordance with the requirements of U.S. law and this Agreement. Promptly after designating such points of contact, Domestic Communications Companies shall notify the FBI, DOJ, DOD and DHS in writing of the points of contact, and thereafter shall promptly



notify the FBI, DOJ, DOD and DHS of any change in such designation. The points of contact shall be resident U.S. citizens who hold U.S. security clearances (which may include interim security clearances), as outlined in Executive Order 12968, and shall serve as points of contact for new Domestic Communications Companies unless and until the FBI, DOJ, DOD and DHS are notified of any change in designation. Domestic Communications Companies shall cooperate with any request by a Government Authority within the United States that a background check and/or security clearance process be completed for a designated point of contact.

3.9. Information Security Plan Domestic Communications Companies shall develop, document, implement, and maintain an information security plan to:

- (i) maintain appropriately secure facilities (e.g., offices) within the United States for the handling and storage of any Classified, Sensitive or Controlled Unclassified Information;
- (ii) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified, Sensitive, or Controlled Unclassified Information;
- (iii) assign U.S. citizens to positions for which screening is contemplated pursuant to Section 3.12;
- (iv) upon request from the DOJ, FBI, DOD or DHS, provide the name, social security number and date of birth of each person who regularly handles or deals with Sensitive Information;
- (v) require that personnel handling Classified Information shall have been granted appropriate security clearances pursuant to Executive Order 12968;
- (vi) provide that the points of contact described in Section 3.8 of this Agreement shall have sufficient authority over any of Domestic Communications Companies' employees who may handle Classified, Sensitive, or Controlled Unclassified Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement;
- (vii) ensure that the disclosure of or access to Classified, Sensitive, or Controlled Unclassified Information is limited to those who have the appropriate security clearances and authority;
- (viii) establish a formal incident response capability with reference to OMB Circular A-130 and NIST Special Publications 800-3, 800-18 and 800-47; and
- (ix) identify the types of positions that require screening pursuant to Section 3.12, the required rigor of such screening by type of position, and the criteria by which Domestic Communications Companies will accept or reject screened persons ("Screened Personnel").

3.10. Security Officer Responsibilities and Duties. The Head of Global Security of New GX, or a designee in a direct reporting relationship with the Head of Global Security, shall serve as the Security Officer with the primary responsibility for ensuring compliance with the Domestic Communications Companies' obligations under Article 3 and Sections 5.2, 5.5, 5.6, 5.7, 5.11, and 5.12 of this Agreement, and shall have the qualifications set forth in Section 3.13. Within thirty (30) days after the Effective Date, New GX shall notify the DOJ, FBI, DOD and DHS of the identity of the Security Officer.

3.11. Disclosure of Protected Data. In carrying out the responsibilities set forth in Section 3.10, the Security Officer shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, Sensitive Information, or Controlled Unclassified Information to any third party or to any officer, director, shareholder, employee, agent, or contractor of New GX or any Domestic Communications Company, including those who serve in a supervisory, managerial or officer role with respect to the Security Officer, except to a Security Director (i) consistent with the Security Officer's or the Security Committee's duties or (ii) to the extent required to comply with this Agreement, unless disclosure has been approved by prior written consent obtained from the FBI, DOJ, DOD or DHS or there is an official need for disclosure of the information in order to fulfill an obligation consistent with the purpose for which the information is collected or maintained.

3.12. Screening of Personnel. Each Domestic Communications Company shall implement a thorough screening process through a reputable third-party to ensure that all personnel whose position involves access to the Domestic Communications Infrastructure that enables those persons to monitor the content of Wire or Electronic Communications (including in electronic storage) or to have access to Transactional Data, Call Associated Data or Subscriber Information, persons who have access to Sensitive Information, and security personnel meet personnel screening requirements agreed to by New GX, DOJ, the FBI, DOD and DHS. The screening process undertaken pursuant to this Section shall follow the guidance to U.S. government agencies for screening civilian Federal employees in Executive Order 10450, and shall specifically include a background and financial investigation, an additional criminal record check, and a review of at least three references. Newly hired personnel will also be required to sign a non-disclosure agreement approved in advance by DOJ, FBI, DOD and DHS.

- (i) New GX shall consult with DOJ, the FBI, DOD and DHS on the screening procedures utilized by the reputable third party and shall provide to DOJ, FBI, DOD and DHS a list of the positions subject to screening. New GX shall utilize the criteria identified pursuant to Section 3.9 (ix) to screen personnel, shall report the results of such screening on a regular basis to the Security Committee, and shall, upon request, provide to the investigations services of the DOJ, the FBI, DOD and DHS or, in the alternative, to the investigations service of OPM, all the information it collects in its screening process of each candidate. Candidates for these positions shall be informed that the information collected during the screening process may be provided to the U.S. government, and the candidates shall consent to the sharing of this information with the U.S. government.

- (ii) If the DOJ, the FBI, DOD or DHS so desires, it may on its own, or through OPM's investigations service, conduct further background checks for Screened Personnel. New GX will cooperate with any U.S. government agency undertaking any such further background checks.
- (iii) Individuals who are rejected by the DOJ, the FBI, DOD or DHS for the screening requirements agreed to pursuant to this Section 3.12 of this Agreement will not be hired or, if they have begun their employment, will be immediately removed from their positions or otherwise have their duties immediately modified so that they are no longer performing a function that would require screening under this Section. New GX will notify the DOJ, the FBI, DOD and DHS of the transfer, departure, or job modification of any individual rejected as a result of the screening conducted pursuant to this Section 3.12 of this Agreement within seven (7) days of such transfer or departure, and shall provide the DOJ, the FBI, DOD and DHS with the name, date of birth and social security number of such individual.
- (iv) New GX shall provide training programs to instruct Screened Personnel as to their obligations under the Agreement and the maintenance of their trustworthiness determination or requirements otherwise agreed. New GX shall monitor on a regular basis the status of Screened Personnel, and shall remove personnel who no longer meet the Screened Personnel requirements.
- (v) New GX shall maintain records relating to the status of Screened Personnel, and shall provide these records, upon request, to the DOJ, FBI, DOD, DHS or any third party auditor appointed under the terms of Section 5.8 below.

3.13. Qualification of Principal Network and Security Officers. New GX shall employ a Head of Network Operations and a Head of Global Security for Domestic Communications Companies. Within thirty (30) days after the Effective Date, New GX shall notify the DOJ, FBI, DOD and DHS of the identities of the Head of Network Operations and the Head of Global Security. The Head of Network Operations and the Head of Global Security, and any designee of the Head of Global Security who serves as the Security Officer under Section 3.10, shall be resident citizens of the United States who, if not already in possession of U.S. security clearances, shall apply for U.S. security clearances pursuant to Executive Order 12968 immediately upon their appointment; who are subject to the screening requirements of Section 3.12 of this Agreement; and whose appointment to the position is not objected to by the DOJ, the FBI, DOD and DHS within ten (10) days of receiving notice thereof. If the Head of Network Operations, the Head of Global Security, or any designee of the Head of Global Security who serves as the Security Officer under Section 3.10, does not already possess a U.S. security clearance, he or she may nevertheless serve in that position, subject to DOJ, FBI, DOD and DHS approval, pursuant to an interim security clearance. New GX shall have the right to remove the Head of Network Operations or the Head of Global Security at any time and to appoint a replacement, subject to the terms of this Section. New GX shall promptly appoint a person who meets the qualifications of this Section to fill any such vacancy, and shall promptly notify the DOJ, FBI, DOD, and DHS in writing of such appointment. In no event shall a vacancy for the position of Head of

Network Operations or Head of Global Security exist for a period of more than ninety (90) days before New GX appoints a qualified candidate to fill such vacancy.

3.14. Qualification of General Counsel and Head of Human Resources. Within thirty (30) days after the Effective Date, New GX shall notify DOJ, FBI, DHS and DOD of the identities of the Human Resources executive responsible for hiring and screening and the General Counsel. The Human Resources executive responsible for hiring and screening and the General Counsel shall be resident citizens of the United States who, if not already in possession of U.S. security clearances, shall apply for U.S. security clearances pursuant to Executive Order 12968 immediately upon their appointment; who are subject to the screening requirements of Section 3.12 of this Agreement; and whose appointment to the position is not objected to by the DOJ, the FBI, DOD or DHS within ten (10) days of receiving notice thereof. If the Human Resources executive responsible for hiring and screening or the General Counsel does not already possess a U.S. security clearance, he or she may nevertheless serve in that position, subject to DOJ, FBI, DOD and DHS approval, pursuant to an interim security clearance. New GX shall have the right to remove the Human Resources executive responsible for hiring and screening and the General Counsel at any time and to appoint a replacement, subject to the terms of this Section. New GX shall promptly appoint a person who meets the qualifications of this Section to fill any such vacancy, and shall promptly notify the DOJ, FBI, DOD, and DHS in writing of such appointment. In no event shall a vacancy for the position of Human Resources executive responsible for hiring and screening or General Counsel exist for a period of more than ninety (90) days before New GX appoints a qualified candidate to fill such vacancy.

3.15. Establishment of Security Committee of New GX Board. The New GX Board shall establish a Security Committee to oversee security matters within Domestic Communications Companies. The Security Committee shall be comprised solely of directors ("Security Directors") who are U.S. citizens; who, if not already in possession of U.S. security clearances, shall apply for U.S. security clearances pursuant to Executive Order 12968 immediately upon their appointment to the Security Committee; and who satisfy the independent director requirements of the New York Stock Exchange. If a Security Director does not already possess a U.S. security clearance, he or she may nevertheless serve as Security Director, subject to DOJ, FBI, DOD and DHS approval, pursuant to an interim security clearance. The Security Committee shall supervise and report to the full New GX Board on all matters related to security, including implementation of this Agreement, consistent with their obligation to keep such information confidential. To perform its function, the Security Committee shall, among other things, receive reports from the Head of Global Security on New GX's compliance with this Agreement, and also shall receive a summary of any report issued pursuant to this Agreement, including reports made in connection with audits conducted pursuant to Section 5.8 of this Agreement and the annual report on compliance issued pursuant to Section 5.11 of this Agreement. The Security Committee shall, in turn, provide general reporting to the full New GX Board on New GX's compliance with this Agreement.

3.16. Number and Notice of Appointment of Security Directors. Subject to Section 3.20 below, fifty (50) percent of the members of the New GX Board nominated by ST Telemedia and elected to the New GX Board shall be Security Directors. Notice of the

proposed appointment of a Security Director shall be provided in writing to the DOJ, FBI, DOD and DHS by New GX. The DOJ, FBI, DOD and DHS shall have the opportunity to review and disapprove the appointment of a Security Director within thirty (30) days of receiving notice of the proposed appointment. If the DOJ, FBI, DOD or DHS objects to the appointment of an individual as Security Director within the 30-day timeframe, the appointment of that individual shall be rescinded and a different candidate shall be appointed.

3.17. Approval of Acquisition. Acquiring or upgrading network hardware (e.g., routers, switches, servers and network transmission capability) and network operating systems software requires prior approval of a Security Director, unless subject to other procedures pursuant to a policy to be negotiated with DHS. That policy may provide for simplified procedures for non-sensitive acquisitions and upgrades (e.g., vetting by the Head of Network Operations).

3.18. Participation of Security Directors in Committees of the Board of New GX. A quorum for a meeting of the New GX Board or any committee of the New GX Board shall require at least one Security Director, unless the issues addressed at such meeting in no respect address or affect the obligations of New GX under this Agreement. In the event that the New GX Board or any committee of the New GX Board must address at a meeting, for reasons of exigent circumstances, an issue related to or affecting the obligations of New GX under this Agreement, and all Security Director positions are vacant at the time of such a meeting, the absence of the Security Director will not prevent the formation of a quorum provided that the Security Officer of New GX attends the meeting.

3.19. Attendance of Security Directors at Board Meetings of Domestic Communications Companies. A meeting of the board of a Domestic Communications Company or of a board committee of a Domestic Communications Company shall not occur without a Security Director in attendance, whether as a member or as an observer, unless the issues addressed at such meeting in no respect address or affect the obligations of the Domestic Communications Company under this Agreement. In the event that the board of a Domestic Communications Company or a board committee of a Domestic Communications Company must address at a meeting, for reasons of exigent circumstances, an issue related to or affecting the obligations of the Domestic Communications Company under this Agreement, and all Security Director positions are vacant at the time of such a meeting, the absence of the Security Director will not prevent the meeting provided that the Security Officer of New GX attends the meeting.

3.20. Removal of Security Directors. Any Security Director may be removed for any reason permitted by the provisions of applicable law or under the charter of New GX, provided that:

- (i) the removal of a Security Director shall not become effective until that Security Director, DOJ, the FBI, DOD and DHS have received written notification, a successor who is qualified to become a Security Director within the terms of this Agreement is selected, DOJ, the FBI, DOD and DHS receive written notice of such selection under the terms of this Agreement, and DOJ, the FBI, DOD or

DHS do not object to the proposed Security Director within thirty (30) days of such notice; and

- (ii) notification to DOJ, the FBI, DOD and DHS of the removal of a Security Director shall be the responsibility of the General Counsel of New GX.

Notwithstanding the foregoing, however, if immediate removal of any Security Director is deemed necessary to prevent actual or possible violation of any statute or regulation or actual or possible damage to New GX, the Security Director may be temporarily suspended, pending written notification to the FBI, DOJ, DOD and DHS, and removed upon the approval of the removal by the FBI, DOJ, DOD and DHS. The written notification to DOJ, FBI, DOD and DHS shall set forth the reasons for the removal if such reasons are related to the performance of this Agreement. In the event of any vacancy in the position of Security Director, however occurring, New GX will give prompt written notice of such vacancy to DOJ, the FBI, DOD and DHS through the General Counsel of New GX, or if that position is vacant, through the Chief Operating Officer of New GX. New GX shall promptly nominate a person who meets the qualifications in Section 3.15 to fill such vacancy, and shall promptly notify DOJ, the FBI, DOD and DHS in writing of such nomination. In no event shall a vacancy for the position of Security Director exist for a period of more than ninety (90) days before New GX nominates a qualified candidate to fill such vacancy.

3.21. Indemnification of Security Directors. New GX shall indemnify and hold harmless each Security Director from any and all claims arising from, or in any way connected to, his or her performance as a Security Director under the Agreement except for his or her own individual gross negligence or willful misconduct. New GX shall advance fees and costs incurred in connection with the defense of such claim. New GX may purchase insurance to cover this indemnification.

3.22. Operational Control of New GX Network. Except to the extent and under conditions concurred in by the FBI, DOJ, DOD and DHS in writing, operational control of the Domestic Communications Infrastructure will be restricted to the New GX Network Operating Centers located in the United States.

3.23. Security Standards and Practices, and Consultations with U.S. Government. Domestic Communications Companies will maintain or exceed security standards and practices utilized within the U.S. telecommunications industry and will consult with the DOJ and other appropriate U.S. government agencies on steps to maintain or exceed such standards and practices.

3.24. Notice of Obligations. Domestic Communications Companies shall instruct appropriate officials, employees, contractors, and agents as to the security restrictions and safeguards imposed by this Agreement, including the reporting requirements in Sections 5.5, 5.6, and 5.7 of this Agreement, and shall issue periodic reminders to them of such obligations.

3.25. Access to Classified, Controlled Unclassified, or Sensitive Information. Nothing contained in this Agreement shall limit or affect the authority of a U.S. government agency

to deny, limit or revoke Domestic Communications Companies' access to Classified, Controlled Unclassified, and Sensitive Information under that agency's jurisdiction.

#### ARTICLE 4: DISPUTES

4.1. Informal Resolution The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to the General Counsel of New GX, the General Counsel of the FBI, and the Deputy Attorney General, Criminal Division, DOJ, the General Counsel of DOD, and the General Counsel of DHS or their designees, unless the FBI, DOJ, DOD or DHS believes that important national interests can be protected, or a Domestic Communications Company believes that its paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.2 of this Agreement. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 4.2 of this Agreement. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

4.2. Enforcement of Agreement. Subject to Section 4.1 of this Agreement, if any of the Parties believes that any other of the Parties has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. government agency to:

- (i) require that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days upon receiving written notice of such breach;
- (ii) request that the FCC modify, condition, revoke, cancel or render null and void any license, permit, or other authorization granted or given by the FCC to Domestic Communications Companies, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against Domestic Communications Companies;
- (iii) seek civil sanctions for any violation by New GX or Domestic Communications Companies of any U.S. law or regulation or term of this Agreement;
- (iv) pursue criminal sanctions against New GX or Domestic Communications Companies, or any director, officer, employee, representative, or agent of Domestic Communications Companies, or against any other person or entity, for violations of the criminal laws of the United States; or
- (v) seek suspension or debarment of New GX or Domestic Communications Companies from eligibility for contracting with the U.S. government.

4.3. Irreparable Injury. New GX agrees that the United States would suffer irreparable injury if for any reason a Domestic Communications Company failed to perform any of its material obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, New GX agrees that, in seeking to enforce this Agreement against Domestic Communications Companies, the FBI, DOJ, DOD and DHS shall be entitled, in addition to any other remedy available at law or equity, to specific performance and immediate injunctive or other equitable relief. The obligations in Section 5.5 or 5.6 are material for the purpose of this Section. (Listing these sections does not imply that obligations in other sections are not material).

4.4. Waiver. The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

4.5. Forum Selection. It is agreed by and among the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

4.6. Effectiveness of Article 4. This Article 4, and the obligations imposed and rights conferred herein, shall be effective upon the execution of this Agreement by all the Parties.

#### ARTICLE 5: AUDITING, REPORTING, NOTICE AND LIMITS

5.1. Filings re de jure or de facto control of a Domestic Communications Company. If any Domestic Communications Company makes any filing with the FCC or any other Governmental Authority relating to the de facto or de jure control of a Domestic Communications Company except for filings with the FCC for assignments or transfers of control to any Domestic Communications Company that are pro forma, New GX shall promptly provide to the FBI, DOJ, DOD and DHS written notice and copies of such filing. This Section 5.1 is effective upon execution of this Agreement by all the Parties.

5.2. Control of New GX. If any member of the Security Committee or of the senior management of New GX or a Domestic Communications Company (including the Chief Executive Officer, President, General Counsel, Chief Technical Officer, Chief Financial Officer, Head of Network Operations, Head of Global Security, Security Officer, or other senior officer) acquires any information that reasonably indicates that any single foreign entity or individual, other than ST Telemedia has obtained or will likely obtain an ownership interest (direct or indirect) in New GX or a Domestic Communications Company above ten (10) percent, as determined in accordance with 47 C.F.R. § 63.09, or if any single foreign entity or individual has gained or will likely otherwise gain either (1) Control or (2) de facto or de jure control of New GX or a Domestic Communications Company, then



such member shall promptly cause to be notified the Security Officer or a Security Director, who in turn, shall promptly notify the DOJ, FBI, DOD and DHS in writing. Notice under this section shall, at a minimum:

- (i) Identify the entity or individual(s) (specifying the name, addresses and telephone numbers of the entity);
- (ii) Identify the beneficial owners of the increased or prospective increased interest in New GX or a Domestic Communications Company by the entity or individual(s) (specifying the name, addresses and telephone numbers of each beneficial owner); and
- (iii) Quantify the amount of ownership interest in New GX or a Domestic Communications Company that has resulted in or will likely result in the entity or individual(s) increasing the ownership interest in or control of New GX or a Domestic Communications Company.

5.3. Joint Ventures. A Domestic Communications Company may have entered into or may enter into joint ventures under which the joint venture or entity may provide Domestic Communications.

- (i) To the extent that such Domestic Communications Company does not have *de facto* or *de jure* control over a joint venture or entity, such Domestic Communications Company shall in good faith (a) notify such entity of this Agreement and its purposes, (b) endeavor to have such entity comply with this Agreement as if it were a Domestic Communications Company, and (c) consult with the DOJ, FBI, DOD or DHS about the activities of such entity. Nothing in this Section 5.3 shall be construed to relieve Domestic Communications Companies of obligations under Article 2 of this Agreement.
- (ii) If a Domestic Communications Company enters into joint venture under which the joint venture or entity may provide Domestic Communications or transmission, switching, bridging, routing equipment (including software and upgrades), facilities used to provide, process, direct, control, supervise or manage Domestic Communications, the Domestic Communications Company must provide DHS with notice no later than 30 days before the joint venture offers Domestic Communications service. DHS will have 30 days from receipt of the notice to review and provide the Domestic Communications Company with any objection to the joint venture. Any objection shall be based on national security, law enforcement or public safety grounds. If the DHS objects, the joint venture shall not offer Domestic Communications service.

5.4. Outsourcing. A Domestic Communications Company shall not outsource functions covered by this Agreement to an entity that is not a Domestic Communications Company except pursuant to an outsourcing policy to be negotiated with DHS. Such policy shall include prior notice of the proposed outsourcing and the right of DHS to object within thirty (30) days to the proposed outsourcing; the parties may agree in the outsourcing policy

to exclude classes of outsourcing contracts of a routine and nonsensitive nature from this notice and approval requirement. Further:

- (i) the Domestic Communications Company shall ensure that the entity complies with the applicable terms of this Agreement
- (ii) the Domestic Communications Company shall include in its contracts with any such entities written provisions requiring that such entities comply with all applicable terms of this Agreement (and otherwise ensure that such entities are aware of, agree to, and are bound to comply with the applicable obligations of this Agreement);
- (iii) the Domestic Communications Company shall notify the DOJ, FBI, DOD and DHS within thirty (30) days of contracting out operation of the Domestic Communications Infrastructure to an entity that is not a Domestic Communications Company, which notice shall identify the name of the entity and the nature of the contract;
- (iv) if the Domestic Communications Company learns that the entity or the entity's employee has violated an applicable provision of this Agreement, the Domestic Communications Company will notify the DOJ, FBI, DOD and DHS promptly; and
- (v) with consultation and, as appropriate, cooperation with DOJ, FBI, DOD and DHS, the Domestic Communications Company will take reasonable steps necessary to rectify promptly the situation, which steps may (among others) include terminating the arrangement with the entity, including after notice and opportunity for cure, and/or initiating and pursuing litigation or other remedies at law and equity.

Peering, interconnection and purchase of local access service shall not constitute outsourced functions for purposes of this Agreement.

5.5. Notice of Foreign Influence. If any member of the Security Committee or of the senior management of New GX or a Domestic Communications Company (including the Chief Executive Officer, President, General Counsel, Chief Technical Officer, Chief Financial Officer, Head of Network Operations, Head of Global Security, Security Officer, or other senior officer) acquires any information that reasonably indicates that any foreign government, any foreign government-controlled entity, or any foreign entity:

- (i) plans to participate or has participated in any aspect of the day-to-day management of New GX or a Domestic Communications Company in such a way that interferes with or impedes the performance by New GX or a Domestic Communications Company of its duties and obligations under the terms of this Agreement, or interferes with or impedes the exercise by New GX or a Domestic Communications Company of its rights under this Agreement, or

- (ii) plans to exercise or has exercised, as a direct or indirect shareholder of New GX or a Domestic Communications Company or their subsidiaries, any Control of New GX or a Domestic Communications Company in such a way that interferes with or impedes the performance by New GX or a Domestic Communications Company of its duties and obligations under the terms of this Agreement, or interferes with or impedes the exercise by New GX or a Domestic Communications Company of its rights under the terms of this Agreement, or in such a way that foreseeably concerns New GX's or a Domestic Communications Company's obligations under this Agreement,

then such member shall promptly cause to be notified the Security Officer or a Security Director, who in turn, shall promptly notify the FBI, DOJ, DOD and DHS in writing of the timing and the nature of the foreign government's or entity's plans and/or actions.

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5.6. Reporting of Incidents. New GX and Domestic Communications Companies shall take practicable steps to ensure that, if any New GX or Domestic Communications Company officer, director, employee, contractor or agent acquires any information that reasonably indicates: (a) a breach of this Agreement; (b) access to or disclosure of Domestic Communications, or the conduct of Electronic Surveillance, in violation of Federal, state or local law or regulation; (c) access to or disclosure of CPNI or Subscriber Information in violation of Federal, state or local law or regulation (except for violations of FCC regulations relating to improper commercial use of CPNI); or (d) improper access to or disclosure of Classified, Sensitive, or Controlled Unclassified Information, then the individual will notify the Security Officer or a Security Director, who will in turn notify the FBI, DOJ, DOD and DHS in the same manner as specified in Section 5.5. This report shall be made promptly and in any event no later than ten (10) calendar days after New GX or the Domestic Communications Company acquires information indicating a matter described in this Section 5.6(a)-(d) of this Agreement. New GX and the Domestic Communications Companies shall lawfully cooperate in investigating the matters described in this section of this Agreement. New GX or the Domestic Communications Company need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States.

5.7. Non-Retaliation New GX and each Domestic Communications Company shall, by duly authorized action of its respective Board of Directors, adopt and distribute an official corporate policy that strictly prohibits New GX or a Domestic Communications Company from discriminating or taking any adverse action against any officer, director, employee, contractor or agent because he or she has in good faith initiated or attempted to initiate a notice or report under Sections 5.2, 5.5 or 5.6 of this Agreement, or has notified or attempted to notify directly the Security Officer or a Security Director named in the policy to convey information that he or she believes in good faith would be required to be reported to the FBI, DOJ, DOD and DHS by the Security Officer or a Security Director under Sections 5.2, 5.5 or 5.6 of this Agreement. Such corporate policy shall set forth in a clear and prominent manner the contact information for the Security Officer or one or more Security Directors to whom such contacts may be made directly by any officer, director, employee, contractor or agent for the purpose of such report or notification. Any violation

by New GX or a Domestic Communications Company of any material term of such corporate policy shall constitute a breach of this Agreement.

5.8. Third Party Audits. New GX shall retain and pay for a neutral third party to audit objectively on an annual basis its compliance with agreed elements of this Agreement. New GX shall provide notice of its selected auditor to the DOJ, FBI, DOD and DHS, and the DOJ, FBI, DOD and DHS shall be able to review and approve or disapprove the selected auditor and terms of reference for that auditor within thirty (30) days of receiving notice. In addition, New GX shall provide to the DOJ, FBI, DOD and DHS a copy of its contract with the third party auditor, which shall include terms defining the scope and purpose of the audits. The DOJ, FBI, DOD and DHS shall have the right to review and approve the terms defining the scope and purpose of the audits. Through its contract with the third party auditor, New GX shall ensure that all reports generated by the auditor are provided promptly to the DOJ, FBI, DOD and DHS. Domestic Communications Companies also will provide the DOJ, FBI, DOD and DHS with access to facilities, information, and personnel consistent with Sections 5.9 and 5.10 below in the event that the DOJ, FBI, DOD or DHS wishes to conduct its own audit of a Domestic Communication Company. The terms defining the scope and purpose of the audits shall include, at a minimum, the following:

- (i) Development of an initial vulnerability and risk assessment based on this Agreement, and a detailed audit work plan based on such assessment, which work plan will be subject to review and approval by the DOJ, the FBI, DOD and the DHS;
- (ii) Authority for the auditor to review and analyze of New GX policies and procedures designed to implement this Agreement;
- (iii) Authority for the auditor to review and analyze relevant information related to the configuration of the New GX network;
- (iv) The Head of Network Operations will report periodically on technical advancements that enhance compliance with this Agreement;
- (v) Authority for the auditor to review and analyze minutes of New GX Board and other Board Committee meetings held in accordance with the terms of this Agreement;
- (vi) Authority for the auditor to review and analyze Security Director and Security Officer logs and records including, but not limited to, records relating to facility visits, employee screening data and any reports submitted in accordance with Section 5.6 of this Agreement;
- (vii) Authority for the auditor to conduct a reasonable number of unannounced inspections of New GX Network Operating Centers and other key facilities each year.

- (viii) Authority for the auditor to conduct a reasonable volume of random testing of network firewalls, access points and other systems for potential vulnerabilities; and
- (ix) Authority for the auditor to conduct a reasonable number of confidential interviews of New GX employees concerning compliance with this Agreement.

5.9. Access to Information and Facilities. FBI, DOJ, DOD and DHS may visit with thirty (30) minutes notice, any part of Domestic Communications Companies' Domestic Communications Infrastructure and security offices to conduct on-site reviews concerning the implementation of the terms of this Agreement and may at any time require unimpeded access to information concerning technical, physical, management, or other security measures needed by the FBI, DOJ, DOD or DHS to verify compliance with the then-effective terms of this Agreement. Within sixty (60) days of the Effective Date, the parties will develop procedures for implementation of this Section 5.9.

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5.10. Access to Personnel Upon reasonable notice from the FBI, DOJ, DHS or DOD Domestic Communications Companies will make available for interview officers or employees of Domestic Communications Companies, and will require contractors to make available appropriate personnel located in the United States who are in a position to provide information to verify compliance with the then-effective terms of this Agreement.

5.11. Annual Report. On or before the last day of January of each year, the Head of Global Security shall submit to the FBI, DOJ, DOD and DHS a report assessing Domestic Communications Companies' compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

- (i) a copy of all audit reports compiled by the third party auditor conducted pursuant to Section 5.8 of this Agreement;
- (ii) a copy of the policies and procedures adopted to comply with this Agreement;
- (iii) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;
- (iv) a summary of any known acts of material noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
- (v) identification of any other issues that, to Domestic Communications Companies' knowledge, will or reasonably could affect the effectiveness of or compliance with this Agreement.

New GX and all Domestic Communications Companies shall make available to the Security Officer, in a timely fashion, all information necessary to complete the report required by this Section.

5.12. Notice of Establishment of Additional Network Operating Centers. In the event New GX establishes a new Network Operating Center, New GX shall provide prior written notice of such establishment to the DOJ, FBI, DOD and DHS at least ninety (90) days prior to the commencement of operations of such Network Operating Center.

5.13. Information and Reports Concerning Network Architecture. New GX shall provide to the DOJ, FBI, DHS and DOD, on a quarterly basis, the following information regarding the interconnections and control of the Domestic Communications Infrastructure:

- (i) A description of the plans, processes and/or procedures, relating to network management operations, that prevent the Domestic Communications Infrastructure from being accessed or controlled from outside the United States.
- (ii) A description of the placement of Network Operations Centers and interconnection (for service offload or administrative activities) to other domestic and international carriers, ISPs and critical U.S. financial, energy, and transportation infrastructures.
- (iii) A description of New GX's IP networks and operations processes, procedures for management control and relation to the backbone infrastructures of other service providers.
- (iv) A description of any unique or proprietary control mechanisms of New GX as well as of New GX's operating and administrative software.
- (v) A report of Network Management Information that includes an assurance that network performance satisfies FCC rules and reporting requirements.

New GX shall promptly report any material changes, upgrades and/or modifications to the items described in (i) - (v) above, including the installation of critical equipment and software. For the purposes of this section, critical equipment and software shall include: routers, switches, gateways, network security appliances, network management/test equipment, operating systems and network and security software (including new versions, patches, upgrades, and replacement software), and other hardware, software, or systems performing similar functions. Monitors, desktop computers, desktop computer applications, disk drives, power supplies, printers, racks and the like are not "critical equipment or software" unless they perform functions similar to those of the items described in (i) - (v) above. Similarly, "material" shall refer to those changes, modifications and upgrades that alter network operating characteristics or architecture--it does not apply to spare parts replacement, the one-for-one swapping of identical equipment or the related re-loading of system software or backups; provided, however, that network security configuration and capabilities remain unchanged.

5.14. Notices. Effective upon execution of this Agreement by all the Parties, all notices and other communications given or made relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed to have been duly given or made as of the date of receipt and shall be (a) delivered personally, or (b) sent by facsimile, or (except as noted below) (c) sent by documented overnight courier service, or (d) sent by registered

or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the Parties may designate in accordance with this Section:

Department of Justice  
Assistant Attorney General  
Criminal Division  
Main Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Federal Bureau of Investigation  
General Counsel  
935 Pennsylvania Avenue, N.W.  
Washington, DC 20535

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Department of Defense

Office of General Counsel  
Attn: Deputy General Counsel  
for Acquisition and Logistics  
The Pentagon, Room 3D973  
1600 Defense Pentagon  
Washington, DC 20301-1600

Department of Homeland Security  
Washington, D.C. 20528  
Attn: General Counsel, Office of the General Counsel  
Telephone: 202-692-4237  
Fax: 202-282-8415  
(By Personal Delivery or E-mail Only)

Global Crossing Ltd.  
200 Park Avenue, Third Floor  
Florham Park, NJ 07932  
Attn: General Counsel  
Telephone: (973) 937-0312  
Fax: (973) 360-0538

GC Acquisition Limited  
200 Park Avenue, Third Floor  
Florham Park, NJ 07932  
Attn: General Counsel  
Telephone: (973) 937-0312  
Fax: (973) 360-0538

Singapore Technologies Telemedia Pte Ltd  
51 Cuppage Road  
#10-11/17, StarHub Centre  
Singapore 229469  
Attn: General Counsel  
Telephone: (65) 6723-8777  
Fax: (65) 6720-7277

With a copy to:

GC Acquisition Limited  
Wessex House, 1st Floor  
45 Reid Street  
Hamilton HM 12, Bermuda

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Federal Bureau of Investigation  
The Assistant Director  
National Security Division  
935 Pennsylvania Avenue, N.W.  
Washington, DC 20535

#### ARTICLE 6: FREEDOM OF INFORMATION ACT

6.1. Protection from Disclosure. The DOJ, FBI, DOD and DHS shall take all reasonable measures to protect from public disclosure all information submitted by a Domestic Communications Company or other entities in accordance with the terms of this Agreement to the DOJ, FBI, DOD or DHS in connection with this Agreement and clearly marked with the legend "Business Confidential; subject to protection under 5 U.S.C. § 552(b); not to be released without notice to the filing party" or similar designation. Such markings shall signify that it is the company's position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted. If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ, FBI, DOD or DHS, as appropriate, shall notify the company of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 23, 1987). If the Domestic Communications Company objects to the intended disclosure and its objections are not sustained, the DOJ, FBI, DOD or DHS, as appropriate, shall notify the company of its intention to release (as provided by Section 5 of Executive Order 12600) not later than five business days prior to disclosure of the challenged information. The Parties note that information submitted by a Domestic Communications Company or other entities in accordance with the terms of this Agreement may be protected from disclosure under the Critical Information Infrastructure Act of 2002.

6.2. Use of Information for U.S. Government Purposes. Nothing in this Agreement shall prevent the FBI, DOJ, DOD or DHS from lawfully disseminating information as



appropriate to seek enforcement of this Agreement, or from lawfully sharing information as appropriate with other Federal, state, or local government agencies to protect public safety, law enforcement, or national security interests, provided that the FBI, DOJ, DOD or DHS take all reasonable measures to protect from public disclosure the information marked as described in Section 6.1.

6.3. Unlawful Disclosure of Information The DOJ, FBI, DOD and DHS acknowledge that officers and employees of the United States and of any department or agency thereof are subject to liability under 18 U.S.C. § 1905 for unlawful disclosure of information provided to them by other Parties to this Agreement.

#### ARTICLE 7: FCC CONDITION AND CFIUS

7.1. FCC Approval Upon the execution of this Agreement by all the Parties, the DOJ, FBI, DOD and DHS shall promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Authorization"), the DOJ, FBI, DOD and DHS have no objection to the FCC's grant of the applications filed with the FCC in FCC IB Docket No. 02-286. This Section 7.1 is effective upon execution of this Agreement by all the Parties.

7.2. Future Applications. New GX agrees that, in any application or petition by any Domestic Communications Company to the FCC for licensing or other authority filed with or granted by the FCC after the Effective Date, except with respect to *pro forma* assignments or *pro forma* transfers of control, the Domestic Communications Company shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 8.10, the FBI, the DOJ, DOD and DHS reserve the right to object, formally or informally, to the grant of any other FCC application or petition of a Domestic Communications Company for a license or other authorization under Titles II or III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to their ability to enforce the laws, preserve the national security, and protect the public safety raised by the transactions underlying such applications or petitions.

7.3. CFIUS. Provided that the FCC adopts the Condition to FCC Authorization, the Attorney General, the Secretary of Defense and the Secretary of Homeland Security shall not make any objection to the CFIUS or the President concerning ST Telemedia's investment in New GX or grant of the applications filed with the FCC in FCC IB Docket No. 02-286. This commitment, however, does not extend to any objection the Attorney General, the Secretary of Defense or the Secretary of Homeland Security may wish to raise with the CFIUS or the President in the event that (a) New GX fails to comply with the terms of this Agreement, (b) the Attorney General, the Secretary of Defense or the Secretary of Homeland Security learns that the representations of New GX made to the DOJ, the FBI, the DOD, the DHS or the FCC above are materially untrue or incomplete, (c) there is a material increase in the authority of a foreign entity to exercise Control of New GX or a Domestic Communications Company, or (d) there is any other material change in the circumstances associated with the transactions at issue.

ARTICLE 8: OTHER

8.1. Role of GCL. GCL is a Party on account of its central role in both the negotiation of this Agreement and the establishment of New GX. Notwithstanding the foregoing, New GX and GCL stipulate that, upon the Effective Date, GCL will not Control New GX or any of the Domestic Communications Companies, and consequently will have no ability or obligation to ensure compliance by New GX or the Domestic Communications Companies after the Effective Date.

8.2. Obligations of New GX. New GX shall cause Domestic Communications Companies to comply with this Agreement and, where appropriate, shall act through its subsidiaries to discharge its obligations under this Agreement.

8.3. Right to Make and Perform Agreement. GCL, New GX and ST Telemedia each represent that they have and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of GCL, New GX and ST Telemedia enforceable in accordance with its terms.

8.4. Headings. The Article headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

8.5. Other Laws. Nothing in this Agreement is intended to limit or constitute a waiver of (a) any obligation imposed by any U.S. Federal, state or local laws on GCL, New GX or any Domestic Communications Company, (b) any enforcement authority available under any U.S. or state laws, (c) the sovereign immunity of the United States, or (d) any authority the U.S. government may possess (including without limitation authority pursuant to International Emergency Economic Powers Act) over the activities of GCL, New GX or any Domestic Communications Company located within or outside the United States. Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

8.6. Statutory References. All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

8.7. Non-Parties. Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any Governmental Authorities, entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

8.8. Modifications. This Agreement may only be modified by written agreement signed by all of the Parties. The DOJ, FBI, DOD and DHS agree to consider in good faith and promptly possible modifications to this Agreement if GCL or the New GX believes that the obligations imposed on GCL, New GX or the Domestic Communications Companies under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this

Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties.

8.9. Changes in Circumstances for New GX or Domestic Communications Companies. The DOJ, FBI, DOD and DHS agree to negotiate in good faith and promptly with respect to any request by New GX or a Domestic Communications Company for relief from application of specific provisions of this Agreement: (a) if a Domestic Communications Company provides Domestic Communications solely through the resale of transmission or switching facilities owned by third parties, or (b) as regards future Domestic Communications Company activities or services, if those provisions become unduly burdensome or adversely affect New GX's or a Domestic Communications Company's competitive position.

8.10. Changes in Circumstances for the DOJ, FBI, DHS or the DOD. If after the date that all the Parties have executed this Agreement the DOJ, FBI, DOD or DHS finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns presented, then the other Parties will negotiate in good faith to modify this Agreement to address those concerns. In the event that improvements in technology may enhance the efficacy of this agreement to protect the national security, enforce the laws or protect the safety of the public, the parties will work promptly to amend the Agreement to implement such advances.

8.11. Periodic Review. To ensure that this Agreement and the policies implemented in furtherance of this Agreement continue to adequately preserve the national security, law enforcement and public safety objectives, the terms of this Agreement and those policies shall be reviewed by the parties at least every 18 months from the Execution Date.

8.12. Sovereign Immunity. ST Telemedia stipulates that it operates as a commercial entity and its commercial operations are wholly separate from the government of the Republic of Singapore. Nevertheless, to resolve any ambiguity regarding its status as a commercial entity operating wholly separate from any governmental entity, ST Telemedia agrees that, to the extent that it or any of its property is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit or proceeding or from setoff or counterclaim arising from compliance with this Agreement from the jurisdiction of any competent court from service of process, from attachment prior to judgment, from attachment in and of execution of a judgment from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, to the extent allowable by law, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any immunity with respect to matters arising with respect to compliance with this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a Party. ST Telemedia agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq. The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a Party with respect to or relating to this Agreement.

8.13. Severability. The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

8.14. Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

8.15. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and assigns.

8.16. Effectiveness of Agreement. Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

8.17. Termination of Agreement. If the Purchase Agreement is terminated prior to the Effective Date, GCL shall promptly provide written notification of such termination to the FBI, DOJ, DHS and DOD, and upon receipt of such written notice, this Agreement shall automatically terminate. After the Effective Date, this Agreement shall terminate upon thirty (30) days prior written notice from New GX to the FBI, DOJ, DHS and DOD, provided that at such time there is no Domestic Communications Company.

8.18. Suspension of Agreement With Respect to a Domestic Communications Company. This Agreement shall be suspended upon thirty (30) days notice to the DOJ, FBI, DOD and DHS with respect to any covered New GX entity if said entity is no longer a Domestic Communications Company.

8.19. Suspension of Agreement If No Significant Foreign Ownership. This Agreement shall be suspended in its entirety with respect to New GX and all Domestic Communications Companies thirty (30) days after receipt from New GX of notice and documentation reasonably satisfactory to the DOJ, FBI, DOD, and DHS that neither ST Telemedia nor any other foreign entity either Controls New GX or a Domestic Communications Company or holds, directly or indirectly, a ten (10) percent or greater interest in New GX or a Domestic Communications Company, unless the DOJ, FBI, DOD and DHS notify New GX within said thirty (30) day period that this Agreement shall not be suspended in order to protect U.S. national security, law enforcement, and public safety concerns. If this Agreement is not suspended pursuant to this provision, the DOJ, FBI, DOD and DHS agree to consider promptly and in good faith possible modifications to this Agreement. Notwithstanding anything to the contrary in this Section 8.19, this Agreement shall remain in effect with respect to New GX and the Domestic Communications Companies for so long as (and the obligations of New GX and the Domestic Communications Companies shall not be suspended and any suspension of the obligations of New GX and the Domestic Communications Companies shall terminate if) ST Telemedia or any other foreign entity shall either Control or hold, at any time does hold, or is a party to an agreement to hold, directly or indirectly, a ten (10) percent or greater ownership interest in New GX or any

Domestic Communications Company or any transferee or assignee of the FCC licenses or authorizations held by New GX or a Domestic Communications Company.

8.20. Pledging of Stock or Assets of Domestic Communications Companies. Nothing in this Agreement shall be interpreted to prevent New GX from pledging the stock or assets of any Domestic Communications Company in connection with the borrowing of funds and similar financial activities by New GX, nor shall such pledging of stock or assets excuse performance of the obligations in this Agreement by New GX or any Domestic Communications Company.

8.21. Effectiveness of Article 8. This Article 8, and the obligations imposed and rights conferred herein, shall be effective upon the execution of this Agreement by all the Parties.

This Agreement is executed on behalf of the Parties:

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**Global Crossing Ltd.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Title:

**GC Acquisition Limited**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Title:

**Singapore Technologies Telemedia Pte Ltd**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Title:

**United States Department of Justice**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Title:

**Federal Bureau of Investigation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Title:

**United States Department of Defense**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name:

Title:

**United States Department of Homeland Security**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name:

Title:

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This Agreement is executed on behalf of the Parties:

Date: Sept 8 2003

Global Crossing Ltd.

By: [Signature]  
Printed Name: John J. Legere  
Title: Chief Executive Officer

Date: Sept 8 2003

GC Acquisition Limited

By: [Signature]  
Printed Name: John J. Legere  
Title: Attorney-in-Fact

Date: 8 September 2003

Singapore Technologies Telemedia Pte Ltd

By: [Signature]  
Printed Name: Lee Theng Kiat  
Title: President and Chief Executive Officer

Date: Sept. 23, 2003

United States Department of Justice

By: [Signature]  
Printed Name: John G. Malcolm  
Title: Deputy Assistant Attorney General

Date: Sept 23, 2003

Federal Bureau of Investigation

By: [Signature]  
Printed Name: Patrick W. Kelley  
Title: Deputy General Counsel

Date: \_\_\_\_\_

United States Department of Defense

By: \_\_\_\_\_  
Printed Name:  
Title:

Date: \_\_\_\_\_

United States Department of Homeland Security

By: \_\_\_\_\_  
Printed Name:  
Title:


United States Department of Defense

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name:  
Title:

United States Department of Homeland Security

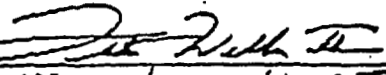
Date: 22 Sept 03

By:   
Printed Name: Robert P. Lisowski  
Title: Assistant Secretary for Infrastructure  
Assurance



United States Department of Defense

Date: 9/24/03

By:   
Printed Name: LINTON WELLS II  
Title: Principal Deputy Asst. Secretary  
(Personnel and International Interactions)

United States Department of Homeland Security

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**CONDITION TO FCC AUTHORIZATION**

IT IS FURTHER ORDERED, that consent to the transfer of control of New GX and grant of a declaratory ruling pursuant to 47 U.S.C. § 310(b)(4) are subject to compliance with the provisions of the Agreement attached hereto among GCL, New GX and ST Telemedia, on the one hand, and the United States Department of Justice (the "DOJ"), the Federal Bureau of Investigation (the "FBI"), the United States Department of Defense ("DOD") and the United States Department of Homeland Security ("DHS"), on the other, dated \_\_\_\_\_, which Agreement is designed to address national security, law enforcement, and public safety issues of the DOJ, the FBI, the DOD and the DHS regarding the authority granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

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