

Before the  
Federal Communications Commission  
Washington, D.C. 20554

|   |   |                        |
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| In the Matter of                                    | ) |                        |
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| GLOBAL CROSSING LTD.                                | ) |                        |
|   | ) |                        |
| and   | ) |                        |
|   | ) | SCL-T/C-20000719-00029 |
| IPC COMMUNICATIONS, INC.                            | ) |                        |
|   | ) |                        |
|   | ) |                        |
| Joint Application for Authority to Transfer Control | ) |                        |
| of International Exchange Networks, Ltd., Holder    | ) |                        |
| of a Cable Landing License                          | ) |                        |

**MEMORANDUM OPINION AND ORDER**

**Adopted:** December 18, 2000

**Released:** December 20, 2000

By the Chief, Telecommunications Division, International Bureau:

**I. Introduction**

1. In this Order, we grant the Application<sup>1</sup> of Global Crossing Ltd. (“Global Crossing”) and IPC Communications, Inc. (“IPC”) (collectively “Applicants”) seeking authority, *nunc pro tunc*, to transfer control of International Exchange Networks, Ltd., (“IEXN”), a non-dominant common carrier with a Cable Landing License, from IPC to Global Crossing in connection with the acquisition of IPC by Global Crossing.

2. On July 9, 1999, the Commission authorized IEXN and numerous other carriers, pursuant to the Cable Landing License Act,<sup>2</sup> and Executive Order No. 10530,<sup>3</sup> to land and operate a non-common carrier submarine fiber optic cable system, called the Japan-U.S. Cable Network (“Japan-U.S. CN”),

<sup>1</sup> See Application of Global Crossing Ltd. and IPC Communications, Inc., Joint Application for Authority to Transfer Control of International Exchange Networks, Ltd., Holder of a Cable Landing License, File No. SCL-T/C-20000719-00029, filed July 19, 2000 (Application).

<sup>2</sup> 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).

<sup>3</sup> Exec. Ord. No. 10530 *reprinted as amended in* 3 U.S.C. § 301.

extending between three landing points in the United States and three landing points in Japan.<sup>4</sup>

3. IEXN's original investment share and allocation of network capital in the Japan-U.S. CN was 0.22630 percent; its capacity allocation, ownership interest in segments, and voting interest were each 0.18692 percent; and its allocation of network operations and maintenance costs was 0.18692 percent.<sup>5</sup>

4. Global Crossing, the builder and operator of a global fiber optic network, is a Bermuda corporation, and is publicly traded on the NASDAQ National Market. Pacific Capital Group, Inc., ("PCG") holds a 12.98 percent<sup>6</sup> interest in Global Crossing. Gary Winnick, a U.S. citizen, is the sole shareholder, as owner and trustee, of PCG.<sup>7</sup> Global Crossing's worldwide network consists of seven undersea systems and terrestrial networks in the United States, Europe, Japan, and Hong Kong.

5. Prior to consummation of the transfer of control, IPC was a publicly traded Delaware holding corporation. IPC, through its wholly-owned subsidiary IPC Information Systems, Inc. ("IPC Systems"), a Delaware corporation, was the parent of IXnet, Inc. ("IXnet"), a Delaware holding company, and IEXN, a Delaware corporation. IEXN is the wholly-owned operating subsidiary of IXnet.<sup>8</sup>

6. Applicants assert that IPC Systems provides integrated telecommunications equipment and services that facilitate the execution of transactions by the worldwide financial services community.<sup>9</sup> Applicants assert further that IXnet provides, through its wholly-owned operating subsidiary IEXN, interexchange and international private line and switched telecommunications services to the financial community in the United States and abroad.<sup>10</sup>

7. IEXN is authorized to provide international telecommunications service pursuant to several Section 214 authorizations granted by the Commission. Applicants assert that although IEXN is not itself authorized to provide telecommunications service in any foreign country, various subsidiaries of IEXN are authorized to provide telecommunications services in foreign countries including Canada, Japan, and the United Kingdom.<sup>11</sup> Applicants further assert that all of IEXN's foreign subsidiaries are located in

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<sup>4</sup> 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, 14 FCC Rcd 13066 (1999).

<sup>5</sup> *Id.* See also Application at 1-2.

<sup>6</sup> The 12.98 percent of PCG's holdings in Global Crossing includes the holdings of GKW Unified Holdings, LLC, a company formed for the benefit of Gary Winnick and members of his family, which is managed by PCG. PCG's percentage held also includes its interest in common stock issuable upon the exercise of certain warrants. See Application at 10, n.9.

<sup>7</sup> *Id.*

<sup>8</sup> See *id.* at 4. See also letter from Troy F. Tanner, Counsel for Global Crossing Ltd., to Donna Christianson, Federal Communications Commission (Oct. 12, 2000) (Amendment Letter).

<sup>9</sup> See Application. at 4.

<sup>10</sup> *Id.*

<sup>11</sup> See *id.* at 4-5.

World Trade Organization (“WTO”) member countries and have substantially less than a 50 percent share of the international transport and local access markets in their respective countries.<sup>12</sup> As a result, Applicants assert that IEXN is regulated as a non-dominant carrier of international services to all of these countries.<sup>13</sup>

8. The Commission, on May 25, 2000, granted Applicants’ request for approval under Section 214 of the Communications Act of 1934, as amended, to transfer control of IEXN to Global Crossing.<sup>14</sup> However, Applicants state that, due to an oversight, they did not request such approval for the transfer of control of IEXN’s ownership interest in the Japan-U.S. CN prior to consummation of the transfer of control of IEXN to Global Crossing on June 14, 2000. Consequently, Applicants request approval of the transfer of control, *nunc pro tunc*.

## II. Comments

9. We placed the Application on public notice on August 11, 2000.<sup>15</sup> We received no comments. Pursuant to Section 1.767(b) of the Commission’s rules,<sup>16</sup> the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the transfer of control request.<sup>17</sup> The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to approving the Applicant’s request to transfer control of IEXN’s interest in the Japan-U.S. CN from IPC to Global Crossing.<sup>18</sup>

## III. Discussion

10. Under the terms of the transfer of control, Global Crossing and IPC entered into a series of transactions whereby Global Crossing acquired IPC and its intermediate subsidiaries, IPC Systems and IXnet, through an exchange of their respective stocks. Specifically, on June 14, 2000, Global Crossing acquired both IXnet and its parent company, IPC Systems, through a series of transactions including: (a) the merger of IPC and IPC Systems; (b) the merger of IPC Systems and Georgia Merger Sub Corporation, a wholly-owned subsidiary of Global Crossing formed specifically for the purposes of effectuating the

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<sup>12</sup> *See id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> The transfer of control was granted by Public Notice. *See International Authorizations Granted*, Report No. TEL-00236, DA 00-1163, Public Notice, File No. ITC-T/C-20000411-00251 (rel. May 25, 2000). *See also* the Amendment Letter.

<sup>15</sup> *See Non Streamlined International Applications Accepted for Filing*, Report No. TEL-00273NS, Public Notice, (rel. Aug. 11, 2000).

<sup>16</sup> 47 C.F.R. § 1.767(b).

<sup>17</sup> Letter from George S. Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Aug. 11, 2000).

<sup>18</sup> Letter from Richard C. Beard, Deputy United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Dec. 6, 2000).

transfer of control, whereby Global Crossing acquired IPC Systems in exchange for shares of Global Crossing; and (c) the merger of IXnet and Idaho Merger Sub Corporation, a wholly-owned subsidiary of IPC Systems formed specifically for the purposes of effectuating the transfer of control, whereby Global Crossing acquired IXnet, also in exchange for shares of Global Crossing.<sup>19</sup> As a result of the transactions, IEXN is an indirect subsidiary of Global Crossing.<sup>20</sup>

11. Under Section 1.767(a)(8) of the Commission's rules, applicants are required to disclose their affiliations with foreign carriers.<sup>21</sup> Global Crossing has certified that it is not a foreign carrier within the meaning of Section 63.09(d) of the Commission's Rules,<sup>22</sup> but that it is affiliated with foreign carriers in the following countries: Argentina, Belgium, Brazil, Canada, Chile, Denmark, France, Germany, Hong Kong, Ireland, Italy, Japan, Mexico, the Netherlands, Norway, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.<sup>23</sup> According to the Application, Global Crossing is affiliated with the following foreign carriers in Japan: Asia Global Crossing Japan Corporation, Global Crossing Japan K.K., Global Access Ltd., IXnet (Japan) K.K., and IXnet Telecommunications.<sup>24</sup> Japan is a WTO member country, and Global Crossing has asserted that the market share in the international transport and local access markets of each of its affiliated foreign carriers in Japan is significantly less than 50 percent.<sup>25</sup> We conclude, therefore, that Global Crossing's affiliated foreign carriers do not possess market power that would allow them to discriminate against unaffiliated U.S. carriers through control of bottleneck facilities in Japan, and we see no reason to deny the Applicants' request to transfer control of IEXN's interest in the Japan-U.S. CN to Global Crossing on the basis of Global Crossing's foreign affiliations.

12. Although the Japan-U.S. CN competes with Global Crossing's cable between the United States and Japan, Applicants assert that Global Crossing's aggregate indirect share in the Japan-U.S. CN, through IEXN and Frontier Communications Services, Inc. ("Frontier") is only 0.45260 percent.<sup>26</sup> Applicants further assert that, given that 30 other carriers have a share of the ownership of the Global Crossing cable, there will be virtually no diminution of competition as a result of the indirect transfer of

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<sup>19</sup> See Application at 5.

<sup>20</sup> See *id.* at 2, 5.

<sup>21</sup> See 47 C.F.R. § 1.767(a)(8).

<sup>22</sup> 47 C.F.R. § 63.09(d).

<sup>23</sup> Letter from Helen E. Disenhaus and Troy F. Tanner to Magalie Roman Salas, Secretary, Federal Communications Commission, outlining Global Crossing's foreign affiliations (Nov. 22, 2000) (Affiliations Letter).

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.*

<sup>26</sup> Global Crossing previously acquired an interest in the Japan-US CN when it acquired Frontier. See *Frontier Communications Services, Inc., Application for Transfer of Control of a Cable Landing License from Frontier Corporation to Global Crossing Ltd.*, Order and Authorization, 15 FCC Rcd 5043 (IB/TD 2000). Global Crossing's interest is calculated by adding the interest of IEXN to the interest of Global Crossing's subsidiary, Frontier. See Application at 3, n.5.

control of IEXN to Global Crossing.<sup>27</sup>

13. Applicants assert that the approval of the transfer of control will serve the public interest because the acquisition of IEXN, IXnet, and IPC Systems enhances Global Crossing's ability to compete in the international services market.<sup>28</sup> Specifically, Applicants state that the acquisition of IXnet will enable Global Crossing to move from solely providing building-to-building connectivity in major cities to providing desktop-to-desktop connectivity to multinational corporations worldwide.<sup>29</sup> According to Applicants, IEXN and IXnet will be able to eliminate network costs by moving their services off leased lines onto the Global Crossing network, and IXnet will be able to take advantage of Global Crossing's advanced broadband network to provide enhanced and expanded service offerings to financial institutions.<sup>30</sup>

14. We conclude that the transfer of control of IEXN's interest to Global Crossing raises no competitive concerns, and does not provide a basis for altering the non-common carrier status of the cable. Specifically, we conclude that Global Crossing's ownership of a 0.45260 percent interest in the Japan-U.S. CN will not cause competitive concerns. A large number of cables have served the U.S.-Japan route for some time, and more are coming on line.<sup>31</sup> Moreover, the amount of Global Crossing's ownership interest in Japan-U.S. CN is insubstantial. Accordingly, we find that grant of the Application is in the public interest.

15. Upon consideration of the record in this proceeding, and in view of the foregoing, we conclude that grant of the transfer of control sought in the Application will serve the public interest and is consistent with the Cable Landing License Act. We grant the *nunc pro tunc* request made in the Application. However, we caution Applicants that the Commission's rules require prior approval of such transfers of control and urge Applicants to plan accordingly in the future.

16. We hereby modify the initial authorization to reflect these transactions. We do not modify the initial authorization in any other respect.

### III. Ordering Clauses

17. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that the Application, File No. SCL-T/C-20000719-00029, IS GRANTED, the transactions listed herein are authorized, and the Japan-U.S. Cable Landing License (File No. SCL-LIC-19981117-00025) IS HEREBY MODIFIED to reflect those transactions.

18. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261,

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<sup>27</sup> See Application. at 6, n.7.

<sup>28</sup> See *id.* at 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> The following cables currently serve the route: HAW-4/TPC-3, NPC, TPC-4, TPC-5, PC-1, and China-US. The following cables, in addition to the Japan-U.S. CN, plan to serve the route: 360pacific and FLAG Pacific-1.

and is effective upon adoption. 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 public notice of this Order.<sup>32</sup>

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast  
Chief, Telecommunications Division  
International Bureau

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<sup>32</sup> See 47 C.F.R. § 1.4(b)(2).