

ORIGINAL

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

OPEN MEETING ITEM



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RECEIVED Executive Director

ARIZONA CORPORATION COMMISSION

2009 OCT -6 P 1:38

DATE: OCTOBER 6, 2009

DOCKET NOS: T-02438B-09-0363; T-02761B-09-0363; T-03539A-09-0363; and
T-03658A-09-0363

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

GLOBAL CROSSING TELECOMMUNICATIONS, INC.; GLOBAL CROSSING NORTH AMERICAN NETWORKS, INC.; GLOBAL CROSSING LOCAL SERVICES, INC. and GLOBAL CROSSING TELEMAGEMENT, INC.
(FINANCE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 15, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 20, 2009 and OCTOBER 21, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKET CONTROL
OCT - 6 2009

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA C. KENNEDY
8 BOB STUMP

9 IN THE MATTER OF THE JOINT APPLICATION
10 GLOBAL CROSSING TELECOMMUNICATIONS,
11 INC., GLOBAL CROSSING NORTH AMERICAN
12 NETWORKS, INC., GLOBAL CROSSING LOCAL
13 SERVICES, INC., AND GLOBAL CROSSING
14 TELEMAGEMENT, INC., FOR APPROVAL
15 TO ENCUMBER ASSETS IN CONJUNCTION
16 WITH NEW FINANCING.

DOCKET NO. T-02438B-09-0363
DOCKET NO. T-02761B-09-0363
DOCKET NO. T-03539A-09-0363
DOCKET NO. T-03658A-09-0363

DECISION NO. _____

ORDER

11
12 Open Meeting
13 October 20 and 21, 2009
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 FINDINGS OF FACT

19 1. On July 17, 2009, Global Crossing Telecommunications, Inc. ("GCTI"), Global
20 Crossing North American Networks, Inc. ("GCNAN"), Global Crossing Local Services, Inc.
21 ("GCLS"), and Global Crossing Telemagement, Inc. ("GCTM," and together with GCTI, GCNAN,
22 and GCLS, the "Applicants"), filed with the Commission an application for approval to pledge their
23 Arizona assets as security for certain debt financing arrangements up to \$1 billion, pursuant to A.R.S.
24 § 40-285 ("Application").¹

25 2. The Applicants caused notice of the Application to be published in the *Arizona*
26 *Business Gazette* on August 31, 2009.

27 3. On September 22, 2009, the Commission's Utilities Division Staff ("Staff") filed a

28 ¹ The Applicants note that the Commission previously approved the Applicants' provision of security in connection with financing of up to \$200 million in Decision No. 69345 (February 20, 2007).

1 Staff Report recommending conditional approval of the request for encumbrance of assets.

2 4. GCTI is a Michigan corporation authorized by the Commission to provide long
3 distance telecommunications service in Arizona under Decision No. 54505 (May 1, 1985).

4 5. GCNAN is a Delaware corporation authorized by the Commission to provide
5 intrastate resold telecommunications service in Arizona under Decision No. 60143 (April 17, 1997).

6 6. GCLS is a Michigan corporation authorized by the Commission to provide
7 competitive facilities-based local exchange telecommunications service in Arizona under Decision
8 No. 61622 (April 1, 1999).

9 7. GCTM is a Wisconsin corporation authorized by the Commission to provide resold
10 long distance telecommunications service in Arizona under Decision No. 61213 (October 29, 1998).

11 8. The Applicants are non-dominant telecommunications providers and provide service
12 in all 50 states and the District of Columbia. The Applicants are also authorized by the Federal
13 Communications Commission to provide interstate telecommunications services.

14 9. Staff states that there are no compliance issues with any of the Applicants.

15 10. The Applicants are wholly-owned indirect subsidiaries of Global Crossing North
16 America, Inc. ("GCNA"), a Delaware corporation, which, in turn, is a wholly-owned indirect
17 subsidiary of Global Crossing Holdings Limited ("Holdings"), an exempt company with limited
18 liability organized under the laws of Bermuda. Holdings is a wholly-owned direct subsidiary of
19 Global Crossing Limited ("Parent"), an exempt company with limited liability organized under the
20 laws of Bermuda.

21 11. The Applicants seek approval from the Commission to provide their guarantee, to
22 serve as borrowers or co-borrowers, or to otherwise provide security in connection with financings of
23 up to \$1 billion. The financings are for the benefit of GCNA, Parent, and Holdings. (GCNA, Parent,
24 and Holdings are, together with the Applicants, the "Borrowers".)

25 12. The Borrowers will initially secure \$650 million in aggregate principal of senior
26 secured notes ("Senior Notes") through several financing arrangements with banks, other financial
27 institutions and/or other types of investors. Along with the \$650 million in senior secured notes, the
28 Borrowers may borrow an additional \$350 million funds, for up to a total of \$1 billion.

1 13. The Senior Notes are expected to mature in 2015, and any additional notes issued will
2 have maturity dates of more than one year.

3 14. The Applicants note that the interest rate will likely be the market rate for similar
4 financings and will not be determined until such time as each financing is finalized; however, the
5 Senior Notes will bear interest at a fixed rate.

6 15. The Applicants state they expect the Senior Notes will be supported by the Borrowers'
7 guarantees and secured by a pledge of the outstanding equity interests in, and a security interest in
8 substantially all the assets of, each of the guarantors.

9 16. The Application states that the proceeds will be used to repay existing debt and for
10 capital expenses, working capital and general corporate purposes, which could include the acquisition
11 of other telecommunications companies and/or telecommunications assets.

12 17. According to the Applicants, their obligations under any security documents will not
13 be consummated until all required regulatory approvals are obtained.

14 18. The Applicants assert that participation in the financing arrangements will not result in
15 any changes to their management, day-to-day operations or provision of service, and will be entirely
16 transparent to their customers.

17 19. The Applicants also assert that the proposed financing will serve the public interest in
18 that it will allow the Applicants to introduce new services in Arizona, allow consumers to benefit
19 from competitive services and will promote competition.

20 20. Staff notes that Arizona Administrative Code ("A.A.C.") R14-2-804(B) provides that
21 a Class A Utility may not obtain a financial interest in any affiliate not regulated by the Commission,
22 or guarantee or assume the liabilities of such an affiliate without Commission approval. Under
23 A.A.C. R-14-2-804(C), the Commission must review the transaction to determine if it would impair
24 the financial status of the public utility, otherwise prevent it from attracting capital at fair and
25 reasonable terms, or impair the ability of the public utility to provide safe, reasonable, and adequate
26 service.

27 21. Staff determined that under A.A.C. R14-2-804, the proposed transactions will not
28 impair the Applicants' financial status, prevent them from attracting capital at fair and reasonable

1 terms, or impair the ability of the Applicants to provide safe, reasonable and adequate service.

2 22. A.R.S. § 40-301 provides that foreign public service corporations providing
3 communications services within the state whose physical facilities are also used in providing
4 communications service in interstate commerce are not required to obtain authorization from the
5 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness
6 payable at periods of more than twelve months. Because the Applicants are each a foreign public
7 service corporation whose physical facilities are also used in providing communications services in
8 interstate commerce, pursuant to A.R.S. § 40-301(D), the Applicants' proposed financing is exempt
9 from Commission approval.

10 23. However, A.R.S § 40-285 requires public service corporations to obtain Commission
11 authorization to encumber certain utility assets. According to Staff, the statute serves to protect
12 captive customers from a utility's disposition of assets that are necessary for the provision of service,
13 thereby preventing any service impairment due to disposal of critical assets necessary to provide
14 service.

15 24. Based on its review of the proposed transaction, Staff determined that the pledge of
16 the Applicants' Arizona assets would not impair the availability of service to the customers since the
17 Applicants provide competitive services that are available from alternative service providers.
18 However, Staff recommends that, because customers who have prepaid for service or made deposits
19 may have exposure to losses, any authorization for encumbrances should include customer protection
20 for prepayments and deposits.

21 25. Staff recommends approval of the Applicants' request to pledge assets as a guarantee
22 or to provide other forms of security for \$1 billion in debt subject to the condition that all Arizona
23 customer deposits and prepayments be excluded from encumbrance or, in the alternative, be secured
24 by a bond or an irrevocable sight draft letter of credit, which is not included in the pledged collateral.

25 26. Staff recommends that the Applicants be authorized to engage in any transactions and
26 to execute or cause to be executed any documents necessary to effectuate the authorizations requested
27 in the Application.

28 27. Staff also recommends that the Applicants file with Docket Control, as a compliance

1 item in this matter, a copy of the loan documents within 60 days of the execution of any financing
2 transaction authorized herein.

3 28. Staff's recommendations are reasonable and should be adopted.

4 **CONCLUSIONS OF LAW**

5 1. Applicants are public service corporations within the meaning of Article XV of the
6 Arizona Constitution, A.R.S. § 40-285.

7 2. The Commission has jurisdiction over the Applicants and the subject matter of the
8 Application.

9 3. Notice of the Application was given in accordance with the law.

10 4. The encumbrance approved herein pursuant to A.R.S. § 40-285 is for the purposes
11 stated in the Application and is reasonably necessary for those purposes.

12 5. Pursuant to A.A.C. R14-2-804 the proposed transactions will not impair the financial
13 status of the Applicants, prevent them from attracting capital at fair and reasonable terms, or impair
14 the ability of the Applicants to provide safe, reasonable and adequate service.

15 6. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

16 7. Staff's recommendations are reasonable and shall be adopted.

17 **ORDER**

18 IT IS THEREFORE ORDERED that the Application by Global Crossing
19 Telecommunications, Inc., Global Crossing North American Networks, Inc., Global Crossing Local
20 Services, Inc., and Global Crossing Telemanagement, Inc., for authorization to encumber assets as
21 security for debt financing up to \$1 billion as provided for herein is granted, subject to the condition
22 that either all Arizona customer deposits and prepayments are excluded from encumbrance or, in the
23 alternative, are secured in the amount of the customer deposits and prepayments either by a
24 performance bond or an irrevocable sight draft letter of credit, which are not included in the pledged
25 collateral.

26 IT IS FURTHER ORDERED that Global Crossing Telecommunications, Inc., Global
27 Crossing North American Networks, Inc., Global Crossing Local Services, Inc., and Global Crossing
28 Telemanagement, Inc., shall, within 60 days of the effective date of this Decision, file with Docket

1 Control, as a compliance item in this docket, either a statement that all Arizona customer deposits and
2 prepayments are excluded from encumbrance, or copies of the performance bond or irrevocable sight
3 draft letter of credit in the amount of the customer deposits and prepayments, and provide the original
4 performance bond or irrevocable sight draft letter of credit to the Commission's Business Office for
5 safekeeping.

6 IT IS FURTHER ORDERED that Global Crossing Telecommunications, Inc., Global
7 Crossing North American Networks, Inc., Global Crossing Local Services, Inc., and Global Crossing
8 Telemanagement, Inc., are hereby authorized to engage in any transactions and to execute or cause to
9 be executed any documents in order to effectuate the authorizations granted herein.

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1 IT IS FURTHER ORDERED that Global Crossing Telecommunications, Inc., Global
2 Crossing North American Networks, Inc., Global Crossing Local Services, Inc., and Global Crossing
3 Telemanagement, Inc., shall file with Docket Control, as a compliance item in the docket, a copy of
4 the loan documents within 60 days of any financing transaction authorized herein.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN _____ COMMISSIONER

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11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____, 2009.

18 _____
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21
22 DISSENT _____

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24 DISSENT _____
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1 SERVICE LIST FOR: GLOBAL CROSSING TELECOMMUNICATIONS, INC.,
2 GLOBAL CROSSING NORTH AMERICAN NETWORKS,
3 INC., GLOBAL CROSSING LOCAL SERVICES, INC., AND
4 GLOBAL CROSSING TELEMAGEMENT, INC.

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6 DOCKET NOS.: T-02438B-09-0363, T-02761B-09-0363, T-03539A-09-0363,
7 and T-03658A-09-0363

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