

Johanna

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

In the Matter of)
)
Global Crossing Ltd. Seeks) DA 00-2366
FCC Consent for Transfer of)
Control of Frontier to)
Citizens Communications Company)

**Petition to Impose Conditions of
Communications Workers of America**

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Dated: November 20, 2000

Summary

The Communications Workers of America (CWA) has a direct interest in this proceeding. CWA represents more than 1,100 Frontier ILEC occupational employees in the states of New York, Iowa, and Minnesota.¹ Because these are among Frontier's largest ILECs, CWA represents a substantial portion of Frontier's ILEC occupational employees. Frontier is currently a wholly-owned subsidiary of Global Crossing.

One year ago, this Commission approved the transfer of control of Frontier Corporation and its operating companies to Global Crossing Ltd.² Now Global Crossing comes before this Commission seeking approval to sell Frontier's incumbent local exchange carriers (ILECs) to Citizens Communications Company.³

Despite the fact that Citizens Communications has a good record in service quality and labor relations, CWA believes that the sale, as currently structured, is not in the public interest. *The current plan of sale does not transfer the employees' pension plan assets from Global Crossing to Citizens.* Absent conditions, the proposed sale could not only negatively impact Frontier's workers' pension and retiree health benefits, it could also

1 Nationally, CWA represents more than 740,000 employees, the majority of whom are employed in telecommunications. CWA-represented employees also work in publishing, broadcasting, cable, manufacturing, airlines, health care, and other public and private organizations.

2 In the Matter of 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 No. 99-264, Sept. 21, 1999.

3 In Re Application of Global Crossing Ltd., Transferor, and Citizens Communications Company, Transferee, for Transfer of Control Pursuant to Section 214 of the Communications Act, as amended, Oct. 4, 2000 ("Application").

result in Citizens' need to seek price cap relief to fund benefits which have already been paid for by ratepayers and customers of exchange access services.

CWA has participated in numerous transfer of control proceedings before this Commission. *This is the first and only instance in recent years in which the proposed transfer of control does not include the transfer of all of the workers' pension plan assets.* CWA considers the failure to transfer workers' pension plan assets as a confiscation by Global Crossing of workers' deferred earnings (the pension plan).

The Commission should not approve the sale absent a condition that would require Global Crossing to transfer all pension plan assets and liabilities to Citizens.

I. After the Sale, Global Crossing Will Continue to Control the Employees' Pension Plan

The sales agreement makes clear that Global Crossing will transfer its Frontier employees and their work to Citizens.⁴ While in some locations these employees are not represented by a labor union, a substantial portion of occupational employees working for Frontier's ILECs are represented by CWA. The sales agreement requires Citizens to continue to recognize the collective bargaining agreements already in place and to maintain wages and benefits. Among the benefits included in the collective bargaining agreements between Frontier and its employees is a defined benefit pension plan. The benefits payable to the employees under the pension plan were frozen as of the end of 1996. This means that no further contributions were made to the plan after that date.

Under the Employee Retirement Income Security Act (ERISA), the employees' accrued benefits (i.e. all benefits accrued through 1996) are protected even though the plan is frozen; employees remain entitled to receive benefits from the plan in the future once they have met its eligibility requirements. The collective bargaining agreement between Frontier and the CWA allows the parties to negotiate improvements in the benefit formula based upon the growth of plan assets, as long as no new contributions would be required.

The collective bargaining agreements between Frontier and CWA also include the

⁴ Stock Purchase Agreement by and among Global Crossing, Ltd., Global Crossing North American, Inc., and Citizens Communications Company dated as of July 11, 2000, Section 8.2, p. 45

provision of **retiree health insurance**. The Internal Revenue Service (IRS) code permits pension funds to transfer excess assets to a trust fund specifically established to fund retiree health benefits.⁵ Many corporations have taken advantage of this provision of the tax code. This provides a cost-effective way of honoring legal commitments to provide retiree health benefits, the cost of which has been rising two to four times faster than the rate of inflation.

When Global Crossing purchased Frontier Communications in 1999, the purchase included the frozen pension plan, its assets and liabilities. Global Crossing, during the period it has owned Frontier, never contributed any money to this plan. However, Global Crossing has taken an unusual position with respect to the plan in its proposed sale of Frontier to Citizens. Under the stock purchase agreement between Global Crossing and Citizens, the frozen plan's assets will remain with Global Crossing upon the sale of the ILECs to Citizens.⁶

This arrangement, which would separate the collectively bargained pension fund from the workers who are its beneficiaries, is not in the best interest of these workers. Nor is it in the best interest of consumers who have funded these assets and who may be asked in the future to pay higher rates for local exchange and exchange access should Citizens be required to seek upward adjustment to fund pension or retiree health benefits which have already been paid for but whose assets were transferred to Global Crossing in this sale.

⁵ IRS Code Section 401(h).

⁶ Stock Purchase Agreement.

II. The Proposed Sale Will Have a Negative Impact on Workers' Pension and Retiree Health Benefits

Absent a condition that would require Global Crossing to transfer all pension plan assets to Citizens, the sale will have a negative impact on workers' pension and retiree health benefits. Frontier employees would no longer be employed by the entity that controls their pension plan. They could no longer assert their right to negotiate improvements in their benefits based on the investment returns enjoyed by the plan trust. Citizens would not have access to the provision of the IRS tax code that would allow it to use excess pension fund assets to fund retiree health insurance.

Instead, any pension improvements would have to be negotiated with Citizens. Funding for retiree health would come out of operating expenses. These new costs would then be added, once again, to the cost of providing local exchange and exchange access service.

Until now, Frontier employees felt that their benefits were secured in a trust controlled by their employer who had a continuing interest in their welfare. They were reassured by the fact that their pensions could be the subject of the collective bargaining process. They could be sure that their union would be able to represent their interests in pension related matters. However, the terms of the stock purchase agreement effectively terminate such security.

By retaining control of the pension plan, Global Crossing will unilaterally be able to

amend or terminate the plan, subject to maintenance of the benefits now provided. The Pension Trust Fund in question had assets of \$604 million and liabilities for benefits of \$472 million as of January 1, 1999. Thus, assets are 28 percent greater than accumulated benefits. And this differential is growing: assets grew by 22.5 percent while liabilities grew by just 7.5 percent since the end of 1996.⁷

By retaining control of the pension plan, Global Crossing will be able to siphon off the substantial excess assets in the fund. It could do so by terminating the plan and reverting the excess assets to its treasury. Alternatively, Global Crossing could choose to merge this fund with another new or existing pension plan or simply allow other employees to become participants. In the latter two cases, Global Crossing would effectively utilize the excess assets to subsidize the benefits of employees who never worked for Frontier.

When a pension fund has excess assets, most commonly the assets are used to provide a cushion against poor investment performance in future years, to provide cost of living increases to retirees when the value of their pension benefits are eroded by inflation, to improve the benefit formula, or as already mentioned, a portion of the excess pension benefits can be transferred tax-free to finance retiree health insurance.

If Global Crossing is allowed to keep the pension fund and its excess assets, Citizens will not have the pension assets with which to fund any of these options. Either workers' benefit levels will decline, or, as discussed below, Citizens may return to the Commission

⁷ Buck Consultants, Pension Plan Actuarial Reports for 1997, 1998 and 1999.

to ask that the price caps for exchange access service be raised to account for “exogenous costs” of pension contributions or retiree health insurance obligations—the costs of which have already funded but had been transferred as a result of this sale to Global Crossing.

III. The Proposed Sale Will Likely Result in Higher Price Caps

As already noted, Global Crossing will maintain control of the trust fund that supports the defined benefit pension plan in which occupational employees working for Frontier’s local operating companies participate. Global Crossing will thereby gain control of the assets in the pension trust fund that are the accumulated result of years of deferred wages of employees and employer contributions. The costs of these employer contributions to the pension trust fund are embedded in local rates and in the prices set by this Commission for exchange access. In 1990, in adopting a price cap regulatory regime for exchange access, the Commission initialized the maximum price carriers are permitted to charge for exchange access based on an imputed rate of return. This imputed rate of return included, among other factors, all labor expenses, including pension contributions.⁸ The Commission has also considered the issue regarding increased employer costs for retiree health insurance (“other than pension benefits”) as exogenous costs.

If the sale, as currently structured, goes forward, the Commission may in the future be required to make upward adjustments in price caps to fund retiree health benefits and/or pension improvements. In both instances, price cap relief would be necessary to fund

⁸ The Commission allowed mid-size carriers the choice of price cap or rate-of-return regulation. Frontier elected price cap regulation.

benefits that have already been paid for by virtue of Frontier's previous contributions to the pension fund and the fund's earnings. Clearly, this is not in the public interest.

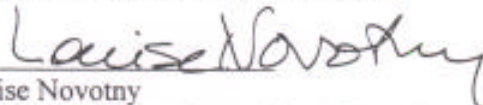
IV. Conclusion

Global Crossing should not be allowed to retain control of the pension plan and divert money from the fund for its own benefit. Global Crossing has not contributed one dime to this pension plan.⁹ The fund was built with contributions flowing from revenue generated by customers of local exchange and exchange access.

Therefore, the Commission should require that Global Crossing transfer all the assets and liabilities of the Frontier employee pension plans to Citizens as a condition for approval of the transfer of control application.

Respectfully Submitted,

Communications Workers of America


By 
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Dated: November 20, 2000

⁹ Buck Consultants.

CERTIFICATE OF SERVICE

This is to certify that I have duly served these comments upon these parties by depositing copies of same in the United States mail, addressed as follows:



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