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In re :
: Chapter 11
: 02-40188 (REG)
GLOBAL CROSSING LTD., et al., :
: (Jointly Administered)
Debtors. :
: :
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**FOURTH AND FINAL APPLICATION OF WILLKIE FARR &
GALLAGHER LLP, AS SPECIAL COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION, FOR (A) ALLOWANCE OF
COMPENSATION FOR SERVICES RENDERED AND EXPENSES
INCURRED FROM APRIL 1, 2003 THROUGH DECEMBER 9,
2003; (B) FINAL ALLOWANCE OF COMPENSATION FOR
SERVICES RENDERED AND EXPENSES INCURRED FROM
JANUARY 28, 2002 THROUGH DECEMBER 9, 2003, INCLUSIVE;
AND (C) PAYMENT OF HOLDBACK AMOUNTS**

TO THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE:

Willkie Farr & Gallagher LLP (“WF&G”), as special counsel for the above-captioned debtors and debtors in possession in the cases (“Global Crossing” or the “Debtors”), in support of its fourth and final application (the “Fourth and Final Application” or the “Application”) for (a) interim allowance of compensation for professional services rendered and reimbursement of expenses incurred from April 1, 2003 through and including December 9, 2003 (the “Fourth Application Period”); (b) final allowance of all compensation for professional services rendered and expenses incurred during the period January 28, 2002 through December 9, 2003, inclusive (the “Full Application Period”); and (c) authorizing the payment of the Holdback Amounts (as defined below), respectively represents:

PRELIMINARY STATEMENT

1. WF&G's role in these cases was limited and principally involved two general matters: (i) corporate governance and (ii) bankruptcy and real estate matters related to the Exodus Communications, Inc. ("Exodus") chapter 11 cases. Specifically, since the Petition Date, WF&G provided legal services to a special committee of the Debtors' Board of Directors in connection with certain accounting inquiries related to an investigation conducted by the Securities and Exchange Commission. In particular, WF&G rendered advice concerning the responsibilities of the Debtors, their Audit Committee and Arthur Andersen under certain provisions of the Securities Exchange Act of 1934, as well as advice concerning a press release regarding accounting allegations. In addition, WF&G monitored the status and progress of the Exodus chapter 11 cases relative to the Debtors' position as a major creditor.¹ In this regard, WF&G assisted the Debtors both offensively and defensively to protect the Debtors' interests in connection with the Exodus bankruptcy. Offensively, WF&G analyzed, prepared and filed claims on behalf of the Debtors in the Exodus bankruptcy cases relating to, among other things, goods and services provided both prior to and after Exodus' bankruptcy filing for which the Debtors had not been paid.² Defensively, WF&G also researched and analyzed the various

¹ Prior to the Petition Date (as defined below), WF&G was retained by Global Crossing as counsel in connection with Global Crossing's role as a substantial creditor and equity interest holder of Exodus. In January 2001, Global Crossing sold its GlobalCenter web hosting business to Exodus for 108.2 million Exodus common shares, representing about 20% of total outstanding Exodus shares at the time. At the time of the transaction, the market value of 20% of Exodus' common stock was approximately \$1.95 billion and through the Exodus plan of reorganization was deemed worthless. In addition to its position as a substantial equity holder, GX has claims against Exodus in connection with various receivables and lease obligations which Global Crossing has guaranteed for the benefit of Exodus.

² Global Crossing filed prepetition claims totaling \$46,229,237 against the Exodus debtors, as well as administrative claims totaling \$4,596,019.01.

claims asserted by Exodus in the Debtors' chapter 11 cases.³ Through WF&G's efforts, the Debtors successfully resolved the various claims asserted by Exodus. Such resolution saved the Debtors' estate significant litigation costs and potential material liabilities.

2. By this Application and pursuant to sections 330 and 331 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), WF&G requests that this Court authorize: (a) approval and payment of compensation in the amount of \$35,775.50 for professional services rendered during the Application Period and the reimbursement of actual and necessary expenses incurred in connection with the rendition of such professional services in the amount of \$3,853.34; (b) final allowance of compensation for services rendered and expenses incurred during the Full Application Period in the total amount of \$429,196.16⁴; and (c) payment of the Holdback Amounts (as defined below) in the aggregate amount of \$79,253.80.

3. WF&G's request reflects the requisite time, skill and effort WF&G expended towards, inter alia: (a) researching and analyzing the various claims asserted by and between the Debtors and Exodus; and (b) negotiating, drafting and finalizing a settlement agreement by and between the Debtors and Exodus.

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges," dated July

³ Exodus asserted prepetition claims in Global Crossing's chapter 11 cases totaling \$6,818,165.432.00, as well as administrative expense claims totaling \$3,609.73.

⁴ This amount reflects all compensation requested by WF&G during the Full Application Period less the agreed upon write off amounts pursuant to the First Interim Order and Second Interim Order (as defined below).

10, 1984, of District Court Judge Robert T. Ward. Venue of these cases and this Third Application is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are sections 330 and 331 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

GENERAL BACKGROUND

5. On January 28, 2002 (the “Petition Date”), each of the Debtors commenced a case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Global Crossing has built the world’s most extensive owned and controlled fiber-optic network, spanning over 100,000 route miles and reaching five continents, 27 countries and more than 200 major cities (the “Network”). The markets in those cities represent approximately 85% of the world’s international telecommunications traffic. The Network took over four years, multiple acquisitions and partnerships, and billions of dollars of capital to reach its current state of near-completion.

7. Each Debtor that is incorporated in Bermuda (collectively the “Bermuda Group”) has commenced a coordinated proceeding in the Supreme Court of Bermuda. The Supreme Court of Bermuda has issued an order appointing certain principals of KPMG International as Joint Provisional Liquidators (the “JPLs”) of the Bermuda Group. The Supreme Court of Bermuda has directed the JPLs to oversee the continuation of Global Crossing under the

control of its Board of Directors and under the supervision of the Supreme Court of Bermuda and this Court in effecting a plan of reorganization under the Bankruptcy Code.

8. By order dated January 28, 2002, WF&G were retained as special counsel to the Debtors to represent the Debtors in their chapter 11 cases. Specifically, WF&G was retained to (a) advise the Board of Directors of Global Crossing with respect to certain matters of corporate governance that may arise in connection with the Debtors' chapter 11 cases, and (b) provide bankruptcy and real estate advice and assistance in connection with the Exodus chapter 11 cases. In addition, pursuant to the affidavit of Michael Walsh attached to the retention application filed in these cases by Weil Gotshal & Manges ("WG&M"), dated January 27, 2002, WG&M disclosed that it currently represents certain of the Debtors' secured lenders and contract parties in matters unrelated to these Debtors. In an effort to assuage conflict concerns that may result from WG&M's dual representation of the Debtors and certain of such parties in interest, WG&M, in their retention papers, indicated that in the event issues arise in these cases which would cause the Debtors to be adverse to any such party, one of the Debtors' other professionals or another firm would be retained to represent the Debtors with respect to such matters. Since the Petition Date, WF&G has been called upon to handle various matters on behalf of the Debtors for which WG&M was conflicted from handling.

PRIOR INTERIM FEE APPLICATIONS AND ALLOWANCE

9. WF&G's services in these cases have been necessary and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout the Full Application Period, the variety and complexity of the issues involved in these cases and the need to address those issues on an expedited basis have required WF&G, in discharge of its

professional responsibilities, to devote substantial time by professionals from several legal disciplines on a regular basis.

10. In accordance with section II.B. of the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, dated May 30, 1995, WF&G makes the following disclosures:

- (a) By order dated January 28, 2002 this Court approved the Debtors' retention of WF&G as Special Counsel to the Debtors.
- (b) On or about July 1, 2002, WF&G filed its first interim fee application (the "First Application") seeking approval of compensation for services rendered and reimbursement of expenses incurred for the period January 28, 2002 through April 30, 2002 (the "First Application Period"). Through the First Application, WF&G sought compensation services rendered and expenses incurred in the amount of \$156,887.67. By order dated August 7, 2002 (the "First Interim Order"), this Court approved the First Application and allowed (a) interim compensation for professional services rendered during the First Application Period in the amount of \$127,638.90 and (b) reimbursement of expenses in the amount of \$15,066.67. Pursuant to the First Interim Order, fees totaling \$14,182.10 (the "First Interim Holdback Amount") were held back pending the prosecution of this Application.
- (c) On or about November 25, 2002, WF&G filed its second interim fee application (the "Second Application") seeking approval of compensation for services rendered and reimbursement of expenses incurred for the period May 1, 2002 through September 30, 2002 (the "Second Application Period"). Through the Second Application, WF&G sought compensation for services rendered and expenses incurred in the amount of \$86,445.19. By order dated June 4, 2003 (the "Second Interim Order"), this Court approved the Second Application and allowed (a) interim compensation for professional services rendered during the Second Application Period in the amount of \$58,604.62⁵ and (b) reimbursement of expenses in the amount of \$8,274.19. Pursuant to the Second Interim Order, fees totaling \$14,651.16 (the "Second Interim Holdback Amount") were held back pending the prosecution of this application.

⁵ This amount reflects a write-off of \$4,915.22 as set forth in the First Interim Order.

- (d) On or about June 9, 2003, WF&G filed its third interim fee application (the “Third Application”) seeking approval of compensation for services rendered and reimbursement of expenses incurred for the period October 1, 2002 through March 31, 2003 (the “Third Application Period”). Through the Third Application, WF&G sought compensation for services rendered and expenses incurred in the amount of \$158,210.95. By order dated December 16, 2003 (the “Third Interim Order”), this Court approved the Third Application and allowed (a) interim compensation for professional services rendered during the Third Applications Period in the amount of \$108,451.60⁶ and (b) reimbursement of expenses in the amount of \$15,594.18⁷. Pursuant to the Third Interim Order, fees totaling \$27,112.90 (the “Third Interim Holdback Amount” and together with the First Interim Holdback Amount and the Second Interim Holdback Amount, the “Holdback Amounts”) were held back pending the prosecution of this Application.
- (e) Since the Petition Date and pursuant to this Court’s Order Under Local Rule 2016-1 and 11 U.S.C. §§ 105(a) and 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated January 28, 2002 (the “Interim Compensation Procedures Order”), WF&G received an aggregate of \$303,507.24 as payments for services rendered and reimbursement for expenses incurred in these cases.

11. During the Fourth Application Period, pursuant to the Interim Compensation Procedures Order, WF&G has received no payment for services rendered and expenses incurred in these cases. No agreement or understanding exists between WF&G and any other entity for the sharing of compensation to be received for services rendered in or in connection with this case. See Affidavit of Matthew A. Feldman, Esq., annexed hereto as Exhibit A.

12. WF&G maintains written records of the time expended by attorneys and paraprofessionals in the rendition of professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by the person rendering such services. A

⁶ This amount reflects a write-off of \$4,946.00 pursuant to the Second Interim Order.

⁷ This amount reflects a write-off of \$2,115.27 pursuant to the Third Interim Order.

copy of the daily time records for the Fourth Application Period, broken down by matter and listing the name of the attorney or paraprofessional, the date on which the services were performed, and the amount of time spent in performing the services, is annexed hereto as Exhibit B.⁸

13. For the convenience of the Court and parties-in-interest, annexed hereto as Exhibit C is a list of the attorneys and paraprofessionals who have worked on those matters during the Fourth Application Period, the aggregate time expended by each individual during the Fourth Application Period, his or her hourly billing rate during the Fourth Application Period, and the amount of WF&G's fees attributable to each individual. Additionally, annexed hereto as part of Exhibit C is a list of all the matters for which services were rendered and the aggregate amount of hours and fees expended for each of those matters.

14. WF&G also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule setting forth the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit D.

15. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases (the "Administrative Order"), WF&G has recorded its services rendered and disbursements incurred in four different matter categories

⁸ Copies of the daily time records, except for certain redacted litigation matters, are being provided to the Court, the Office of the United States Trustee, counsel to the Debtors, counsel to the Unsecured Creditors' Committee, counsel for the Debtors' prepetition lenders, the JPLs and counsel to the JPLs. Copies will be made available on the same basis to other parties in interest upon reasonable request.

reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought during an application period.

SUMMARY OF SERVICES RENDERED

16. Recitation of each and every item of professional services that WF&G performed would unduly burden the Court. Hence, the following summary highlights the major areas to which WF&G devoted substantive time and attention during the Fourth Application Period. The full breadth of WF&G's services are reflected in WF&G's annexed time records.

- **Exodus Chapter 11 Issues**. During the Fourth Application Period, WF&G researched and analyzed the claims asserted by Exodus as well as researched and analyzed defenses in respect thereof. In addition, WF&G negotiated, drafted and finalized a settlement agreement by and between Exodus and the Debtors. Also during the Fourth Application Period, WF&G was asked to review and analyze issues relating to certain administrative claims filed against the Debtors' estate.

17. As highlighted above, WF&G provided necessary and valuable services to the Debtors in connection with certain issues related to Exodus claims issues. Such services have assisted the Debtors in responding and handling discrete issues arising from the administration of these chapter 11 cases.

WF&G'S REQUEST FOR INTERIM AND FINAL ALLOWANCE OF COMPENSATION

18. The allowance of interim compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

[A] debtor's attorney, or any professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court

permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

11 U.S.C. § 331.

19. Concerning the level of compensation, section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person, including the debtor's attorney:

reasonable compensation for actual, necessary services rendered by the . . . professional person, or attorney

11 U.S.C. § 330. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and competent practitioners to bankruptcy cases.

20. WF&G submits that its request for interim and final allowance of compensation is reasonable. The services rendered by WF&G, as highlighted above, required significant time and effort, much of which occurred during nights and, in some instances, weekends.

21. The services rendered by WF&G during both the Fourth Application Period and the Full Application Period were performed diligently and efficiently. Accordingly, when possible WF&G delegated tasks to lower cost junior attorneys or, for discrete matters, to attorneys with specialized expertise in the particular task at issue. Moreover, from an efficiency perspective, it is noteworthy that the bulk of WF&G's time was recorded by one partner, three associates, and one paraprofessional primarily assigned to these cases.

22. In many instances, WF&G has been able to successfully resolve disputes without the need to resort to the Court. When necessary, however, WF&G actively represented

the Debtors' interests before the Court and, through litigation or settlement, substantially furthered the Debtors' reorganization efforts.

23. During the Fourth Application Period, WF&G brought to bear legal expertise in many areas, but primarily including bankruptcy, real estate and corporate law issues. WF&G attorneys have rendered advice in all of these areas with skill and dispatch.

24. The services rendered to the Debtors by WF&G during the Full Application Period required an aggregate expenditure of 1,041.90 recorded hours of the time of attorneys and paraprofessionals, including 154 hours during the Fourth Application Period. Exhibit C sets forth a list of such individuals, the aggregate amount of time expended by each and the current hourly billing rate for each. The fair and reasonable value of the services rendered and recorded by WF&G to the Debtors during the Fourth Application Period is set forth in Exhibit B and summarized above.

DISBURSEMENTS

25. WF&G incurred actual and necessary out-of-pocket expenses during the Fourth Application Period, in connection with the rendition of the professional services described above, in the amounts set forth in Exhibit D.⁹ By this Application, WF&G respectfully requests allowance of such reimbursement in full.

26. The disbursements for which WF&G seeks reimbursement include the following:

⁹ WF&G's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in WF&G's accounting system.

- a. Duplicating - Charged at \$0.15 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;
- b. Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$0.75 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by WF&G for machine maintenance, phone line rental and supplies used in operating the fax machine;
- c. Computer Research Charges - WF&G's practice is to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment;
- d. Overtime Expenses - WF&G's practice is to allow any attorney working later than 8:00 p.m. and any legal assistants working later than 7:30 p.m. to charge a working meal to the appropriate client. The meal charge is limited to \$20 per person;
- e. Local Car Service - WF&G's practice is to allow attorneys, legal assistants and secretaries to charge car service to the appropriate client after 8:00 p.m.; and
- f. Delivery Services - WF&G's practice is to charge postal, overnight delivery and courier services at actual cost.

PROCEDURE

27. The Debtors have provided notice of this Application to: (i) the Debtors; (ii) attorneys for the Debtors; (iii) attorneys for the Prepetition Lenders; (iv) counsel to the Official Committee of Unsecured Creditors; (v) Office of the United States Trustee for the Southern District of New York; (vi) the JPLs; and (vii) counsel to the JPLs.

CONCLUSION

WHEREFORE, WF&G respectfully requests that this Court (a) allow, on an interim basis, compensation for services rendered and reimbursement of expenses incurred from April 1, 2003 through December 9, 2003, inclusive, in the amount of \$39,628.84; (b) approve, on a final basis, compensation for services rendered and reimbursement of expenses incurred during the Full Application Period in the aggregate amount of \$429,196.16; and (c) authorize the Debtors' payment of Holdback Amounts relating to the Full Application Period in the aggregate amount of \$79,253.80; and (d) grant such other relief as is just or proper.

Dated: February 9, 2004
New York, New York

WILLKIE FARR & GALLAGHER LLP

By: /s/ Matthew A. Feldman
Matthew A. Feldman (MF- 8961)

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Special Counsel to the Debtors
and Debtors in Possession