UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 94-1317 (TFH)
	)	
CONCERT PLC and	)	
MCI COMMUNICATIONS	)	
CORPORATION,	)	Filed:
	)	
Defendants.	)	
	)	

MODIFIED FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint in this action on June 15, 1994 and a Final Judgment was entered on September 29, 1994,

AND WHEREAS, plaintiff and defendants, by their respective attorneys, have consented to the entry and modification of this Final Judgment without trial or adjudication of any issue of fact or law,

AND WHEREAS, defendants have further consented to be bound by one provision of this Modified Final Judgment pending its approval by the Court and to be bound by all the provisions of this Modified Final Judgment if the Merger

Agreement is consummated before this Modified Final Judgment is approved by the Court,

AND WHEREAS, plaintiff the United States believes that entry of this Modified Final Judgment is in the public interest,

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that this Modified Final Judgment shall replace the existing Final Judgment, dated September 29, 1994, in all respects:

AND it is further ORDERED, ADJUDGED, AND DECREED that:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Modified Final Judgment. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended.

II

Substantive Restrictions and Obligations

A. Concert and MCI shall not offer, supply, distribute, or otherwise provide in the United States any telecommunications or enhanced telecommunications service that makes use of telecommunications services provided

by BT in the United Kingdom or between the United States and the United Kingdom, unless the following information is disclosed in the United States by Concert and MCI or such disclosure is expressly waived, in whole or in part, by plaintiff through written notice to defendants and the Court:

1. Within 30 days following any agreement or change to an agreement - The prices, terms, and conditions, including any applicable discounts, on which telecommunications services are provided by BT to NewCo in the United Kingdom pursuant to interconnection arrangements, whether formal or informal;

2. Within 30 days following any agreement or change to an agreement, or the provision of service absent any specific agreement - The prices, terms, and conditions, including any applicable discounts, on which telecommunications services, other than those provided pursuant to interconnection arrangements as described in Section II.A.1 hereinabove, are provided by BT to NewCo in the United Kingdom for use by NewCo in the supply of telecommunications or enhanced telecommunications services between the United States and the United Kingdom, or are provided by BT in the United Kingdom in conjunction with such NewCo services where BT is acting as the distributor for NewCo;

3. With respect to international switched telecommunications or enhanced telecommunications services jointly provided by BT and MCI on a correspondent basis between the United States and the United Kingdom, and to the

extent not already disclosed publicly pursuant to the rules and regulations of the Federal Communications Commission,

(i) within 30 days following any agreement or change to an agreement, or the provision of service absent any specific agreement, the accounting and settlement rates and other terms and conditions for the provision of each such service; and

(ii) on a semiannual basis, and within 60 days of the end of the six month period, for any international direct dial or integrated services digital network ("ISDN") service (except for ISDN traffic that is not subject to a proportionate return requirement), separately for each accounting rate, MCI's minutes of traffic to and from BT and, separately, BT's minutes of traffic to MCI and to each United States international telecommunications providers by time of day (e.g., traffic originating in six-hour periods beginning at midnight), by point of termination (e.g., traffic to each area code in the United States in the North American Numbering Plan), and by type of transatlantic transmission facility (e.g., satellite versus submarine cable).

4. On a semiannual basis - A list of telecommunications services provided by BT to NewCo in the United Kingdom for use by NewCo in the supply of telecommunications or enhanced telecommunications services between the United States and the United Kingdom, or provided by BT in the United Kingdom in

conjunction with such NewCo services where BT is acting as the distributor for NewCo, showing:

(i) the types of circuits (including capacity) and telecommunications services provided;

(ii) the actual average time intervals between order and delivery of circuits (separately indicating average intervals for analog circuits, digital circuits up to 2 megabits, and digital circuits 2 megabits and larger) and telecommunications services; and

(iii) the number of outages and actual average time intervals between fault report and restoration of service for circuits (separately indicating average intervals for analog and for digital circuits) and telecommunications services;

but excluding the identities of individual customers of BT, MCI, or NewCo or the location of circuits or telecommunications services dedicated to the use of such customers;

5. A list showing:

(i) on a semiannual basis, separately for analog international private line circuits (IPLCs) and for digital IPLCs jointly provided by BT and MCI between the United States and the United Kingdom, the actual average time intervals between order and delivery by BT;

(ii) on an annual basis, separately for analog IPLCs and for digital IPLCs jointly provided by BT and MCI between the United

States and the United Kingdom, the number of outages and actual average time intervals between fault report and restoration of service, for any outages that occurred in the international facility, in the cablehead or earth station outside the United States, or the network of a telecommunications provider outside the United States, indicating separately the number of outages and actual average time intervals to restoration of service in each such area; and

(iii) on a semiannual basis, for circuits used to provide international switched telecommunications services or enhanced telecommunications services on a correspondent basis between the United States and the United Kingdom, the average number of circuit equivalents available to MCI during the busy hour;

6. Within 30 days of receipt of any information described herein - Information provided by BT to MCI or NewCo about planned and authorized improvements or changes to Concert's United Kingdom public telecommunications system operated pursuant to its license that would affect interconnection arrangements, whether formal or informal, between BT and NewCo or interconnection arrangements between BT and other licensed operators, provided that if MCI receives any such information from BT separately from NewCo, MCI shall similarly be required to disclose such information in the same manner as NewCo.

The obligations of this Section II.A shall not extend to the disclosure of intellectual property or other proprietary information of the defendants or BT that has been maintained as confidential by its owner, except to the extent that it is of a type expressly required to be disclosed herein, or is necessary for licensed operators to interconnect with Concert's United Kingdom public telecommunications system operated pursuant to its license or for United States international telecommunications providers to use Concert's international telecommunications or enhanced telecommunications correspondent services.

B. Neither Concert nor MCI shall use any information that is identified as proprietary by United States telecommunications or enhanced telecommunications service providers (and maintained as confidential by them) and is obtained by BT from such providers as the result of BT's provision of interconnection or other telecommunications services in the United Kingdom, for any purpose other than BT's provision of interconnection or other telecommunications services in the United Kingdom, and any such information shall not be disclosed to any person other than those persons within BT who need such information in order for BT to provide interconnection or other telecommunications services in the United Kingdom, except that any United States telecommunications or enhanced telecommunications service providers may authorize BT to use such providers' proprietary information for some other purpose if such authorization is in writing and specifically sets forth the purpose for which such information is to be used. Such written authorizations shall be appended to

any reports required to be filed with the Department of Justice pursuant to Section V herein. Nothing in this Section II.B shall prevent Concert or BT from disclosing any information to any governmental authority as required by law or regulation.

C. Neither Concert nor MCI shall use any confidential, non-public information obtained as a result of BT's correspondent relationships with other United States international telecommunications or enhanced telecommunications service providers, for any purpose other than conducting BT's correspondent relationships with such providers, and such information shall not be disclosed to any person other than those persons within BT who need such information in order to conduct BT's correspondent relationships with other United States international telecommunications and enhanced telecommunications service providers, except to the extent that such disclosure is necessary for Concert or MCI to comply with their obligations under Section II.A.3(ii) concerning disclosure of the total volume of traffic (but not the individual traffic volumes for other providers) received by BT from the United States and sent by BT to the United States that is subject to proportionate return, or under Section II.A.5 (but not including individual information on other providers), and except further that any United States telecommunications or enhanced telecommunications service providers may authorize BT to use such providers' proprietary information for some other purpose if such authorization is in writing and specifically sets forth the purpose for which such information is to be used. Such written authorizations shall be appended to any reports required to be filed with the Department of Justice pursuant to Section

V herein. Nothing in this Section II.C shall prevent Concert, MCI or BT from disclosing any information to any governmental authority as required by law or regulation.

D. Neither Concert nor MCI shall use any non-public information about the future prices or pricing plans of any provider of international telecommunications services between the United States and the United Kingdom obtained through BT's correspondent relationships with other United States international telecommunications providers, for any purpose other than accounting rate negotiations between BT and such providers, and such information shall not be disclosed to any person other than those persons within BT who need such information in order to negotiate BT's accounting rates with other United States international telecommunications providers. Nothing in Section II.D shall prevent Concert or BT from disclosing any information to any governmental authority as required by law or regulation.

III

Applicability and Effect

The provisions of this Modified Final Judgment shall be binding upon defendants, their affiliates, subsidiaries, successors and assigns, officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Modified Final Judgment by personal service or otherwise. Defendants shall cooperate with the United States Department of Justice in ensuring that the provisions of this Modified Final

Judgment are carried out. Neither this Modified Final Judgment nor any of its terms or provisions shall constitute any evidence against, an admission by, or an estoppel against the defendants. The effective date of this Modified Final Judgment shall be the date upon which it is entered.

IV

Definitions

For the purposes of this Final Judgment:

A. "BT", prior to the consummation of the Merger Agreement and the creation of Concert, means British Telecommunications plc, and any subsidiary, affiliate, predecessor, successor, or assign of British Telecommunications plc, and following the consummation of the Merger Agreement and the creation of Concert, BT means any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and providing interconnection or other telecommunications services within the United Kingdom or from the United Kingdom to the United States, but does not include MCI or NewCo.

B. "Concert" means Concert plc, and any subsidiary, affiliate, predecessor, successor, or assign of Concert plc, or any other entity that is partially (20% or more) or wholly owned or controlled by Concert plc, including without limitation, BT, MCI and NewCo.

C. "Correspondent" means a bilaterally negotiated arrangement between a provider of telecommunications services in the US or the UK and a provider of telecommunications services in the other of the US or the UK for

provision of an international telecommunications or enhanced telecommunications service, by which each party undertakes to terminate in its country traffic originated by the other party. A service managed by NewCo, and provided without correspondent relationships with any other provider, shall not be deemed to constitute a correspondent service.

D. "Defendant" or "defendants" means Concert and MCI.

E. "Disclose," for purposes of ¶¶ II.A.1-6, means disclosure to the United States Department of Justice Antitrust Division, which may further disclose such information to any United States corporation that directly or through a subsidiary or affiliate holds or has applied for a license from either the United States Federal Communications Commission or the United Kingdom Department of Trade and Industry to provide international telecommunications services between the United States and the United Kingdom. Disclosure by the Department of Justice to any corporation described above shall be made only upon agreement by such corporation, containing the terms prescribed in the Stipulation entered into by BT, defendant MCI and the United States on July 2, 1997, not to disclose any non-public information to any other person, apart from governmental authorities in the United States or United Kingdom and not to use such information for any purpose other than to obtain relief from said governmental authorities. Where Concert or MCI is required to disclose, in Section II.A, particular telecommunications services provided, this shall include disclosure of the identity of each of the services, and reasonable detail about each of the services to the extent not already published

elsewhere, but shall not require disclosure of underlying facilities used to provide a particular service that is offered on a unitary basis, except to the extent necessary to identify the service and the means of interconnection with the service.

F. "Enhanced telecommunications service" means any telecommunications service that involves as an integral part of the service the provision of features or capabilities that are additional to the conveyance (including switching) of the information transmitted. Although enhanced telecommunications services use telecommunications services for conveyance, their additional features or capabilities do not lose their enhanced status as a result.

G. "Facility" means: (i) any line, trunk, wire, cable, tube, pipe, satellite, earth station, antenna or other means that is directly used or designed or adapted for use in the conveyance, transmission, origination or reception of a telecommunications or enhanced telecommunications service; (ii) any switch, multiplexer, or other equipment or apparatus that is directly used or designed or adapted for use in connection with the conveyance, transmission, origination, reception, switching, signaling, modulation, amplification, routing, collection, storage, forwarding, transformation, translation, conversion, delivery or other provision of any telecommunications or enhanced telecommunications service, and (iii) any structure, conduit, pole, or other thing in, on, by, or from which any facility as described in (i) or (ii) is or may be installed, supported, carried or suspended.

H. "MCI", prior to the consummation of the Merger Agreement, means MCI Communications Corporation, and any subsidiary, affiliate,

predecessor, successor, or assign of MCI Communications Corporation, and following the consummation of the Merger Agreement, MCI means any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and providing telecommunications services within the United States or from the United States to the United Kingdom, but does not include BT or NewCo.

I. "Merger Agreement" means the Agreement and Plan of Merger, dated November 3, 1996 (including any subsequent modifications or amendments to such agreement), entered into by and among British Telecommunications plc, MCI Communications Corporation and Tadworth Corporation.

J. "NewCo" means Concert Communications Company, the joint venture of MCI and BT created pursuant to the terms of the Joint Venture Agreement entered into by MCI and BT as of August 4, 1993 (including any subsequent modifications or amendments to such agreement), and any subsidiary, affiliate, predecessor (whether the predecessor is jointly owned by MCI and BT or separately owned by either of them), successor, or assign of such joint venture, or any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and having among its purposes substantially the same purposes as described for NewCo in the Joint Venture Agreement, but does not include MCI or BT.

K. "Telecommunications service" means the conveyance, by electrical, magnetic, electromagnetic, electromechanical or electrochemical means

(including fiber-optics, as well as satellite, microwave and other wireless transmission), of information consisting of:

- speech, music and other sounds;
- visual images;
- signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter, including but not limited to data, otherwise than in the form of sounds or visual images;
- signals serving for the actuation or control of machinery or apparatus; or
- translation or conversion that does not alter the form or content of information as received from that which is originally sent.

"Convey" and "conveyance" include transmission, switching, and receiving, and cognate expressions shall be construed accordingly. A telecommunications service includes all facilities used in providing such service, and the installation, maintenance, repair, adjustment, replacement and removal of any such facilities. A service that is considered a "telecommunications service" under this definition retains that status when it is used to provide an enhanced telecommunications service, or when used in combination with equipment, facilities or other services.

L. "United Kingdom" and "UK" mean England, Wales, Scotland, Northern Ireland and all territories, dependencies, or possessions of the United Kingdom (excluding the Isle of Man) for which international telecommunications

traffic is not normally separately reported to the United States Federal Communications Commission by United States telecommunications carriers.

M.. "United States" and "US" mean the fifty states, the District of Columbia, and all territories, dependencies, or possessions of the United States.

N. "United States international telecommunications provider" means any person or entity actually providing international telecommunications services or enhanced telecommunications services to users in the United States, and that is incorporated in the United States, or that is ultimately controlled by United States persons within the meaning of 16 C.F.R. § 801.1.

V

Visitorial and Compliance Provisions

A. Concert agrees to maintain sufficient records and documents to demonstrate compliance with the requirements of this Modified Final Judgment.

B. For the purposes of determining or securing compliance of defendants with this Modified Final Judgment, duly authorized representatives of the plaintiff, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant, shall have access without restraint or interference to Concert and MCI in the United States:

1. during their office hours to inspect and copy all records and documents in their possession or control relating to matters contained in this Modified Final Judgment; and

2. to interview or take sworn testimony from their officers, directors, employees, trustees, or agents, who may have counsel present, relating to any matter contained in this Modified Final Judgment.

C. Concert consents to make available to duly authorized representatives of the plaintiff, for the purposes of determining whether defendants have complied with the requirements of this Final Judgment and to secure their compliance:

1. at the premises of the Antitrust Division in Washington, D.C., within sixty days of receipt of written request by the Attorney General or Assistant Attorney General in charge of the Antitrust Division, records and documents in the possession or control of Concert, wherever located; and

2. for interviews or sworn testimony, in the United States if requested by plaintiff but subject to their reasonable convenience, officers, directors, employees, trustees or agents, who may have counsel present.

D. Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit written reports, under oath if requested, relating to any of the matters contained in this decree.

E. No information or documents obtained by the means provided in this Section V shall be divulged by the plaintiff to any person other than the United States Department of Justice, the Federal Communications Commission ("FCC"),

and their employees, agents and contractors, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this decree, or for identifying to the United Kingdom Office of Telecommunications ("OFTEL"), the European Commission ("EC"), or other appropriate United Kingdom or EC regulatory agencies, conduct by defendants that may violate United Kingdom or EC law or regulations or Concert's license to operate its United Kingdom public telecommunications system (but no documents received from defendants pursuant to this Section V shall be disclosed to United Kingdom or EC authorities by the Department of Justice), or as otherwise required by law. Prior to divulging any documents, interviews or sworn testimony obtained pursuant to this Section V to the Federal Communications Commission or prior to divulging any interviews or sworn testimony obtained pursuant to this Section V to the EC, plaintiff will obtain assurances that such materials are protected from disclosure to third parties to the extent permitted by law.

F. If at the time information or documents are furnished by a defendant to plaintiff pursuant to this Section V, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to a claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging

such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VI

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Modified Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate to carry out or construe this decree, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VII

Modification

A. Any party to this Modified Final Judgment may seek modification of its substantive terms and obligations, and other parties to the Modified Final Judgment shall have an opportunity to respond to such a motion. If the motion is contested by another party, it shall only be granted if the movant makes a clear showing that (i) a significant change in circumstances or significant new event subsequent to the entry of the Modified Final Judgment requires modification of the Modified Final Judgment to avoid substantial harm to competition or consumers in the United States, or to avoid substantial hardship to defendants, and (ii) the proposed modification is (a) in the public interest, (b) suitably tailored to the changed circumstances or new events and would not result in serious hardship to any defendant, and (c) consistent with the purposes of the antitrust laws of the

United States and with the telecommunications regulatory regime of the United Kingdom. Neither the absence of specific reference to a particular event in the Modified Final Judgment nor the foreseeability of such an event at the time this Modified Final Judgment was entered, shall preclude this Court's consideration of any modification request. This standard for obtaining contested modifications shall not require the United States to initiate a separate antitrust action before seeking modifications. The same standard shall apply to any party seeking modification of this Modified Final Judgment. If a motion to modify this Modified Final Judgment is not contested by any party, it shall be granted if the proposed modification is within the reaches of the public interest. Where modifications of the Modified Final Judgment are sought, the provisions of Section V of this Modified Final Judgment may be invoked to obtain any information or documents needed to evaluate the proposed modification prior to decision by the Court.

B. Concert agrees to notify the plaintiff in writing if MCI or Concert hereafter files with the FCC or OFTEL an application to assign (or transfer control of) any license or authorization held by MCI or BT relating to telecommunications services between the United States and the United Kingdom, or if Concert seeks to reorganize its corporate structure so as to combine NewCo and BT in the same corporate entity. Within five (5) days of receipt by plaintiff of such notice, plaintiff may request from defendants additional information concerning the proposed assignment, transfer or reorganization. Defendants shall furnish any additional information requested within ten (10) days of receipt of the request. Such

assignment, transfer or reorganization shall not take effect until thirty (30) days after receipt of the notice or, if additional information is requested by plaintiff, until twenty (20) days after receipt of the additional information. If the plaintiff determines, in its sole discretion, that such an assignment, transfer or reorganization would impair the effectiveness of any of the provisions of this Modified Final Judgment, then the plaintiff, in the exercise of its discretion and without waiving its right to obtain any other remedy, may seek further modification of this Modified Final Judgment, which modification will be reviewed as set forth in Section VII.A hereinabove. Concert and MCI agree that they will not oppose any request by the plaintiff for expedited consideration by the Court of any such request for further modification.

VIII

Sanctions

Nothing in this Modified Final Judgment shall prevent the United States from seeking, or this Court from imposing, against defendants or any other person, any relief available under any applicable provision of law.

IX

Further Provisions

A. The entry of this Modified Final Judgment is in the public interest.

B. The substantive restrictions and obligations of this Modified Final Judgment shall be removed after ten years have passed from September 29, 1994, the date of entry of the Final Judgment, unless this Modified Final Judgment has been previously terminated.

_____
United States District Judge

DATED:_____