IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 8000
Washington, DC 20530,

Plaintiff,

v.

WORLDCOM, INC.,
500 Clinton Center Drive
Clinton, MS 39056,

and

INTERMEDIA
COMMUNICATIONS, INC.
One Intermedia Way
Tampa, FL 33647

Defendants.

CASE NUMBER 1:00CV02789
JUDGE: Richard W. Roberts
DECK TYPE: Antitrust
DATE STAMP: 11/17/2000

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin WorldCom, Inc. ("WorldCom") from acquiring Intermedia Communications, Inc. ("Intermedia") and alleges as follows:

1. WorldCom has attained (primarily through a series of acquisitions) a commanding position in the ownership and operation of the "backbone" networks that connect the thousands of smaller networks that constitute the Internet. WorldCom is the largest of a small group of top tier providers of Internet "backbone" network services in the United States and the world.

2. Intermedia also owns and operates an Internet backbone and provides connectivity service throughout much of the United States.

3. The proposed merger of WorldCom and Intermedia threatens to cause significant harm to competition in one of the nation's most important telecommunications markets. By adding to WorldCom's leading position in the Internet backbone market, the proposed acquisition is likely substantially to lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The United States therefore seeks an order permanently enjoining the merger.

I.

JURISDICTION AND VENUE

4. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the violation by the Defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. WorldCom and Intermedia are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties hereto pursuant to 15 U.S.C. §§ 22, 25 and 28 U.S.C. §§ 1331, 1337.

6. WorldCom and Intermedia each transact business in the District of Columbia. Venue is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

THE DEFENDANTS AND THE TRANSACTION

A. WorldCom, Inc.

7. WorldCom, Inc., formerly known as MCI WorldCom, Inc., is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Clinton, Mississippi. It is one of the largest global telecommunications providers, with operations in more than 65 countries in the Americas, Europe, and the Asia-Pacific region, and more than 22 million residential and business customers worldwide. WorldCom's 1999 annual revenues totaled approximately $37 billion.

8. WorldCom's UUNET subsidiary is by far the world's largest provider of Internet backbone services, whether measured by traffic or revenues. UUNET's backbone network extends from North America to Europe and Asia, serving more than 70,000 businesses in 114 countries. UUNET offers a wide range of retail and wholesale Internet backbone services, including "dial-up" (i.e., through shared modem banks) and dedicated Internet access (i.e., through direct connections to the customer), as well as value-added services such as web site hosting, applications hosting, and Internet security services.

9. WorldCom has achieved its current competitive position in large part through the acquisition of more than 60 competitors and other companies. For example:

(a) In January 1995, WorldCom acquired the network services operations of Williams Telecommunications Group and its 11,000-mile fiber optic nationwide network for $2.5 billion.

(b) In December 1996, WorldCom acquired MFS Communications Company,

Inc. ("MFS"), the largest competitive local access provider in many U.S. and Western European metropolitan areas, for $12.5 billion in stock. Through the MFS acquisition, WorldCom gained control of UUNET, the world's leading Internet backbone provider, which MFS had itself acquired in August 1996.

(c) In January 1998, WorldCom acquired Compuserve Corp., one of the nation's leading Internet and data network services providers, for approximately $1.3 billion.

(d) In a related transaction, WorldCom bought ANS Communications, Inc. ("ANS") from America Online ("AOL") for approximately $500 million. ANS served as one of AOL's primary Internet backbone networks, and as part of the ANS transaction, WorldCom secured a long-term contract to provide AOL with Internet backbone services. WorldCom has subsequently renewed this contract and will continue to be AOL's principal supplier of Internet backbone services through at least December 31, 2004.

(e) WorldCom has also acquired other Internet backbones, including GridNet, Unicom-Pipex, InNet, NL Net, and Metrix-Interlink.

10. In large part because of these acquisitions, by 1998 WorldCom was by far the largest provider of Internet backbone services. Its subsequent efforts to acquire other Internet backbone competitors have been blocked by the Department of Justice and the Commission of European Communities because of concerns that these acquisitions would be harmful to competition. Specifically:

(a) In September 1998, WorldCom completed the acquisition of MCI Communications Corp., the United States' second-largest provider of long distance

telecommunications and a leading Internet backbone service provider. As a result of actions taken by the U.S. Department of Justice, the FCC, and the Commission of European Communities, MCI divested its internetMCI assets to Cable & Wireless, PLC pursuant to conditions designed to ensure the continued competitive vigor and vitality of the divested business.

(b) In July 2000, WorldCom and Sprint Corporation, another leading Internet backbone service provider, abandoned their proposed merger after the Department of Justice and the Commission of European Communities moved to block the merger because of antitrust concerns.

B. Intermedia Communications, Inc.

11. Intermedia Communications, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Tampa, Florida. Intermedia focuses on providing integrated voice and data communications solutions to business and government customers. It offers an array of communications services, including local and long distance voice and data services, enterprise data solutions (e.g., frame relay, ATM and private line data services), wholesale carrier services, and U.S. long distance carriage and local termination and origination for international telecommunications carriers. Intermedia also operates a significant nationwide Internet backbone network, offering a broad range of dedicated and dial-up Internet connectivity services to ISPs, businesses and government customers. In 1999, Intermedia had revenues of approximately $906 million, and served approximately 90,000 business and government customers.

12. In addition, Intermedia owns a controlling interest -- approximately 94% of the

voting securities and 62% of all outstanding common shares -- in Digex, Inc., a publicly traded Delaware corporation headquartered in Beltsville, Maryland. Digex is a leading provider of complex, managed web site/application hosting and other "value-added" services to business customers.

C. The Proposed Transaction

13. On September 5, 2000 WorldCom, Inc. announced that its board of directors had approved a proposed purchase of Intermedia Communications, Inc. in a deal worth approximately $6 billion.

14. On October 23, 2000, the Defendants filed an application for the transfer of control of various licenses issued by the FCC to Intermedia that are necessary for it to conduct its business. Unless and until their FCC application is granted, the Defendants cannot consummate the merger.

III.

RELEVANT MARKET AND COMPETITIVE EFFECTS

A. Relevant Product Market

15. The Internet is a vital conduit for commerce and communication for millions of Americans. It is fast becoming as much a part of daily life as the television and the telephone. This global network of public and private networks, i.e., the Internet, enables end users to communicate with each other and access large amounts of information, data, and educational and entertainment services. Until April 30, 1995, the National Science Foundation ("NSF"), an independent federal agency, administered the Internet. Thereafter, the NSF relinquished its role,

allowing the current commercial Internet to develop.

16. The end users of the Internet -- individuals, business customers, content providers, governments, and universities -- obtain access either through a "dial-up" modem or other consumer Internet access connection (e.g., cable modem or digital subscriber line service), or through a dedicated high-speed facility accessing the Internet ("dedicated access") through one of thousands of Internet service providers ("ISPs"). ISPs provide access to the Internet on a local, regional, or national basis. ISPs operate their own networks of varying size, but most have limited facilities.

17. An ISP can connect any customer on its network to any of the other customers on its network. In order to facilitate communication between its customers and the many end users connected to other networks, however, an ISP must establish direct or indirect interconnections with those other networks. Because the Internet comprises thousands of separate networks, direct interconnections between each of those networks and all other networks would be impractical. Instead, the Internet has developed a hierarchical structure, in which smaller networks are interconnected with one of a few large Internet "backbone" networks, which operate high-capacity long-haul transmission facilities and are interconnected with each other. In a typical Internet communication, for example, an ISP sends data from one of its customers to the large network that the ISP uses for backbone services, which in turn sends the data to another backbone network, which then delivers it to the ISP serving the end user to whom the data is addressed.

18. Internet backbone providers ("IBPs") and ISPs can generally exchange traffic directly through one of two interconnection arrangements: "transit" or "peering." Through

"transit" service, an ISP, small IBP, or other corporate customer purchases a dedicated access facility linking it directly to the transit provider's Internet backbone network. That transit service provides the purchaser full Internet connectivity, i.e., the ability to send and receive traffic through the purchaser's IBP to any other network or destination on the Internet. Under a transit arrangement, the customer pays a fee for the connection in addition to the fee paid for transit service. A transit provider does not pay any fee for access to its transit customers' networks.

19. Networks, including IBPs and ISPs, may also exchange traffic with other networks through "peering" arrangements whereby each "peer" will only accept traffic that is destined either for its own network or for one of its own transit customers. Peers do not accept traffic destined for non-customer networks, i.e., transit traffic. Unlike transit, peering is typically a settlement-free arrangement under which neither party pays the other for terminating traffic. Each peer usually pays for one half the cost of the connections between their networks.

20. Interconnection arrangements between networks are voluntary and consensual in nature, and are not subject to governmental regulation. Internet networks exchange traffic either at private interconnection sites or at public interconnection sites known as Network Access Points ("NAPs") or Metropolitan Area Exchanges ("MAEs"). The NSF established the first public interconnection facilities, which were to be operated by private parties, through which an ISP or IBP could exchange traffic with another network if both chose to do so. UUNET operates three of the largest and busiest public interconnection points (MAE-East, MAE-West, and MAE-Central) and four smaller regional MAEs.

21. The explosive growth of the Internet overwhelmed these NAPs and MAEs, and despite the addition of new public access points to accommodate this growth, the public

interconnection facilities remain chronically congested. To avoid these congested facilities, some networks have established private bilateral interconnection facilities with their peers. Today, large IBPs exchange most of their traffic with other IBPs at private interconnection sites at various points throughout their networks. Many smaller networks, however, still rely solely or substantially upon public access points, and therefore offer generally lower quality Internet access to their customers.

22. There are a small number of large IBPs -- referred to as "Tier 1" IBPs -- that sell transit service to substantial numbers of ISPs and sell dedicated Internet access directly to corporate customers or other enterprises. Tier 1 IBPs have large nationwide or international networks capable of transporting large volumes of data. Tier 1 IBPs generally maintain private peering relationships with all other Tier 1 IBPs on a settlement-free basis, as opposed to purchasing Internet connectivity (e.g., transit) from any other IBP. Most Internet communications are carried over the networks of these Tier 1 IBPs, and either originate or terminate, or both, with end users that obtain Internet access directly from a Tier 1 IBP or from an ISP or other network that purchases transit from a Tier 1 IBP (i.e., a Tier 1 IBP's customer).

23. Smaller IBPs, often referred to as "Tier 2" or "Tier 3" IBPs, typically sell transit to smaller ISPs or IBPs and sell dedicated Internet access to end users. These Tier 2 or Tier 3 IBPs generally either purchase transit from (rather than peer with) Tier 1 IBPs, and/or rely substantially upon exchanging traffic at the congested public interconnection facilities. Lower-tier IBPs that must purchase a significant amount of connectivity from other IBPs operate at substantial cost disadvantages compared to Tier 1 IBPs, which rely exclusively on peering.

24. Tier 1 IBPs have significant competitive advantages compared to lower tier IBPs

in terms of their ability to provide higher-quality service through their direct and private interconnections, rather than relying on indirect transit service or on the inferior and congested public interconnection points. Generally, network operators seek the most direct routing for their Internet communications -- i.e., over routes with the fewest possible number of cross-network connections or "hops" -- because of the greater risk that data will be lost or its transmission delayed as the number of interconnection points increases. Lower-tier IBPs that must rely on transit typically reach other networks indirectly through their transit provider's network, adding "hops." Because Tier 1 IBPs provide direct connections to large numbers of ISPs and to other Tier 1 IBPs that collectively handle most Internet traffic, Tier 1 IBPs can offer higher quality services than can lower-tier IBPs. Many important ISPs and business customers will not purchase Internet connectivity from an IBP unless that IBP maintains direct, private peering connections with most, if not all, Tier 1 IBPs. The vast majority of Internet traffic is carried by Tier 1 IBPs.

25. Because of these differences, the provision of Tier 1 backbone services is distinguished from that provided by other IBPs. Typically, Tier 1 IBPs charge higher prices for Internet access than do lower-tier IBPs because they offer distinct value to their customers.

26. The provision of Internet connectivity by Tier 1 IBPs is a line of commerce and a relevant product market for purposes of Section 7 of the Clayton Act. There are no substitutes for this connectivity sufficiently close to defeat or discipline a small but significant nontransitory increase in price.

B. Relevant Geographic Market

27. Tier 1 IBPs provide connectivity to their networks throughout the United States. Because providing customers with IBP connectivity in the United States requires domestic

operations, customers in the U.S. are unlikely to turn to any foreign providers that lack these domestic operations in response to a small but significant and nontransitory increase in price by domestic IBPs. The United States is the relevant geographic market for purposes of Section 7 of the Clayton Act.

C. Market Concentration and Anticompetitive Effects

28. WorldCom's wholly owned subsidiary, UUNET, is by far the largest IBP by any relevant measure and is already approaching a dominant position in the Internet backbone market. Based upon a study conducted in February 2000, UUNET's share of all Internet traffic sent to or received from the customers of the 15 largest Internet backbones in the United States was about 37%, more than twice the share of Sprint, the next-largest IBP. These 15 largest backbones represent approximately 95% of all U.S. dedicated Internet access revenues.

29. Although Intermedia is much smaller than WorldCom, it is a significant nationwide provider of Internet backbone services. The difference in size between UUNET and other large IBPs would be meaningfully increased if traffic carried on the Intermedia backbone were added to UUNET's backbone.

30. As is true in network industries generally, the value of Internet access to end users becomes greater as more and more end users can easily be reached through the Internet. The benefit that one end user derives from being able to communicate effectively with additional users is known as a "network externality."

31. When the networks that constitute the Internet operate in a competitive market, this network externality creates powerful incentives for each individual network to seek and implement efficient interconnection arrangements with other networks. Efficient interconnection

has many requirements, including the physical connection to exchange traffic and the effective implementation of cross-network protocols or standards. For example, providers in competitive network industries have strong incentives to cooperate in the development of new cross-network protocols or quality of service ("QoS") standards that would enable new services or applications to be used across interconnection points on multiple providers' networks. By securing efficient interconnection, an ISP or IBP makes its services more valuable to its existing and potential customers. End users can enjoy the benefits of network externalities regardless of which network they belong to so long as their cross-network communications are of similar quality to communications that originate and terminate "on-net," or on a single provider's network. A failure to secure efficient interconnection arrangements places any given network at a significant competitive disadvantage when customers can turn to a competing network that is efficiently interconnected to other networks.

32. A network that upgrades bandwidth within its own network in an adequate and timely manner can maintain the quality of its customers' Internet experience with regard to communications that originate as well as terminate on that network. In order to maintain the quality of its customers' Internet experience with regard to communications that originate or terminate on another network, however, a network must constantly upgrade the capacity of its interconnections with other networks, as well as upgrade capacity within its own network. Because of the explosive growth of Internet traffic, which has been doubling in volume every three to four months, and the introduction of new applications that depend upon the transmission of large quantities of data, IBPs must constantly increase the capacity, i.e., bandwidth, of both their own networks and their interconnection facilities to other networks.

33. Any failure to keep pace with the growing demand for increased interconnection capacity -- or, worse yet, any degradation in the quality of existing interconnections with other networks -- would adversely affect the quality of an Internet user's experience regardless of the capacity and efficiency of an IBP's own network. Due to the Internet's growth rate, any failure to make adequate and timely upgrades of interconnection capacity is tantamount to a degradation of the quality of interconnection. When networks operate in competitive markets, they have mutual incentives to avoid such degradation.

34. Similarly, when operating in competitive markets, networks have incentives to negotiate reasonable prices for interconnection arrangements. An IBP that sells transit to another network will have incentives to charge reasonable prices for that service in order to prevent a transit customer from taking its business to a rival IBP. Furthermore, two networks will have incentives to enter into peering arrangements when, for each, the cost of terminating the other's traffic is roughly comparable to the benefit of having its own traffic terminated by the other, taking into account, among other factors, whether the networks have comparable traffic levels, similar geographic scope, and a roughly comparable input/output ratio at each interconnection point. As long as there are a sufficient number of large IBPs of roughly comparable size, there exist sufficient incentives for these IBPs to peer privately with each other at the necessary capacity levels. In turn, this enhances both Internet connectivity and competition among the resulting Tier 1 IBPs. Nevertheless, an IBP makes peering decisions on a discretionary basis, and may refuse to peer or may terminate a peering relationship with any other IBP on short notice or without cause if it determines that doing so is in its self-interest.

35. When a single network grows to a point at which it controls a substantial share of

the total Internet end user base and its size greatly exceeds that of any other network, network externalities may cause a reversal of its previous incentives to achieve efficient interconnection arrangements with its rival networks. In this context, degrading the quality or increasing the price of interconnection with smaller networks can create advantages for the largest network in attracting customers to its network. Customers recognize that they can communicate more effectively with a larger number of other end users if they are on the largest network, and this effect feeds upon itself and becomes more powerful as larger numbers of customers choose the largest network. This effect has been described as "tipping" the market. Once the market begins to "tip," connecting to the dominant network becomes even more important to competitors. This, in turn, enables the dominant network to further raise its rivals' costs, thereby accelerating the tipping effect. As a result of an increase in their costs, rivals may not be able to compete on a long-term basis and may exit the market. If rivals decide to pass on these costs, users of connectivity will respond by selecting the dominant network as their provider. Ultimately, once rivals have been eliminated or reduced to "customer status," the dominant network can raise prices to users of its own network beyond competitive levels. Once this occurs, restoring the market to a competitive state often requires extraordinary means, including some form of government regulation.

36. If the merger is allowed to proceed, UUNET will increase its commanding position vis-à-vis all other IBP rivals. UUNET already carries more than twice the Internet traffic as its nearest rival, Sprint. Whereas large IBPs currently have roughly equal incentives to peer with each other, the merged entity threatens to become so large relative to any other IBP that its interest in providing others efficient and mutually beneficial access to its network will diminish. If

this happens, current Tier 1 IBPs could be forced to purchase transit services from the combined UUNET/Intermedia to maintain adequate interconnection capacity.

37. Whereas in a competitive environment Tier 1 IBPs have incentives to charge reasonable prices for transit, the merged entity threatens to become so large relative to other IBPs that its interest in providing reasonable prices or terms for transit service will diminish. Ultimately, there is a significant risk that, as a result of the merger, the combined entity will be able to "tip" the Internet backbone services market and raise prices for all dedicated access services.

38. The proposed transaction substantially enhances the risk that UUNET will have the power to engage in anticompetitive behavior. Such behavior may involve refusing to peer with current Tier 1 IBPs for interconnection, and either failing to augment (e.g., by denying, withholding, or "slow-rolling" requested upgrades) or otherwise degrading the quality of interconnection capacity between peers, which will decrease the quality of the experience for Internet customers.

D. Entry

39. Entry barriers are already high, and the proposed transaction will raise barriers to entry even higher. Entry sufficient to offer a significant competitive constraint on the offering of connectivity by Tier 1 IBPs requires substantial time and enormous sums of capital to build a network of sufficient size and capacity to attract the relevant base of customers, and to attract and retain the scarce, highly skilled technical personnel required for its operations.

40. UUNET/Intermedia would enhance its ability to control and inhibit successful entry by refusing to interconnect with new entrants or by limiting those connections in order to

control the growth of its rivals. By degrading the quality of interconnection and raising its rivals' costs, UUNET/Intermedia would further prevent entry and expansion by other IBPs. Moreover, through its control of public interconnection facilities (e.g., MAE-East, MAE-West) and its refusal to upgrade these facilities, UUNET would be able to limit opportunities for existing rivals and new entrants to build their traffic volumes through public peering.

IV.

VIOLATIONS ALLEGED

41. The United States hereby incorporates paragraphs 1 through 40.

42. Pursuant to an Agreement and Plan of Merger dated September 5, 2000, WorldCom and Intermedia intend to consolidate or merge their businesses.

43. The effect of the proposed acquisition of Intermedia by WorldCom would be substantially to lessen competition in interstate trade and commerce in the relevant market alleged above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

44. The transaction will likely have the following effects, among others:

(a) competition in the development, provision, and sale of services in the Internet backbone market will be eliminated or substantially lessened;

(b) prices for services in the Internet backbone market will likely increase to levels above those that would prevail absent the merger;

(c) innovation and quality of service in the Internet backbone market will likely decrease to levels below those that would prevail absent the merger; and

(d) barriers to entering this market will be increased.

V.

REQUEST FOR RELIEF

Plaintiff prays:

1. That WorldCom's proposed consolidation and merger with Intermedia be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

2. That a permanent injunction be issued to prevent and restrain the Defendants and all persons acting on their behalf from consummating the merger agreement described in Paragraph 13 or from going forward with any other plan or agreement by which WorldCom would merge with or acquire Intermedia, its capital stock, or any of its assets;

3. That the United States be awarded the costs of this action; and

4. That the Court impose such additional equitable relief as it deems necessary and proper.

Respectfully submitted,

A. Douglas **Melamed**
Acting Assistant Attorney General

Donald J. Russell
Chief

Constance K. Robinson
Director of Operations

David F. Smutny (D.C. Bar #435714)
J. Parker Erkmann
Lorenzo McRae
Trial Attorneys

Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
1401 H Street, N.W., Suite 8000
Washington, DC 20530
(202) 514-5621

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