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DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA, Plaintiff, v. U S WEST, INC. and CONTINENTAL CABLEVISION, INC., Defendants.	No. 96 2529 (Antitrust) Filed: November 5, 1996

COMPLAINT FOR INJUNCTIVE RELIEF AGAINST COMBINATION IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action pursuant to section 15 of the Clayton Act, as amended 15 U.S.C. § 25, to obtain equitable relief in order to prevent and restrain a violation of section 7 of the Clayton Act, as amended 15 U.S.C. § 18, and alleges as follows:

Nature of the Action

1. The United States brings this antitrust action to prevent the proposed acquisition of Continental Cablevision, Inc. ("Continental") by U S WEST, Inc. ("U S WEST"). U S WEST is one of the seven Regional Bell Operating Companies ("RBOCs"), and provides facilities-based local telecommunications services to customers within a 14 state area.

2. U S WEST is the dominant provider of local telecommunications services, including

dedicated services, within its telephone service area, which includes Denver, Colorado; Omaha, Nebraska; Phoenix, Arizona; and Seattle, Washington. Dedicated services can be defined as the provision of dedicated telephone lines connecting (1) the premises of high-volume end-users with the end-user's long-distance carrier; (2) a long-distance carrier's points-of-presence ("POPs") within a given metropolitan area; or (3) multiple locations of an end-user within a given metropolitan area.

3. Continental, the third largest cable system operator in the United States, now owns approximately 11 percent of the Class B Common Stock of Teleport Communications Group, Inc. ("TCG"). TCG is a competitive access provider ("CAP"). CAPs provide dedicated services over their own facilities, thus allowing customers to bypass the facilities of the dominant local exchange carrier ("LEC"). TCG, the first and largest CAP in the United States, currently provides dedicated services in 48 cities, including Denver, Omaha, Phoenix, and Seattle.

4. TCG competes with U S WEST for consumers of dedicated services in the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services. TCG's networks are composed of state-of-the-art fiber optics. In many instances, TCG has been able to construct and/or expand its networks by leasing fiber optic cable from its cable company partners who already possess rights-of-way. TCG's high quality service offerings combined with its lower cost structure make it a significant competitor to U S WEST.

5. Following U S WEST's acquisition of Continental, U S WEST would own approximately 11 percent of TCG's Class B Common Stock. U S WEST's acquisition of Continental, if consummated, would result in a reduction of competition between U S WEST and TCG in the market for dedicated services in those areas where TCG provides dedicated services.

leading to lower quality and/or higher prices to consumers.

Jurisdiction and Venue

6. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. U S WEST, Continental and TCG sell products and services in interstate commerce. The Court has jurisdiction of this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 4, 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

8. Both U S WEST and Continental have consented to the jurisdiction of this Court. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).

Defendants and the Proposed Acquisition

9. U S WEST is a Delaware corporation with its headquarters in Englewood, Colorado. It is the dominant provider of local telecommunications services, including dedicated services, within its 14 state telephone service area, which includes major portions of the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. In 1995, U S WEST's revenues were approximately $11.7 billion.

10. Continental is a Delaware corporation with its headquarters in Boston, Massachusetts. Continental owns a substantial stake of the equity of TCG. TCG is a CAP providing dedicated services in 48 cities in the United States, including Denver, Omaha, Phoenix, and Seattle, all of which enumerated cities are within U S WEST's telephone service area. In 1995, TCG's revenues were approximately $184.9 million.

11. On February 27, 1996, U S WEST entered into an agreement to purchase all of the stock and assets of Continental for approximately $10.8 billion.[1] At the time the acquisition was first announced, Continental owned 20 percent of the outstanding Class B Common Stock of TCG. Thereafter, Continental reduced its share to approximately 11 percent of TCG's Class B Common Stock. Thus, as a result of this transaction, U S WEST will acquire approximately 11 percent of TCG, a direct competitor in the dedicated services market.

Nature of Trade & Commerce

12. Dedicated services means (1) *special access*, defined as the provision of dedicated lines connecting the premises of high-volume end-users (primarily large and medium-size businesses) to the end-user's long-distance carrier or between a given long-distance carrier's POPs, and (2) *local private line services*, defined as the provision of dedicated lines connecting multiple locations of an end-user within a given metropolitan area. In 1995, revenues from dedicated services totaled approximately $5 billion in the United States.

13. Initially, dedicated services were provided only by the RBOCs, GTE and other LECs. With the development of fiber optics and digital electronic technology, as well as changes in regulation, new competitors have emerged. The first competitors were designated "competitive access providers" or CAPs by the FCC, because they allowed long-distance carriers and high-volume end-users to bypass the monopoly LEC's facilities. The emergence of CAPs generally has resulted in lower rates and higher quality services in those areas in which CAPs have constructed their networks.

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[1]On October 7, 1996, the defendants announced a restructuring of the deal which is currently valued at approximately $11.8 billion.

14. TCG is the first and largest CAP in the United States. Initially, TCG's business was limited to the provision of local private line services to a handful of businesses in Manhattan. In the last ten years, TCG has expanded and continues to expand both its geographic scope and service offerings. TCG now provides special access and local private line services in 48 cities throughout the United States and is expanding its networks to another seven cities.

Relevant Markets

15. Dedicated services are a relevant product market. There are no cost-effective alternatives to dedicated services for those customers using this service. A sufficient number of dedicated services customers would not switch away from dedicated services in response to a small, but significant non-transitory price increase to make that price increase unprofitable.

16. The relevant geographic markets are the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services. Dedicated services, as defined herein, involve the carriage of telecommunications traffic over a provider's dedicated facilities located within a given metropolitan area. Consequently, dedicated services providers outside of the foregoing areas do not constitute an effective substitute. Customers would not turn to dedicated services providers located outside of their area in response to a small but significant, non-transitory price increase for dedicated services in the area in sufficient numbers to make such a price increase unprofitable.

17. The provision of dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of § 7 of the Clayton Act.

Competitive Effects

18. U S WEST is the dominant provider of dedicated services within its 14 state telephone service area including the metropolitan areas of Denver, Omaha, Phoenix and Seattle. TCG is one of a few providers of dedicated services competing with U S WEST in these areas.

19. U S WEST's partial ownership of TCG will have an adverse impact on competition for dedicated services in the relevant geographic markets. U S WEST's competitive strategy, including its pricing and output decisions, will be influenced by its partial ownership of a significant direct competitor. Because of its partial ownership of TCG, losses of customers to TCG would not be as detrimental to U S WEST, and it would have less incentive to lower prices or increase quality to meet the emerging competition from CAPs in these areas.

20. In addition, as a Class B voting shareholder of TCG, U S WEST could receive advance and detailed notice of significant TCG business transactions, including TCG's plans for entry and expansion in U S WEST markets. U S WEST could use this confidential and proprietary information strategically to raise the cost, increase the risk, and reduce the profitability of entry and expansion by TCG, thereby limiting competitive entry and expansion that would undermine U S WEST's dominance of these markets.

21. As discussed above, there are no effective substitutes for dedicated services. A price increase for dedicated services resulting from this acquisition, therefore, will not be defeated by a significant proportion of consumers switching to other telecommunications services or to other providers of dedicated services located outside of the relevant geographic area.

22. Entry into the dedicated services market sufficient to mitigate the competitive harm resulting from this acquisition is unlikely within the next two years.

23. Unless restrained, the proposed acquisition will violate Section 7 of the Clayton Act.

Harm to Competition

24. The effect of the proposed acquisition of Continental by U S WEST is to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

25. The transaction would have the following effects, among others:

a. actual competition in the sale of dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services would be substantially lessened;

b. actual competition between U S WEST and TCG in the sale of dedicated services would be substantially lessened; and

c. the rates for dedicated services in the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services would increase and/or the quality of such services would decrease.

Requested Relief

27. The United States requests (a) adjudication that U S WEST's proposed acquisition of Continental would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive

relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is just and proper.

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