ADDRESSES: Homewood Suites Hotel, 400 Griffin Street, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–18343 Filed 7–11–97; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 6–7, 1997.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Stein Eriksen Lodge, 7700 Stein Way, Park City, Utah.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–18344 Filed 7–11–97; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

DATE: October 13–14, 1997.

ADDRESS: Monterey Plaza Hotel, 400 Cannery Row, Monterey, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–18345 Filed 7–11–97; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

DATE: October 20–21, 1997.

ADDRESS: Charleston Place Hotel, 130 Market Street, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–18346 Filed 7–11–97; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Modified Final Judgment and Memorandum in Support of Modification

Notice is hereby given that a Motion to Modify, a Memorandum in Support of Modification, a proposed Modified Final Judgment and a Stipulation, and have been filed in the United States District Court for the District of Columbia in *United States of America* v. *MCI Communications Corporation and BT Forty-Eight Company (''NewCo''),* Civ. No. 94–1317 (TFH).

As set forth in the plaintiff's uncontested Motion and Memorandum In Support of Modification, a number of factual and legal events have occurred since the entry of the existing Final Judgment, including British Telecommunications plc's (''BT'') plan, announced last fall, to purchase the remaining 80% of MCI Communications Corporation (''MCI'') for $21 billion.

The existing final judgment, which stems from a 1994 acquisition by BT of 20% of MCI's stock, contains provisions designed to remedy allegations in the Complaint filed contemporaneously therewith, that BT would successfully act on its incentives to use its market power in the United Kingdom to discriminate in favor of MCI and/or BT's joint-venture with MCI, at the expense of other U.S. telecommunications carriers in the market for international telecommunications services between the U.S. and the U.K. and the global network services market. The proposed Modified Final Judgment retains and, in some cases, strengthens these protections in order to take into account the full integration of BT and MCI, as well as changed market conditions since the existing Final Judgment was entered. Specifically, the proposed Modified Final Judgment increases the amount of information that the merged entity, who is named as a party to the modified decree, is required to report in order to facilitate the detection of specific instances of discrimination and to provide evidence that could be used in support of complaints to the relevant U.S. and U.K. regulatory agencies. The proposed Modified Final Judgment also revises the confidentiality provisions of the existing decree in order to reduce the risk that confidential, competitively sensitive information that BT obtains in the course of its relationships with other U.S. telecommunications providers are not disclosed to MCI through the corporate parent or as a result of any subsequent corporate reorganization. The proposed Modified Final Judgment also extends the time period of the existing decree and enhances the Department's ability to monitor and enforce compliance with the decree by giving the Department access to the merged entity's documents and personnel, wherever located.

Public comment on the proposed Modified Final Judgment should be directed to Donald Russell, Chief, Telecommunications Task Force, Room 8104, U.S. Department of Justice, Antitrust Division, 555–4th Street, N.W., Washington, D.C. 20001. Such comments and the Department's responses thereto will be filed with the Court. In its filing, the Department indicated that it would follow its standard 60-day comment period. On

July 7, 1997, however, the Court granted defendants' motion to shorten the comment period to 30 days.

Constance K. Robinson,

Director of Operations.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company ("NewCo"), Defendants

[Civil Action No. 94–1317 (TFH)]

Stipulation

It is stipulated and agreed by and between the undersigned parties by their respective attorneys, that:

1. The Court has jurisdiction over the defendants and, for the limited purpose of enforcing this Stipulation, over British Telecommunications plc ("BT").

2. The parties to this Stipulation consent to the modification of the Final Judgment entered by this Court on September 29, 1994, as shown in the attached Modified Final Judgment filed with this Stipulation. The parties further consent that the Modified Final Judgment in the form attached may be entered by the Court, upon any party's motion, at any time after the completion of the procedures specified in the United States' Explanation of Procedures, attached to this Stipulation, without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the Modified Final Judgment by serving notice on the defendants and BT and by filing that notice with the Court.

3. BT and defendant MCI have entered into a Merger Agreement and Plan of Merger dated November 3, 1996 ("Merger Agreement"), whereby MCI shall be merged into a wholly-owned subsidiary of BT. Upon completion of the merger, the parent company, BT, will be renamed Concert plc ("Concert"). The parties have agreed that this Court shall have jurisdiction over the parent company following the consummation of the proposed transaction, and that the parent company will be bound by the provisions of the Final Judgment and the Modified Final Judgment when it is entered. The parties are hereby estopped from arguing that this Court lacks venue or jurisdiction over the subject matter of this action or over Concert. The parties further agree that following its formation, Concert will become a party to the Modified Final Judgment.

4. The parties to this Stipulation agree that as of the date of this Stipulation and pending entry of the Modified Final Judgment, MCI shall abide by the terms and conditions of Section II.A.3.ii of the Modified Final Judgment as though the same were in full force and effect as an order of the Court.

5. The parties to this Stipulation agree that if the Merger Agreement is consummated before the Modified Final Judgment is entered, they shall abide by all of the terms and conditions of the Modified Final Judgment as though the same were in full force and effect as an order of the Court.

6. The parties agree to notify the plaintiff in writing if MCI or Concert hereafter files with the Federal Communications Commission ("FCC") or the United Kingdom's Office of Telecommunications ("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 as set forth in Section VII.B of the Modified Final Judgment.

7. The agreements governing disclosure to United States corporations that are referenced in Section IV.E of the Modified Final Judgment, shall provide that: (1) Non-public information received from the Department of Justice shall be used solely in connection with the filing of a complaint with or providing information to governmental authorities in the United States or the United Kingdom, and not for any other purpose; (2) such information shall not be disclosed to any persons other than those officers, directors, employees, agents or contractors of the corporation who need such information in order to file a complaint, to determine whether a complaint should be filed or to provide information to any governmental authority in the United States or the United Kingdom, and to those government authorities (including, but not limited to, the FCC and OFTEL); (3) all persons to whom any non-public information is disclosed will be advised of the limitations on the use and disclosure of such information; and (4) if unauthorized use or disclosure occurs, the Department of Justice may revoke or otherwise limit further access to such information by the corporation or any person unless the Department of Justice decides, in its sole discretion, that such revocation is unnecessary under the circumstances. The Department of Justice may add further conditions to any agreements referenced in Section IV.E of the Modified Final Judgment if it determines that such conditions are necessary for the protection of any non-public information. Any actions taken by the Department of Justice to redress the unauthorized use or disclosure of any non-public information shall neither preclude nor give rise to defendant's right to pursue to separate action against any person for the unauthorized use of disclosure or such information.

8. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Modified Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For Plaintiff United States of America.

Dated: July 2, 1997.

Yvette Benguerel,

D.C. Bar #442452,

David Myers

United States Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.

For British Telecommunications PLC.

Dated: July 2, 1997.

David J. Saylor,

D.C. Bar # 96826,

Hogan & Hartson,

Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109, (202) 637–8679.

For MCI Communications Corporation.

Dated: July 2, 1997.

Anthony C. Epstein,

D.C. Bar #250829

Jenner & Block,

601 Thirteenth Street, N.W., Suite 1200, Washington, D.C. 20005, (202) 639–6080.

Certificate of Service

I, Tracy Varghese, hereby certify under penalty of perjury that I am not a party to this action, that I am not less than 18 years of age, and that I have on this day caused the Motion to Modify, Memorandum In Support of Modification, Stipulation, and Modified Final Judgment, to be served on the defendants by mailing a copy, postage paid, to each of the defendants on the attached service list.

Dated: July 7, 1997.

Tracy Varghese

Service List

BT Forty-Eight Company.

David J. Saylor,

Hogan & Hartson,

Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109.

MCI Communications Corporations

Anthony C. Epstein,

Jenner & Block,

601 Thirteenth Street, N.W., Suite 1200, Washington, D.C. 20005.

United States District Court for the District of Columbia

[Civil Action No. 94–1317 (TFH)]

United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company, ("NewCo"), Defendants

Motion of the United States for Modifications of the Final Judgment

Plaintiff, the United States of America, moves this Court to modify the Final Judgment in the above-captioned matter. Plaintiff's motion is based on the following grounds:

1. On June 15, 1994, the United States filed its complaint in the above-captioned case alleging that the acquisition by British Telecommunications plc ("BT") of a 20% ownership interest in MCI Communications Corporation ("MCI") created an incentive for BT, using its existing market power in the United Kingdom, to favor MCI at the expense of other United States international carriers in the market or markets for international telecommunications services in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint also alleged that the formation of a joint venture between BT and MCI ("NewCo") to provide seamless global network services to multinational corporations created an incentive for BT to

use its dominance in the UK to favor the joint venture at the expense of other global network service providers in the provision of the UK segment essential to any seamless global network.

2. The Final judgment, filed contemporaneously with the compliant and entered by the Court on September 29, 1994 after a Tunney Act review, contains provisions designed to reduce the risk that BT would use its market power to discriminate in favor of MCI or the joint venture. The Final Judgment further provides that the Department may seek a modification of the Final Judgment in order to prevent discrimination. The potential discrimination need not have been foreseen at the time the Complaint in this matter was filed. If a motion for modification is uncontested, it is analyzed under a public interest standard. After the Final Judgment was entered, BT and MCI consummated BT's 20% acquisition and formed the joint venture, NewCo.

3. In November 1996, BT and MCI entered into a Merger Agreement and Plan of Merger pursuant to which MCI will be completely merged into a wholly-owned subsidiary of BT. The new parent company, BT, will then be renamed Concert, plc.

4. Both the US and UK governments have enacted reforms since the final judgment was entered that altar the status of competition for international traffic between the US and the UK. Despite these changes, however, BT still maintains substantial market power in local and domestic long distance services in the United Kingdom and BT's dominance in these markets is unlikely to erode swiftly.

5. Accordingly, certain modifications to the final judgment aimed at deterring and detecting discrimination need to be retained and, in some cases, strengthened in order to ensure that the resulting full integration of BT and MCI and changed market conditions will not impair the effectiveness of any protections afforded by the existing decree.

6. The proposed modified final judgment, filed contemporaneously herewith, sets forth the specific modifications agreed to among the parties. Plaintiff's Memorandum In Support Of Modification demonstrates that the proposed modifications are necessary to address the concerns raised by the full integration of BT and MCI as well as certain regulatory changes and, therefore, are in the public interest.

7. Defendants have authorized Plaintiff to state that they concur in this motion.

8. The Department does not believe that this modification is subject to the Tunney Act. Because of the important issues involved, however, the Department intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, the Department will file another motion requesting that the Court enter the attached Modified Final Judgment.

Respectfully submitted,

Joel I. Klein,

Acting Assistant Attorney General.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Charles E. Biggio,

Senior Counsel.

Constance K. Robinson,

Director of Operations.

Donald J. Russell,

Chief, Telecommunications Task Force.

Nancy M. Goodman,

Assistant Chief, Telecommunications Task Force.

Yvette Benguerel,

DC Bar #442452

David Myers

Attorneys, United States Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.

Dated: July 7, 1997.

United States District Court for the District of Columbia

[Civil Action No. 94–1317 (TFH)]

United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company (''NewCo''), Defendants

Memorandum of the United States in Support of Modification of the Final Judgment

The United States submits this memorandum in support of its motion to modify the Final Judgment entered in the above-captioned case. Contemporaneously with filing its motion and memorandum, the United States is also filing a proposed modified final judgment and a Stipulation wherein the parties have agreed to be bound by the provision of modified final judgment following consummation of the merger and pending entry of the modified final judgment by the Court. A number of factual and legal events have occured since the entry of the exisiting final judgment, including an agreement among the parties to enter into a full merger. The proposed modifications ensure that these events do not impair the effectiveness of the existing Final Judgment, and are in the public interest.

I. Introduction and Background

On June 15, 1994, the United States filed its complaint in the above-captioned case. The complaint alleged, *inter alia*, that the acquisition by British Telecommunications plc (''BT'') of a 20% ownership interest in MCI Communications Corporation (''MCI'') created an incentive for BT, using its existing market power in the United Kingdom, to favor MCI at the expense of other United States international carriers in the market or markets for international telecommunications services between the United States and the United Kingdom. See Competitive Impact Statement of the United States Department of Justice (hereinafter ''CIS''), dated June 15, 1994, at 11. The complaint also alleged that the formation of a joint venture between BT and MCI to provide seamless global network services to multinational corporations created an incentive for BT to use its dominance in the UK to favor the joint venture at the expense of other global network service providers in the provision of the UK segment essential to any seamless global network. See CIS at 14–17.

The complaint recognized that BT could effectuate this discrimination in numerous ways, including: (1) Offering MCI and the joint venture interconnection and other telecommunications services on more favorable terms and conditions than MCI's competitors and/or providing MCI and the joint venture with advance notice of planned changes to BT's network; (2) providing MCI and the joint venture with confidential, competitively sensitive information that BT obtains from other telecommunications providers through BT's correspondent relationships and/or through BT's provision of interconnection or other telecommunications services within the United Kingdom; and (3) discriminating against other carriers by diverting some or all of BT's international switched traffic between the United Kingdom and the United States to MCI or the joint venture, outside the correspondent system.[1] If other carriers could not respond to this diversion by diverting their own traffic, they would be left with larger net settlement payments (due to the loss of BT's offsetting minutes of traffic), placing them at a competitive disadvantage to MCI. It would also give BT an incentive to keep the US–UK accounting rate high. See id.

The final judgment, filed contemporaneously with the complaint and entered by the Court on September 29, 1994 after a Tunney Act review, contains three categories of provisions designed to remedy the anticompetitive effects of the partial acquisition: (1) Transparency provisions;[2] (2) confidentiality provisions;[3] and (3) a provision designed to address the diversion issue.[4] These provisions were specifically designed to diminish the risk that BT would successfully act on its incentive to use its

[1] Under the correspondent system, carriers from one nation set up correspondent relationships with carriers from other nations to facilitate the movement of traffic between their respective countries. The negotiated rate at which such traffic is carried is called the Accounting Rate. In order to prevent foreign monopoly carriers from discriminating against United States carriers by threatening to send all of their traffic to any one US carrier unless the other carriers accepted a higher accounting rate (a practice known as ''whipsawing''), the FCC promulgated the International Settlements Policy or ISP. Pursuant to the ISP, each carrier must pay ½ of the accounting rate, known as the Settlement Rate, for the completion of calls on the corresponding carrier's network; all US carriers must be charged the same accounting rate (non-discrimination); and traffic must be returned to a particular US carrier in proportion to the traffic received from that US carrier (proportionate return). Because the US sends more minutes of traffic to the UK than UK carriers send to the US, US carriers end up with a net settlement outpayment to UK carriers equal to the settlement rate multiplied by the imbalance of minutes.

[2] See Sections II.A.1–5.

[3] See Sections II.B–D.

[4] See Section II.E.

market power to discriminate in favor of MCI or the joint venture. After the final judgment was entered, BT and MCI consummated BT's 20% acquisition and formed the joint venture, NewCo.[5]

The final judgment also specifically provided a mechanism for allowing modifications of the judgment to expand, alter or reduce its terms in order for the United States to maintain the status quo or to prevent new forms of discrimination that would result in harm to United States consumers.[6] Under the terms of the decree, the event or change that triggers the need for the modification need not have been foreseen at the time the final judgment was entered. Such an event could include new forms of discrimination that were not anticipated at the time the final judgment was entered and thus, not referenced or described in the CIS. See CIS at 32–33, 38.[7] Whether based on foreseen or unforeseen circumstances, a modification that is uncontested is reviewed under a public interest standard. Id. at 31–32. The modifications proposed herein have been agreed to by all parties, and this memorandum, therefore, analyzes the proposed modifications under a public interest standard.

II. Factual and Legal Events Occurring Since the Final Judgment Was Entered

The United States seeks to modify the final judgment, in part, because BT and MCI have now agreed to enter into a full merger. In November 1996, a Merger Agreement and Plan of Merger was executed pursuant to which MCI shall be merged into a wholly-owned subsidiary of BT. The new parent company, BT, will be renamed Concert plc. Although the Department thoroughly analyzed all of the competitive consequences associated with BT's initial 20% acquisition of MCI, the Department undertook an evaluation of the changes in market conditions since 1994 in order to determine whether a modification of the existing decree was appropriate under the circumstances.

In addition to the full merger of BT and MCI, both the US and UK governments have enacted reforms since the Final Judgment was entered that alter the status of competition for international traffic between the US and the UK. Theses changes were designed to move international telecommunications services from the highly regulated correspondent system characterized by few providers (many of which have substantial market power in their home countries) and above-cost prices, to a more competitive environment. As discussed in more detail below, these regulatory changes and, in particular, the granting of International Simple Resale (''ISR'') licenses,[8] have been somewhat effective in lowering the US–UK accounting rate. Despite these changes, however, the US–UK accounting rate is still above-cost and, thus, BT's incentive to discriminate against its and MCI's competitors still exists.

In addition to BT's incentive to discriminate, concerns about BT's ability to discriminate against its and MCI's competitors also still exist. BT maintains substantial market power in local and domestic long distance services in the United Kingdom. Currently, BT has an 80% share of switched long distance revenues in the UK. Although cable companies have made some inroads into the local market, BT maintains a 91% share of local revenues. BT's position in these markets is unlikely to erode swiftly.[9] For the foreseeable future, international carriers will be required to obtain interconnection and other services from BT in order to terminate calls in the UK.

As a result of its new analysis, the Department has concluded that provisions of the Final Judgment aimed at deterring and detecting discrimination need to be retained and, in some cases, strengthened. In addition, certain modifications are required in order to ensure that the resulting full integration of BT and MCI will not impair the effectiveness of the protections afforded by the existing decree.

III. Explanation of the Proposed Modifications

BT's merger with MCI, combined with the regulatory changes outlined above, justify modifying certain substantive and procedural provisions of the existing Final Judgment. These proposed modifications are discussed seriatim.

A. Transparency Provisions

Sections II.A.1–6 of the existing Final Judgment require MCI and NewCo (the joint venture of BT and MCI that provides global network services), to report certain information, including but not limited to prices, terms and conditions of interconnection and other arrangements between MCI, NewCo and BT, data concerning the quality of service provided by BT to MCI and NewCo, and the total minutes of traffic that MCI sends to and receives from BT in each accounting rate category. See CIS at 18–26. These provisions were included to allow principal competitors of MCI and the joint venture (who have signed confidentiality agreements with the US government) to monitor whether BT is discriminating in favor of these entities and to provide evidence that could be used in support of complaints to the relevant US or UK government agencies.

The proposed modified final judgment retains all of the transparency provisions of the existing final judgment with two notable modifications. First, in addition to MCI, the proposed modified final judgment directs the ultimate corporate parent, Concert plc, to report the requisite information.[10] This ensures that the required information is reported regardless of what entity within Concert maintains it and whether Concert in the future undergoes substantial reorganization. The second modification requires MCI and Concert, in addition to reporting the total number of minutes that MCI sends to and receives from BT, to report information regarding time-of-day, point-of-termination and type of transmission facility. This information is designed to enable competitors to more easily detect a particular type of discrimination. Given BT's ownership of MCI there is a concern that BT could discriminate by sending better traffic (i.e., traffic that is less expensive to terminate and, therefore, more profitable) to MCI, thus disadvantaging MCI's competitors. The modified final judgment also requires the parties to report this information on a semiannual as opposed to annual, basis and no later than 60 days after the end of the six month period being reported.

Under a separate provision, defendants have also agreed to provide notification to the United States prior to any corporate reorganization that would combine the functions of or otherwise eliminate the separate identities of MCI, NewCo and BT. Such reorganizations may make it difficult for the parties to accurately report the data required under the transparency provisions or make the data reported insufficient to detect discriminatory conduct. The provision further establishes a procedure whereby the United States can obtain additional information prior to any such reorganization in order to evaluate the impact of such reorganization on the modified final judgment and, if required, to seek further modifications so as to maintain the viability of the modified final judgment.[11]

B. Confidentiality Provisions

Sections II.B, II.C and II.D of the existing Final Judgment prohibit MCI and NewCo from receiving confidential, competitively sensitive information that BT receives in the course of its correspondent relationships with other United States telecommunications providers and/or in the provision of interconnection or other telecommunications services within the United Kingdom. This prohibition made sense in the context of BT's 20% acquisition because MCI remained an independent, fully accountable company.

[5] The joint venture ultimately came to be known as Concert Communications Company, not to be confused with Concert plc (the proposed name of the fully merged company as discussed below).

[6] The modification provision of the final judgment also allows the parties to seek changes in order to prevent undue hardship to them.

[7] Before concluding that discrimination against any particular competitor of MCI or NewCo necessitates modification of the final judgment, however, the Department would ordinarily first inquire whether the injured party had availed itself of existing regulatory remedies in the United States or the United Kingdom. See CIS at 32–33.

[8] International Simple Resale or ISR means the use of telecommunications facilities to carry international telecommunications traffic without measuring usage (e.g., over private leased lines), where such traffic is carried over the public switched network in the nation where it originates and where it terminates.

[9] These figures have not changed substantially since the complaint was filed in this case. See CIS at 7–8. Although UK regulators have taken steps to encourage competition, they do not require BT to unbundle local loops or to provide dialing parity and/or presubscription to competing providers. Such requirements have been imposed in the US to speed the introduction of competition into telecommunications markets.

[10] Concert plc, the ultimate parent, is thus named as a party to the Modified Final Judgment. Because Concert plc is defined therein to include NewCo, and because Concert plc has agreed to assume liability for certain acts of NewCo, NewCois deleted as a separately named party to the modified final judgment.

[11] See Section VII.B of the proposed modified final judgment.

After the complete merger of MCI into BT, concerns abut the inappropriate use of such confidential information continue to exist. For a number of reasons, however, the complete merger of MCI into BT limits the enforceability of the existing provisions. First, after the merger, Concert plc, not MCI, will be the ultimate decision-maker. Confidential information could flow from BT to MCI and the joint venture through the corporate decision-maker, Concert. Second, after the merger, the defendants have proposed to transfer the responsibility for maintaining BT's correspondent relationships with other United States telecommunications carriers to the subsidiary with responsibility for the merged entity's global network services business. The threat of misuse of confidential information is exacerbated when both wholesale and retail functions are housed in the same subsidiary. Third, as discussed above, there is no guarantee that either MCI or NewCo will be maintained as separate subsidiaries from BT post-merger. The merged entity could thwart the existing confidentiality provisions by reorganizing in such a way as to combine the functions of, or otherwise eliminate, the separate identities of BT, MCI and NewCo.

The proposed modified final judgment redresses these problems by prohibiting the parties from inappropriately using any confidential information they obtain from competitors. Specifically, the ultimate parent, Concert, as well as MCI, is prohibited from using any confidential, competitively sensitive information that BT (or any entity performing the same functions as BT) receives through its correspondent relationships and/or as a result of BT's provision of interconnection or other telecommunications services in the United Kingdom, for any purpose other than the purpose for which such information is obtained (or for which BT is otherwise authorized to use such information by the entity from whom such information is obtained) or to disclose such information to any person other than those persons, including supervisory persons, with a need to know such information.[12]

C. Diversion Provision

The complaint recognized that one of the ways BT could discriminate against MCI's competitors was by diverting some or all of its international switched traffic over private lines (a practice known as ''International Simple Resale'' or ''ISR'') to MCI. Because traffic sent over ISR is outside of the correspondent system, it is not subject to the FCC's rules regarding non-discrimination and proportionate return.[13] If other carriers could not respond to this diversion by diverting their own traffic, they would be left with larger net settlement deficits (due to the loss of BT's offsetting minutes), hence higher costs. BT's ability to divert ''could also give BT an increased incentive to keep international accounting rates above costs.'' CIS at 13–14. The existing Final Judgment sought to ameliorate these anticompetitive consequences by prohibiting BT and MCI from engaging in ISR until, *inter alia*, a selected list of other international telecommunications providers were granted ISR licenses by the UK government. The list of providers was included in Annex A to the existing Final Judgment.

Since the existing Final Judgment was entered, all of the international telecommunications providers listed in Annex A have been granted ISR licenses by the UK government. The grant of these licenses alleviates concerns that BT and MCI could bypass the correspondent system on the US-UK route by sending traffic to the US over ISR when other US carriers could not, thereby gaining an unfair competitive advantage. Because this condition has been fulfilled, it has no continuing legal effect and therefore, is deleted in the proposed Modified Final Judgment.

D. Visitorial Provisions

Section V of the final judgment allows the Department of Justice to monitor defendants' compliance by giving the Department access to records and documents of the defendants and also access to their personnel for interviews or to take sworn testimony. Under the original final judgment only MCI and NewCo were parties to the decree. In the modified final judgment, Concert has been made a party thus necessitating access by the Department to all of Concert's documents and personnel with information related to compliance issues. Consequently, where applicable, Concert has replaced NewCo in the visitorial provisions of the modified final judgment and language limiting the scope of these provisions to documents and information relating only to NewCo has been deleted. As modified, the visitorial provisions now grant the United States access in the United States to Concert's documents, and personnel, wherever located, for the purposes of determining or securing compliance with the modified final judgment.

E. Term of Decree

The final judgment was entered on September 29, 1994 and by its terms would have expired on September 29, 1999. The modified final judgment will expire 10 years after the entry of the existing final judgment. Although there have been significant changes in the regulatory scheme in the UK and new entry into some segments of the UK telecommunications industry, BT still retains a substantial share of the UK local telecommunications market and is expected to retain its existing market power for a significant period of time. Given BT's continued dominance in the UK as well as its increased interest in MCI, the term of the decree was extended in order to ensure that US consumers were protected from any anticompetitive consequences of the merger until the risk of discrimination by the defendants has been dissipated by the development of competitive markets in the UK.

IV. Other Concerns Related to the US–UK Route

In the course of the investigation of the proposed merger of BT and MCI, some competitors identified potential new ways in which the merged entity could discriminate and therefore lessen competition in the market for international traffic between the US and UK. Specifically, competitors have argued that the merged entity could deter or delay new facilities-based competitors on the US–UK route by refusing to sell requisite facilities to new entrants. These facilities include capacity on the transatlantic cable as well as interconnection and backhaul[14] services at both ends of the circuit. For the reasons discussed below, the Department has concluded that it is not necessary at present to modify the Final Judgment to resolve these issues.[15]

With respect to cable capacity, BT and MCI are major owners of capacity on transatlantic cables. Presently, BT and MCI are the first and third largest owners of capacity on the eastern end of TAT 12/13, the main cable used to provide international telecommunications services between the US and UK.[16] Indeed, BT controls approximately 43% of the eastern end capacity of the TAT 12/13 cable and MCI controls approximately 13%. As a result of the merger, the combined entity will own over 56% of this capacity.

The merged entity's increased ownership of TAT 12/13 cable capacity potentially strengthens its ability to disadvantage potential competitors by denying them access to needed facilities. Given the current shortage of capacity on the transatlantic

[12] The modified final judgment also requires the parties to provide the Department with advance notice of any subsequent reorganization that would combine the functions of, or otherwise eliminate, the separate identities of BT, MCI and NewCo. The provision also allows the Department to seek additional information prior to any such reorganization in order to determine whether it would impair the effectiveness of any of the confidentiality provisions and, if so, to seek further modifications of the decree.

[13] One of the problems with the ISP is that accounting rates are significantly above-cost. Prior to December 1996, only BT and Mercury Communications, Ltd. were allowed to provide the corresponding half-circuit in the UK. Since US carriers had to correspond with BT or Mercury in order to terminate traffic in the UK, they had no choice but to accept whatever accounting rate that BT and Mercury were offering. ISR was devised as a way of bypassing the ISP and thus, exerting downward pressure on the accounting rate.

[14] Backhaul can be defined as the transport of traffic from the international cable head-end to a point of interconnection with a carrier's domestic facilities.

[15] These concerns were not mentioned in the earlier CIS or included in the Complaint filed in June 1994, because, at that time, no one other than BT or Mercury could own facilities on the UK-end of the US–UK transatlantic route for the purposes of providing US–UK telecommunications services. On December 19, 1996, the UK government granted 45 new international facilities licenses (''IFLs'') thus allowing, for the first time in history, carriers other than BT and Mercury to become facilities-based providers of international telecommunications services in the UK. The UK indicated that it anticipated that these new licenses would put ''further downward pressure on international rates.'' See Press Notice of the United Kingdom's Department of Trade and Industry, dated December 19, 1996, attached hereto as Exhibit A.

[16] TAT 12/13 is the largest transatlantic cable and utilizes state-of-the-art self-restoring technology. For these reasons, it is the most desirable cable for the transmission US–UK international traffic.

cables,[17] such denials would be especially detrimental to the new IFLs recently licensed by the UK government who are currently seeking to enter the US–UK international route. As discussed above, it is this entry that is expected to create downward pressure on the US–UK accounting rate.

Modification of the existing final judgment is not required to prevent Concert from delaying or deterring IFLs access to the TAT 12/13 cable, however, because on May 14, 1997, the European Commission (''EC'') required, as a condition of its approval of the merger, that BT make TAT 12/13 cable capacity available to certain of these IFLs.[18] Under this condition, BT is required to divest all of the capacity it obtained through its merger with MCI. The Department believes that this divestiture will relieve any potential problem associated with TAT 12/13 cable capacity shortages, and BT's and MCI's increased control over existing capacity.

With respect to interconnection and backhaul, concerns have also been raised both with the Department and with the FCC about the availability of backhaul in the US.[19] Entrants seeking to provide international telecommunications services between the US and the UK may have difficulty in obtaining US backhaul facilities as currently, there are only three entities that own backhaul facilities from the TAT 12/13 cable head-ends located in the US: AT&T, MCI and Sprint. However, the Department believes that it is appropriate to allow the FCC to evaluate this issue in the first instance. As the Department stated in its CIS, if it subsequently received complaints about potential discrimination, it would not seek to modify the existing final judgment unless the injured parties first sought relief from the appropriate regulatory agency. See CIS at 32–33. This condition was included in order to minimize the risk that the final judgment would contain provisions that were inconsistent with regulatory requirements in the US or the UK.

Accordingly, the Department is not seeking to modify the decree at this time in order to redress potential concerns associated with backhaul facilities in the US. Rather, the Department will continue its investigation of the extent and nature of the problem, if any, raised by the merged entity's control of backhaul facilities in the U.S. If the Department later concludes that the merged entity could discriminate against new entrants by denying or delaying IFLs access to backhaul facilities in the U.S. and that these concerns are not alleviated by regulatory conditions placed on the parties by the FCC, the Department will seek a further modification of the Final Judgment.[20] The parties have agreed that they will not contest a modification that requires MCI to sell backhaul capacity, equivalent in quantity to the transatlantic capacity which the parties are required to offer pursuant to the EC's order, on reasonable terms and conditions, to certain IFLs or to those corresponding therewith.[21]

V. Modification Is In The Public Interest

Pursuant to Section VII of the Final Judgment, an uncontested motion to modify the final judgment ''shall be granted if the proposed modification is within the reaches of the public interest.'' See, e.g., *United States* versus *Western Electric Co.,* 993 F.2d 1572, 1576 (D.D.C. 1993) (citing *United States* versus *Western Electric Co.,* 900 F.2d 283, 307 (D.D.C. 1990) (hereinafter Triennial Review)). In the context of an uncontested motion to modify an existing consent decree, the ''public interest'' standard ''directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today.''' *United States* versus *Western Electric Co.,* 993 F.2d at 1576 (quoting Triennial Review, 900 F.2d at 307) (emphasis in original). Thus, ''it is not up to the court to reject an agreed-on change simply because the proposed diverged from its view of the public interest. Rather, the court [is] bound to accept any modification that the Department (with the consent of the other parties, we repeat) reasonably regarded as advancing the public interest.'' *United States* versus *Western Electric Co.,* 993 F.2d at 1576. See also *United States* versus *Microsoft Corp.,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995); *United States* versus *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *United States* versus *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; *United States* versus *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978). See also Microsoft, 56 F.3d at 1461.

V. Conclusion

For all of the foregoing reasons, the proposed modification is in the public interest, and the United States' motion for modification of the final judgment should be granted.

Respectfully submitted,

Joel I. Klein,

Acting Assistant Attorney General.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Charles E. Biggio,

Senior Counsel.

Constance K. Robinson,

Director of Operations.

Dated: July 7, 1997.

Donald J. Russell,

Chief, Telecommunications Task Force.

Nancy M. Goodman,

Assistant Chief, Telecommunications Task Force.

Yvette Benguerel,

DC Bar # 442452,

David Myers,

Attorneys.

United States Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.

Exhibits A through C have not been reprinted here, however they may be inspected in Room 215, Department of Justice, 325 7th Street, N.W., Washington, D.C. and at the Office of the Clerk of the United States District Court for the District of Columbia.

July 2, 1997.

By Messenger

Ms. Yvette Benguerel,

Attorney, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC. 20001

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[17] On December 20, 1996, the day after the international facilities licenses were granted, MCI put in a demand for 252 circuits on the TAT 12/13 cable. MCI's purchase triggered other co-owners' standing orders (BT, for instance, received 155 circuits and AT&T acquired 205), exhausting the TAT 12/13 cable capacity and foreclosing access to TAT 12/13 cable capacity to all but a few IFLs.

The transatlantic capacity shortage is expected to be a short-term problem. A new planned cable, Gemini, is projected to come into service in March 1998 (the southern leg) and September 1998 (the northern leg). Moreover, the TAT 12/13 co-owners recently voted to deploy wave division multiplexing, which will result in a doubling of the capacity of the existing TAT 12/13 cable. Finally, another new cable known as Atlantic Crossing #1 is also under development. The two legs of the Atlantic Crossing #1 are planned to begin service in May 1998 and November 1998, respectively.

[18] See Statement of the European Commission re: No. IP/97/406, dated May 14, 1997, attached hereto as Exhibit B.

[19] During the course of its investigation, the Department also examined interconnection in the US as well as interconnection and backhaul from the TAT 12/13 cable head-end located in the UK in order to determine whether any of these facilities constitute bottlenecks through which the merged entity could exert its market power to deter or delay new entry. After conducting numerous interviews with the industry as well as US and UK regulators, the Department is satisfied at this time that the reporting requirements of the decree, along with regulations currently or soon to be put into place in the US and the UK, are sufficient to alleviate any competitive concerns raised with respect to the merged entity's control over any of these facilities. Accordingly, the Department proposes taking no further relief in this proposed Modified Final Judgment with respect to interconnection in the US or the UK or backhaul from the TAT 12/13 cable head-end located in the UK.

[20] Again, as with the transatlantic cable, any problem with backhaul capacity is expected to be short-term. New entry into the U.S. backhaul market could occur in 2–3 years.

[21] See Letter from Anthony C. Epstein To Yvette Benguerel, dated July 1, 1997, and Letter from David J. Saylor and Anthony C. Epstein to Yvette Benguerel, dated July 2, 1997, attached hereto as Exhibits C and D, respectively.

Re. *United States* v. *MCI Communications Corporation and Concert Communications Company, Civil Action No. 94–1317–TFH (D.D.C)*

Dear Ms. Benguerel: MCI Communications Corporation (''MCI'') and British Telecommunications plc (''BT''), through their undersigned counsel, submit this letter with respect to their proposed merger to form Concert plc (''Concert'').

As set forth in the attached letter that MCI will send to the Federal Communications Commission (''FCC'') on the date the proposed Modified Final Judgment is filed with the Court, MCI and BT do not object to the inclusion of certain conditions concerning the provision of backhaul facilities to the western TAT 12/13 cable head-ends in any FCC order approving the transfer of control of various licenses in connection with the proposed merger.

Exhibit D

MCI and BT understand and agree that, if for any reason any FCC order approving the transfer of control does not incorporate the conditions set forth in the attached letter, the Department, in its sole discretion, may seek a further modification of the final judgment in the above-captioned case that incorporates any or all of these requirements. MCI and BT, on behalf of their successor Concert, further agree not to contest any such motion under Section VII of the decree. MCI and BT understand that the Department has concluded that the Tunney Act, 15 U.S.C. § 16(b–h), does not apply to modifications of existing consent decrees, but that the Department would follow Tunney Act-like procedures with respect to any such motion for further modification under Section VII.

The parties make these commitments in order to achieve a prompt resolution of this matter and without agreeing that they are necessary to comply with any legal duty.

Respectfully submitted,

David J. Saylor,

Counsel for BT.

Anthony C. Epstein,

Counsel for MCI.

July 7, 1997.

Peter F. Cowhey,

Chief, International Bureau, Federal Communications Commission, 2000 M St. NW—Room 800, Washington, D.C. 20554.

Re: EX PARTE in Merger of British Telecommunications plc and MCI Communications Corporation, General Docket No. 96–245

Dear Mr. Cowhey: On behalf of MCI Communications Corporation (''MCI'') and British Telecommunications plc (''BT''), we are by this letter stating a commitment to offer a backhaul service, as described below, as a condition of transferring the licenses and authorizations at issue in this docket, subject to the Commission's determination that the commitments are consistent with the Communications Act. MCI and BT (''the parties'') make these commitments in order to achieve a prompt resolution of this matter and without agreeing that these commitments are necessary to comply with any legal duty.

MCI and BT have no objection to the following requirements in any Commission order approving the above-captioned merger:

a. MCI and Concert will make available backhaul capacity equivalent to a total of 147E–1 circuits, pursuant to the schedule described below, between the TAT 12/13 cable head-ends located in the United States and a point or points served by MCI's existing backhaul facilities.

b. MCI and Concert will make these circuits available in four phases: capacity equivalent to a total of 63E–1 circuits available on the date that the Commission releases its order approving the merger; capacity equivalent to a total of 42 additional ET–1 circuits available within 30 days after release of the order; capacity equivalent to 21 additional E–1 circuits available within 60 days after release of the order; and capacity equivalent to 21 additional E–1 circuits available within 90 days after release of the order.

c. This backhaul capacity will be offered on a first-come, first-served basis to any carrier (directly or through its authorized representative), which is not a U.S. cable head-end owner or collocated at a U.S. cable head-end, that purchased from MCI, BT, or Concert the indefeasible right to use the U.S. end of the 147 whole circuits on TAT 12/13 that the parties offered pursuant to the terms of the decision of the European Union dated May 11, 1997, relating to the proposed merger between MCI and BT. Each such carrier shall be eligible to purchase an amount of backhaul capacity equivalent to the capacity it purchased on TAT 12/13 pursuant to the terms of this decision, and for use in connection with the capacity that it purchased on TAT 12/13 pursuant to this decision.

d. These circuits will be offered in each phase as a priority as DS–3 circuits and then as E–1 circuits. If more DS–3 or E–1 circuits are ordered simultaneously than are available in the next phase, MCI will select on a random basis the order or orders to be filled in that phase and will fill the remaining orders in the following phase. No later than the day following the release of the Commission order approving the merger, MCI will send to eligible carriers a written offer for backhaul service that includes all the terms and conditions described in this letter, including specific recurring and nonrecurring charges. Any order will be deemed received on the business day it is physically received by MCI, unless it is received less than fourteen days after the date of MCI's written offer, in which case it will be deemed received on the date fourteen days after the date of that letter.

e. The obligation to make these circuits available shall end two years after the date of the release of the order.

f. MCI and Concert will make these backhaul circuits available by carrier-to-carrier contract for terms of one, two, three, four, and five years pursuant to terms and conditions, including prices for the interoffice channel component, that are substantially the same as those reflected in MCI's then-effective interstate tariff for TDS 45 service for DS–3 backhaul circuits and in MCI's then-effective interstate tariff for TDS 1.5 service for E–1 backhaul circuits, adjusted to recover different costs related to the provision of backhaul services. MCI will make circuits ready for use by the requesting carrier within a reasonable period of time. The contracts will not unreasonably restrict the ability of any carrier to resell these circuits.

Sincerely,

Mary L. Brown.

United States District Court for the District of Columbia

[Civil Action No. 94–1317 (TFH)]

United States of America, Plaintiff, v. Concert PLC and MCI Communications Corporation, 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 trail 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 service 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 rule 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 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 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 IIA.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 than 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 authorization 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 these 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 CFR § 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, DC., 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 substant ive 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 foresee-ability 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 form 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.

United States District Court for the District of Columbia

[Civil Action No. 94–1317 (TFH]

United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company (''NewCo''), Defendants

United States' Explanation of Procedures

The United States submits this short memorandum summarizing the procedures

regarding the Court's entry of the proposed modified final judgment. Although the United States does not believe that this modified final judgment is subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), it intends to follow procedures similar to those set out in this Act in order to allow for interested parties to submit comments to the Court prior to the Court's determination of whether the entry of the modified judgment is in the public interest.

1. Today, the United States has filed a modified final judgment, a Stipulation pursuant to which the parties have consented to entry of the modified final judgment and a Memorandum In Support Of Modification explaining the proposed modifications and the reasons therefor.

2. The United States intends to publish the proposed modified final judgment and its Memorandum In Support Of Modification in the **Federal Register** and in certain newspapers at least 60 days prior to the time that the United States files a motion for the entry of the proposed modified final judgment. The notice will inform members of the public that they may submit comments concerning the modified final judgment to the United States Department of Justice, Antitrust Division.

3. During the sixty-day period, the United States will consider, and at the close of that period respond to, any comments received.

4. After the expiration of the sixty-day period, the United States will file with the Court the comments, the United States' response and a Motion for Entry of the Modified Final Judgment (unless the United States has decided to withdraw its consent to entry of the Modified Final Judgment, as permitted by Paragraph 2 of the Stipulation).

5. At that time, or any time thereafter, the Court may enter the modified final judgment without a hearing, if it finds that the modified final judgment is in the public interest.

Dated: July 7, 1997.

Respectfully submitted,

Yvette Benguerel,

D.C. Bar #442452.

U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.

[FR Doc. 97–18289 Filed 7–11–97; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Ninety-day emergency extension request to a currently approved emergency extension for a revision of a currently approved collection; Application for Asylum and Withholding of Removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance/approval in accordance with the Paperwork Reduction Act of 1995. Additionally, this notice will serve as the 60-day public notification for comments as required by the Paperwork Reduction Act of 1995. The new streamlined information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 12, 1997.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection: Revision of a currently approved collection.*

(2) *Title of the Form/Collection:* Application for Asylum and Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is used by the INS and EOIR to access eligibility of persons applying for asylum and withholding of deportation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at three and one half (3.16) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 252,800 annual burden hours.

Comments and questions about the emergency extension of this information collection should be forwarded to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 9, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

Amendments to Form I–589 Application for Asylum and for Withholding of Removal

In an effort to streamline the Form I–589, Application for Asylum and for Withholding of Removal (OMB No. 1115–0086), the Immigration and Naturalization Service, Office of International Affairs established a Working Group. The Working Group consisted of input from members from the following programs: Executive Office for Immigration Review (EOIR); Office of International Affairs; Office of General Counsel; Benefits Division; Field Manual Project and the Policy Directives and Instructions Branch. Outlined below are the findings as a result of the I–589 Working Group. The Form I–589 has been revised accordingly.