

telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any particular wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 5, 1996. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will prepare an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled. The transcript will be available to members of the public at the cost of reproduction.

**SUPPLEMENTARY INFORMATION:** OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences

(GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (P.L. 99-204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

**FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT:**

Harvey A. Himberg, Financial Management and Statutory Review Department, Overseas Private Investment Corporation, 1100 New York Avenue NW Washington, DC 20527 (202) 336-8614 or by facsimile at (202) 218-0177.

Dated: November 13, 1996.

Richard C. Horanburg,

*Department of Investment Development.*

[FR Doc. 96-29461 Filed 11-15-96; 8:45 am]

BILLING CODE 3210-01-M

**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**United States v. U S West, Inc. & Continental Cablevision, Inc.; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment has been filed with the United States District Court for the District of Columbia in *United States of America v. U S West, Inc. and Continental Cablevision, Inc.*, Civil Action 96-2529 (TPJ).

The Complaint in this case alleged that the proposed acquisition of Continental Cablevision, Inc. by U S West, Inc. would tend to lessen competition substantially in the sale of dedicated services in areas within Denver, Colorado; Omaha, Nebraska; Phoenix, Arizona; and Seattle, Washington in which Teleport Communications Group, Inc. ("TCG") provides such services, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Continental owns approximately 11% of TCG. Under the terms of the

proposed Final Judgment, US WEST must reduce its share of TCG to no more than 10% by June 30, 1997. US WEST must divest the remaining interest in TCG by December 31, 1998. The proposed Final Judgment also prohibits US WEST from appointing members to or participating in meetings of TCG's Board of Directors and contains other provisions barring US WEST's access to confidential TCG information pending completion of the divestitures.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (telephone: (202) 514-5621).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

United States District Court for the District of Columbia

*United States of America, Plaintiff, v. U S West, Inc. and Continental Cablevision, Inc.*, Defendants. No. 96 2529; (Antitrust) filed: November 5, 1996.

Judge Thomas Penfield Jackson

**Stipulation**

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

A. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), 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 proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

B. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court; provided, however, that U S West's obligation to divest the TCG Interest shall not arise until the Final Judgment is entered, except that the manner and timing of any disposition of the TCG Interest by U S West before or after the Final Judgment's entry shall be

done as provided in the proposed Final Judgment.

C. In the event plaintiff withdraws its consent, as provided in paragraph (A) above, or if the proposed 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.

D. Defendants represent that the divestitures contemplated by the proposed Final Judgment can and will be made and that defendants shall raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions in the Final Judgment.

E. All parties agree that this agreement can be signed in multiple counter-parts.

For the Plaintiff:

David Turetsky,

*Deputy Assistant Attorney General.*

Donald J. Russell,

*Chief, Telecommunications Task Force.*

Charles E. Biggio,

*Senior Counsel.*

Nancy M. Goodman,

*Assistant Chief, Telecommunications Task Force.*

Yvette Benguerel,

*Attorney, Telecommunications Task Force.*

Susanna Zwerling,

*Attorney, Telecommunications Task Force.*

Brent E. Marshall,

*Attorney, Telecommunications Task Force.*

U.S. Department of Justice, Antitrust

Division, 555 4th Street, N.W., Room 8104,  
Washington, DC 20001, (202) 514-5808.

Dated: \_\_\_\_\_.

For the Defendants:

James Anderson,

*Vice President & Treasurer, U S West, Inc.*

Dated: \_\_\_\_\_.

Robert J. Sachs,

*Senior Vice President, Corporate & Legal  
Continental Cablevision, Inc.*

Dated: \_\_\_\_\_.

## Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint herein on November 4, 1996, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein:

And whereas, defendants have agreed to be bound by the provisions of this

Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of certain assets and the imposition of related injunctive relief to assure that competition is not substantially lessened;

And whereas, plaintiff requires U S WEST, Inc. to make certain divestitures for the purpose of remedying the lack of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein below;

And, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, *it is hereby ordered, adjudged, and decreed* as follows:

## I. Jurisdiction

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

## II. Definitions

A. "U S WEST" means defendant U S WEST, Inc., a Delaware corporation with its headquarters in Englewood, Colorado and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of U S WEST.

B. "U S WEST Communications" means U S WEST Communications, Inc., a subsidiary of U S WEST, Inc., and its successors and assigns, its subsidiaries and directors, officers, managers, agents and employees acting for it or on its behalf.

C. "Continental" means defendant Continental Cablevision, Inc., a Delaware corporation with its headquarters in Boston, Massachusetts, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Continental.

D. "TCG" means Telephone Communications Group Inc., a Delaware corporation with its headquarters in New York, New York.

E. "TCG Interest" means any and all of the TCG Common Stock owned by Continental as of June 27, 1996, including any securities into which such stock may subsequently be

converted. "TCG Common Stock" means TCG Class A Common Stock, with a par value of \$.01/share, and TCG Class B Common Stock, with a par value of \$.01/share.

F. "U S WEST/Continental Merger" means the merger of Continental into U S WEST, as contemplated by the U S WEST/Continental Merger Agreement.

G. "U S WEST/Continental Merger Agreement" means the Agreement and Plan of Merger dated as of February 27, 1996, as amended, with respect to the merger of Continental into U S WEST.

H. "U S WEST Communications Region" means the collective area in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming in which U S WEST Communications is a local exchange carrier.

## III. Applicability

A. The provisions of this Final Judgment apply to each of the defendants, its successors and assigns, its subsidiaries, directors, officers, managers, agents, employees and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all the assets of the entity or entities holding the TCG Interest at the time of such sale or disposition, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment: provided, however, that this obligation shall not apply in the case of the divestiture required by Section IV or V hereinbelow.

## IV. Divestiture of TCG Interest

A. U S WEST is hereby ordered and directed, in accordance with the terms of this Final Judgment, on or before June 30, 1997, to divest a portion of the TCG Interest sufficient to cause U S WEST to own less than 10% of the outstanding shares of TCG Common Stock. U S WEST is hereby further ordered and directed, in accordance with the terms of this Final Judgment, on or before December 31, 1998, to divest any remaining portion of the TCG Interest. Defendants agree to use their best efforts to accomplish the divestitures as set forth in this Final Judgment as expeditiously as possible.

B. Unless plaintiff otherwise consents in writing, the divestitures made pursuant to Section IV or V of this Final Judgment, shall be made (i) to a

purchaser or purchasers that, in the plaintiff's sole judgment, are financially sound and have the intention of maintaining TCG as a viable competitor and (ii) in a manner that, in plaintiff's sole judgment, shall not injure TCG.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the TCG Interest. The defendants shall inform any person making a bona fide inquiry regarding such a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment; provided, however, that the defendants are not obligated to provide such notice to any purchaser(s) of TCG Common Stock in any proposed sale by U S WEST or its broker if the identity of the ultimate purchaser(s) of the shares is unknown to U S WEST at the time of such sale. Defendants shall also offer to furnish all bona fide prospective purchasers in a proposed private sale all current publicly-available information filed with the Securities and Exchange Commission ("SEC") regarding the TCG Interest. Defendants shall make available such information to plaintiff at the same time that such information is delivered by defendants to any other person.

D. Defendants shall not finance any part of any divestiture required by this Final Judgment without the prior written consent of the Department of Justice.

#### *V. Appointment of Trustee*

A. In the event that U S WEST has not divested the TCG Interest within the time periods specified in Section IV of this Final Judgment, the Court shall appoint, on application of the plaintiff, a trustee selected by the plaintiff to effect the divestiture of any remaining portion of the TCG Interest not divested within the time periods set forth in this Final Judgment.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the TCG Interest. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have other powers as the Court shall deem appropriate. Subject to Section V.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the

divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser or in a manner acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the affected assets or interest by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendants and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the affected assets or interest and shall use their best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the defendants' personnel, books, records, and facilities related to the TCG Interest. Defendants shall permit prospective purchasers of the TCG Interest to have access to any and all financial or operational information in their possession as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of any of the TCG Interest as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be

filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any or all of the TCG Interest and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest any or all of the TCG Interest.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate, which shall, if necessary, include extending the term of the trustee's appointment.

#### *VI. Notification*

A. Within two (2) business days following execution of a definitive agreement to effect, in whole or in part, any proposed divestiture by private sale(s) pursuant to Sections IV or V of this Final Judgment, or, in the event such divestitures are proposed to be made through transactions in the public securities markets, (i) within two (2) business days following defendants' request to convert any Class B Common Stock to Class A Common Stock or (ii) prior to the filing of any registration statement with the SEC for a proposed divestiture of such shares, U S WEST or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture or conversion, as the case may be. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who theretofore offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are

the subject of the binding contract or public offering, together with full details of same. In the case of conversion, U S WEST or the trustee shall include in such notice the then proposed manner in which it intends to effect the divestiture of such converted shares.

B. Except in the case of any proposed sale of TCG Common Stock by U S WEST or its broker wherein the identity of the ultimate purchaser(s) of the shares is unknown to U S WEST at the time of such sale, within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture and the proposed purchaser or purchasers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. In the event of any proposed public sale of TCG Common Stock by U S WEST or its broker wherein the identity of the ultimate purchaser(s) of the shares is unknown to U S WEST at the time of such sale, within three (3) days of receiving notice of defendants' request to convert the TCG Class B shares to Class A shares, plaintiff may request from defendants, any third party, or the trustee if applicable, additional information concerning the proposed divestiture(s). Defendants and the trustee shall furnish any additional information requested within three (3) days of the receipt of the request unless the parties otherwise agree. Within ten (10) days of the receipt of the notice or within four (4) days after plaintiff has been provided the additional information from defendants, any third party, or the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed plan of divestiture(s). If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.B. of this Final

Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or objection by plaintiff, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V.B., a divestiture proposed under Section IV or V shall not be consummated unless approved by the Court.

#### VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed, whether pursuant to Section IV or V of this Final Judgment, U S West shall deliver to plaintiff an affidavit as to the fact and manner of defendant's compliance with the relevant section(s) of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any or all of the TCG Interest, and shall describe in detail each contact with any such person during that period.

B. Defendants shall preserve all records of all efforts made to preserve and divest any or all of the TCG Interest until the termination of this Final Judgment.

#### VIII. Confidentiality

Until the divestitures required by the Final Judgment have been accomplished:

A. U S WEST shall treat the TCG Interest as a passive investment, and shall hold the TCG Interest separate and apart from the activities and interests of U S West Communications.

B. Defendants shall not elect, appoint, or otherwise designate any directors to the TCG Board of Directors.

C. Defendants and any representative of defendants shall not participate in, be present at (whether in person, by telecommunications link, or otherwise), or receive any notes, minutes, or agendas of or any documents distributed in connection with any non-public meeting of the TCG Board of Directors or any committee thereof, or any other governing body of TCG. For purposes of this provision, the term "meeting" includes any action taken by consent of the relevant directors in lieu of a meeting.

D. Defendants shall not be a party to any communication of any non-public strategic or confidential information

concerning TCG or any of its subsidiaries or affiliates; provided however, that nothing in this Final Judgment shall preclude or restrict defendants from being a party to communications relating to the negotiation or conduct of arms-length business transactions between defendants and TCG or any of its subsidiaries or affiliates, relating to 1) the provision of facilities and services outside the U S WEST Communications Region and 2) the provision of interconnection and related services between U S WEST Communications and TCG or any of its subsidiaries or affiliates, within the U S WEST Communications Region; provided further that outside counsel and financial advisors retained by U S WEST or Continental in conjunction with the divestiture of TCG Common Stock required by section IV.A. hereinabove may receive such information as is necessary to effectuate those transactions and provided further, that no such information shall be shared with Continental or U S WEST.

E. Defendants shall appoint a person or persons who will be responsible for defendants' compliance with section VII of this Final Judgment.

#### IX. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hour of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath

if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify 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 defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### *X. Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

#### *XI. Termination*

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

#### *XII. Public Interest*

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_.

United States District Judge.

#### Competitive Impact Statement

The United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

#### *I. Nature and Purpose of the Proceeding*

The plaintiff filed a civil antitrust complaint on November 4, 1996, alleging that the proposed acquisition of Continental Cablevision, Inc. ("Continental") by U S WEST, Inc. ("U S West") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. U S WEST is the dominant provider of local telecommunications services, including dedicated services, within its telephone service area in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Continental is the third largest cable system operator in the United States. At the time the acquisition was announced, Continental owned 20% of Teleport Communications Group, Inc. ("TCG"), a competitive access provider ("CAP") providing dedicated services in various cities across the nation, including Denver, Omaha, Phoenix and Seattle.

The complaint alleges that U S WEST's acquisition of Continental's interest in TCG would substantially lessen competition in the sale of dedicated services in the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides such services. The prayer for relief seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and (2) a preliminary and permanent injunction preventing U S WEST and Continental from carrying out the proposed merger.

Shortly before this complaint was filed, a proposed settlement was reached that requires defendants to divest Continental's interest in TCG by December 31, 1998. Continental had previously reduced its share in TCG from the 20% it owned when the acquisition was announced, to approximately 11%. Continental also relinquished its seats on TCG's Board of Directors. In light of these events, the Department concluded that there was no competition-based reason to seek to prohibit U S WEST's acquisition of Continental. A Stipulation and proposed Final Judgment embodying the settlement were filed simultaneously with the complaint.

The proposed Final Judgment orders U S WEST, on or before June 30, 1997, to divest a portion of the shares of TCG Common Stock it will acquire from Continental sufficient to reduce U S WEST's interest to less than 10% of the outstanding shares of TCG Common Stock. The proposed Final Judgment further orders U S WEST to divest its remaining shares of TCG Common Stock on or before December 31, 1998. If U S

WEST does not divest the TCG Common Stock during the divestiture period, the Court may appoint a trustee to sell the stock. The proposed Final Judgment also prohibits defendants from appointing any members to or participating in meetings of the TCG Board of Directors and contains other provisions designed to bar U S WEST's access to highly sensitive TCG business information. Further, the proposed Final Judgment requires U S WEST to treat the TCG interest as a passive investment, and to hold the TCG interest separate and apart from the activities and interests of U S WEST. Finally, the proposed Final Judgment requires U S WEST to give the United States prior notice of any proposed divestiture, whether pursuant to a public or private sale, to insure that the divestiture is made to an appropriate purchaser or purchasers and in a manner that will not harm TCG.

The United States and U S WEST have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

#### *II. Description of the Events Giving Rise to the Alleged Violation*

##### *A. The Defendants and the Proposed Transaction*

Defendant U S WEST is a Delaware corporation with its headquarters in Englewood, Colorado. U S WEST is one of the seven Regional Bell Operating Companies ("RBOCs"). It is the dominant provider of local telecommunications services, including "dedicated services" (defined as special access and local private line services) within its telephone service area in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. In 1995, U S WEST reported total revenues of approximately \$11.7 billion.

Continental is a Delaware corporation with its headquarters in Boston, Massachusetts. Continental is the third largest cable system operator in the nation. Continental owns cable systems located in and around St. Paul, Minnesota, as well as Twin Falls, Idaho

and Keokuk, Iowa.<sup>1</sup> Continental also has a partial interest in TCG. In 1995, Continental's total revenues were approximately \$1.4 billion. TCG's 1995 revenues totaled approximately \$184.9 million.

On February 27, 1996, U S WEST entered into an agreement to purchase all of the stock and assets of Continental for approximately \$10.8 billion.<sup>2</sup> At the time the acquisition was announced, Continental owned 20% of TCG and held two seats on the TCG Board of Directors. Therefore, Continental reduced its share of TCG to 11% and relinquished its Board seats.

#### B. Sale of Dedicated Services

The complaint alleges that the provision of dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG has constructed facilities constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. Dedicated services include "special access" (the provision of dedicated lines carrying traffic from the premises of high-volume end-users to the end-user's long distance carrier, or between a given long distance carrier's points-of-presence ("POPs")); and "local private line services" (dedicated lines connecting multiple locations of an end-user within a given metropolitan area).

Initially, dedicated services were provided only by the RBOCs, GTE and other local exchange carriers ("LECs"). The development of fiber optics and digital electronic technology as well as changes in regulation, has enabled new dedicated service providers to emerge. The first of these new dedicated service providers were designated "competitive access providers" ("CAPs") by the FCC, because they provided the means for long distance carriers (such as AT&T, MCI and Sprint) and high-volume end-users (such as large and medium-size businesses) to bypass the monopoly LEC's facilities. The emergence of CAPs has generally resulted in lower rates and/or higher quality services in those areas in which CAPs have constructed their networks.

The complaint alleges that the provision of dedicated services are a relevant product market. There are no other economically comparable alternatives available to a dedicated services customer. A small, but significant non-transitory increase in the price of dedicated services would not cause enough customers to switch to

other telecommunications services to make the price increase unprofitable. The complaint alleges the geographic markets are the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services. Dedicated services are local by definition. Consumers of dedicated services in a given metropolitan area cannot turn to providers of dedicated services that do not provide such services in that metropolitan area. Thus, consumers of dedicated services would not turn to dedicated services providers located outside of their area in response to a small, but significant non-transitory price increase for dedicated services in the given metropolitan area.

#### C. Anticompetitive Consequence of the Proposed Merger

The complaint alleges that U S WEST's proposed acquisition of Continental (which would result in U S WEST's acquisition of Continental's interest in TCG) would lessen competition substantially in the provision of dedicated services in the areas of Denver, Omaha, Phoenix and Seattle in which TCG provides such services.

U S WEST is the dominant provider of dedicated services within the relevant geographic markets. An acquisition by U S WEST of Continental's interest in TCG in these markets would lessen competition between U S WEST and TCG, leading to higher prices and/or reduced quality. U S WEST's competitive strategy, including its pricing and output decisions, will be influenced by its partial ownership of a significant direct competitor. Because of its partial ownership of TCG, losses of customers to TCG would not be as detrimental to U S WEST, and it would have less incentive to lower prices or interest quality to meet the emerging competition from CAPs in these areas.

Additionally, as a Class B voting shareholder of TCG, U S WEST is entitled to receive advance and detailed notice of significant TCG business transactions, including TCG's plans for proprietary information strategically to raise the cost, increase the risk, and reduce the profitability of entry and extension by TCG, thereby limiting competitive entry and expansion that would serve to undermine U S WEST's dominance of these markets.

There are no effective substitutes for dedicated services. A price increase for dedicated services resulting from this acquisition would not be defeated by consumers' switching to other telecommunication services or providers of dedicated services located outside of the relevant geographic areas.

Moreover, entry into the relevant markets sufficient to mitigate the competitive harm resulting from this acquisition is unlikely within the next two years.

For these reasons, the Department concludes that the merger as proposed would substantially lessen competition in the provision of dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services, and would result in increased rates and/or reduced quality for dedicated services in these areas, in violation of Section 7 of the Clayton Act.<sup>3</sup>

#### II. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services. It requires U S WEST to divest all of

<sup>3</sup> TCG also competes directly with U S WEST in the provision of local exchange services in those areas in which TCG has the necessary facilities and in which it has been or has applied to become certified as a local exchange carrier, e.g., Seattle. Because the proposed Final Judgment order U S WEST to divest all of the Common Stock of TCG it acquires from Continental, it remedies any other competitive harm resulting from U S WEST's partial ownership of TCG. Accordingly, it is unnecessary to determine whether the acquisition would lessen competition in violation of Section 7 of the Clayton Act in any other markets in which U S WEST competes with TCG.

In addition, the Memorandum Opinion and Order (the "Order"), issued by the Federal Communications Commission (the "FCC") on October 18, 1996, requires U S WEST to divest Continental's wholly-owned cable systems located within U S WEST's telephone service area by August 15, 1997, and to divest Continental's passive, minority interest in the in-region systems owned by Insight Communications Company, LP by April 1, 1998. On October 24, 1996, the FCC issued another order clarifying that the wholly-owned systems which U S WEST is obligated to divest by August 15, 1997, include "nine cable systems serving about 280,000 subscribers in and around St. Paul, Minnesota," which systems Continental acquired from Meredith-New Heritage Partnership after the U S WEST/Continental transaction was first entered into. These divestitures are required by Section 652(a) of the Communications Act of 1934, as amended, which prohibits any local exchange carrier from purchasing or otherwise acquiring "directly or indirectly more than a 10% financial interest, or any management interest, in any cable operator providing cable service within the 'local exchange carrier's telephone service area.'" 47 U.S.C. § 572(a). Section 652 was enacted as part of the Telecommunications Act of 1996. The terms of the FCC's Order regarding the divestiture of the in-region systems obviates the need for the Department independently to determine whether the U S WEST/Continental transaction would violate Section 7 of the Clayton Act. The divestiture of the in-region systems by a date certain, pursuant to the Order, as amended, is substantially similar to the divestiture relief the Department would seek in the event the U S WEST/Continental transaction was deemed to violate the Clayton Act, and thus will prevent any lessening of competition that might have resulted from the transaction.

<sup>1</sup> Continental also has a passive 34% interest in Insight Communications Company, LP, which owns cable systems located in Arizona and Utah.

<sup>2</sup> The deal was subsequently amended and revalued at \$11.8 billion.

Continental's interest in TCG, a direct competitor of U S WEST, in a manner and over a period that will prevent short-term opportunities for anticompetitive behavior while also minimizing any disruption to TCG. The divestiture will help ensure that TCG will remain a strong competitor to U S WEST and that rates for dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services do not increase as a result of the acquisition.

The proposed Final Judgment orders U S WEST, on or before June 30, 1997, to divest enough shares of TCG Common Stock sufficient to cause U S WEST to own less than 10% of the outstanding shares of TCG Common Stock. The proposed Final Judgment further orders U S WEST to divest any remaining shares of TCG Common Stock on or before December 31, 1998. If U S WEST does not divest the TCG Common Stock during the divestiture periods, the Court may appoint a trustee to sell the stock. If a trustee is appointed, the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the divestiture(s) and pursuant to a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture(s) and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture(s) ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture(s) within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture(s), (2) the reasons, in the trustee's judgment, why the required divestiture(s) has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires U S WEST to treat the TCG interest as a passive investment, and to hold the TCG interest separate and apart from the activities and interests of U S WEST. The Judgment also prohibits defendants from appointing any members to or participating in meetings of the TCG Board of Directors and contains other

provisions designed to bar U S WEST's access to highly sensitive TCG business information.

Finally, the proposed Final Judgment requires U S WEST to give the United States prior notice of any proposed divestiture(s), whether pursuant to a public or private sale, to insure that the divestiture(s) is made to an appropriate purchaser or purchasers and in a manner that will not harm TCG. If the plaintiff, in its sole judgment, objects to any purchaser(s) and/or the manner in which the divestiture is being carried out, the defendants shall not consummate the divestiture(s) unless approved by the Court.

#### *IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

#### *V. Procedures Available for Modification of the Proposed Final Judgment*

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the

Court and published in the Federal Register.

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 555 4th Street, N.W., Room 8104, Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### *VI. Alternatives to the Proposed Final Judgment*

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the divestiture of the TCG Common Stock and other relief contained in the proposed Final Judgment will preserve viable competition in the provision of dedicated services in areas within Denver, Omaha, Phoenix and Seattle in which TCG provides dedicated services. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

#### *VII. Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the



specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>4</sup> Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460-62. 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 the 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.<sup>5</sup>

<sup>4</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), reprinted in U.S.C.A.N. 6535, 6538.

<sup>5</sup> *Bechtel*, 648 F.2d at 666 (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978), *Gillette*, 406 F. Supp. at 716. See also

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" <sup>6</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Donald J. Russell,

Chief, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 8104, Washington, DC 20001, (202) 514-5621.

Dated: November 5, 1996.

[FR Doc. 96-29320 Filed 11-15-96; 8:45 am]

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#### Federal Bureau of Investigation

RIN 1105-AA39

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Correction.

In notice document 96-28703, beginning on page 57901, in the issue of Friday, November 8, 1996, make the following corrections:

On page 57901, in the first paragraph of the notice, "April 10, 1996" should read "May 10, 1996."

On page 57901, in the second paragraph of the notice, "January 7, 1996" should read "December 8, 1996."

*Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

<sup>6</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716, *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Dated: November 14, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96-29574 Filed 11-15-96; 8:45 am]

BILLING CODE 4410-02-M

#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-489 AND 50-499]

#### Houston Lighting and Power Company; City Public Service Board of San Antonio; Central Power and Light Company; City of Austin, Texas and South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the transfer of Facility Operating License Nos. NPF-76 and NPF-80, issued to Houston Lighting & Power Company, et al., (HL&P, the licensee) with respect to operating authority thereunder for the South Texas Project, located in Matagorda County, Texas, and considering issuance of conforming amendments under 10 CFR 50.90.

#### Environmental Assessment

#### Identification of the Proposed Action

The proposed action would approve the transfer of operating authority under the licenses to a new operating company to allow it to use and operate South Texas Project Units 1 and 2 (STP) and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations included in the current operating licenses. The proposed action would also approve issuance of license amendments reflecting the transfer of operating authority. The operating company would be formed by the owners to become the licensed operator for STP and would have exclusive control over the operation and maintenance of the facility.

Under the proposed arrangement, ownership of STP will remain unchanged with each owner retaining its current ownership interest. The new operating company will not own any portion of STP. Likewise, the owners' entitlement to capacity and energy from STP will not be affected by the proposed change in operating responsibility for STP from HL&P to the new operating company. The owners will continue to provide all funds for the operation, maintenance, and decommissioning by the operating company of STP. The