

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 v. 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 proposal 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 v. Western Electric Co.*, 993 F.2d at 1576. *See also United States v. Microsoft Corp.*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995); *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988). Precedent requires that

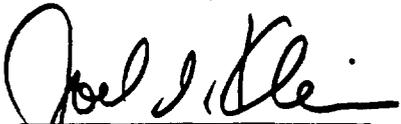
the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty 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 v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978). *See also Microsoft*, 56 F.3d at 1461.

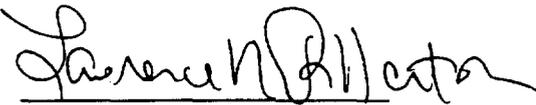
V. Conclusion

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,



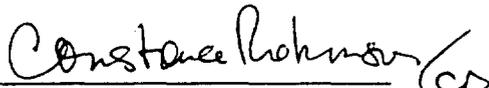
JOEL I. KLEIN  
Acting Assistant Attorney General



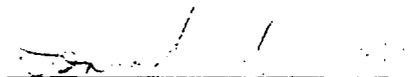
LAWRENCE R. FULLERTON  
Deputy Assistant Attorney General



CHARLES E. BIGGIO  
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CONSTANCE K. ROBINSON  
Director of Operations



DONALD J. RUSSELL  
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Attorneys

Dated: July 7, 1997

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

9-12-96 12:32 FROM:DTI CII DIVISION

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TO:BE WASHINGTON

PAGE:03

**dti****press notice**

P/96/954

19 December 1996

**DTI ANNOUNCES 44 NEW INTERNATIONAL  
TELECOMMUNICATIONS OPERATORS**

The UK has created a fully open international market in telecommunications 12 months in advance of the deadline set for full competition across Europe. Science and Technology Minister Ian Taylor today signed the first new licences for companies to run international telecommunications facilities and holders of these can now compete with BT and Mercury in this important market.

Mr Taylor said:

"This move cements the UK telecommunications market's position as the most open in the world, with full competition in every market sector. The UK has proved to the world that liberalisation pushes down prices and improves services. Phone prices are down 40 per cent overall since 1984, and I expect these new licensees to put further downward pressure on international rates.

"Voice calls to overseas are getting cheaper, and new services are coming on line: new operators include many investing in advanced services such as Internet and integrated voice/data/video. I look to substantial further investment in international cables, satellites and switching to ensure transmission capacity keeps up with the tremendous capabilities of these technologies.

"High-quality, low-cost telecoms are a major boost for the whole of British industry. They give companies based in the UK a competitive edge, and are a significant contribution to our success in attracting inward investment.

MORE/.....

-2

"Many of the new entrants are based overseas - a number in the US - and I believe the UK is showing a lead in opening our market fully to investors from overseas. We look to our trading partners to follow suit by making good offers in the World Trade "Organisation talks on telecommunications, set to conclude in February next year. These new licences have broken fresh ground in demonstrating how anti-competitive behaviour in the international market can be effectively regulated. I am confident that we are giving OfTel sufficient powers to ensure competition will be fair as well as dynamic "

### Notes for Editors

1. The UK government announced on 6 June its willingness to licence further operators to run their own international telecommunications facilities. A right previously only possessed by BT and Mercury, this allows operators to move away from leasing international capacity. Own-facilities services are cheaper to provide, and allow technical innovation since traffic does not need to be passed down 2Mbit leased lines. Several new international cables are currently being planned, representing a significant expansion of capacity into and out of the UK. These are to carry expanding volumes of telecommunications traffic, particularly of data services e.g. Internet.

2. The licences have been the subject of extensive informal consultation with applicants and the industry. Of the 46 applicants who applied in the first tranche, 44 licences were issued today: one applicant has asked for its application to be suspended, while for technical reasons another has been delayed until shortly after Christmas.

3. The following applicants have been successful.

ACC Long Distance UK Ltd	Advanced Business Services Ltd
AT&T Communications (UK) Ltd	CableTel (UK) Ltd
COLT Telecommunications	Communicorp (UK) Ltd
Concert Communications Company	Convergence Ventures Ltd
Energis Communications Ltd	Eşat Telecommunications Ltd
Espri Telecom UK Ltd	Eurotunnel
FaciliCom International (UK) Ltd	Frontel Newco Ltd
Global One Communications Holding Ltd	Hermes Europe Railtel B.V.
Incom (UK) Ltd	Interoute Networks Ltd
ITG (UK) Ltd	DXNET UK Ltd
Long Distance International Communications Ltd	MCI Telecommunications Ltd
MFS Communications Ltd	Net Net Ltd
Pacific Gateway Exchange (UK) Ltd	Primus Telecommunications Ltd

MORE/...

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-3

Racal Telecommunications Ltd  
 ScottishPower Telecommunications Ltd  
 Star Europe Ltd  
 Telecom New Zealand Ltd  
 Teleport London International Ltd  
 Telia UK Ltd  
 TMI TeleMedia International Ltd  
 Unisource Holding (UK) Ltd  
 Vodafone Ltd

RSL Communications Ltd  
 Spacotel International Ltd  
 TeleBermuda International (UK) Ltd  
 Teleglobe International (UK) Ltd  
 TeleWest Communications plc  
 Telsira Global Ltd  
 Torch Communications Ltd  
 Videotron No. 2 Ltd  
 Worldcom UK Ltd

**Press enquiries: 0171-215 5962/6424**  
**(Out of hours: 0171-215 5110/5600)**  
**Public enquiries: 0171-215 5000**

**ENDS**

Brussels, 14th May 1997

## THE COMMISSION CLEARS THE BT-MCI MERGER SUBJECT TO FULL COMPLIANCE WITH SPECIFIC UNDERTAKINGS SUBMITTED BY THE PARTIES

*The European Commission has decided to clear the merger between BT (British Telecommunications plc) and MCI (MCI Communications Corporation). BT is a UK-based supplier of telecommunications services and equipment. Its main services and products are local and long distance telephone exchange lines to homes and businesses, international telephone calls to and from the United Kingdom, and the supply of telecommunications equipment for customers' premises. MCI is a US-based diversified communications company, offering consumers and businesses a portfolio of integrated services, including long distance, wireless, local, paging, messaging, Internet, information services, outsourcing and advanced global communications. BT and MCI also operate jointly a venture known as Concert, which supplies value-added and enhanced services to multi-national business customers.*

After investigation the Commission has concluded that the proposed merger, as originally notified, would have created or reinforced a dominant position in the markets for international voice telephony services on the UK-US route and for audioconferencing services in the UK. However, the Commission has considered that the undertakings proposed by the parties during the proceedings are sufficient to address the competition concerns envisaged in the above mentioned markets and has therefore declared the merger compatible with the common market and with the functioning of the EEA Agreement subject to the condition of the parties' full compliance with proposed commitments.

The Commission's inquiry suggested that, given the current capacity shortage on existing international transmission facilities between the UK and the US as well as the parties' significant capacity entitlements, particularly on the UK end of these international facilities, the merger would have created or reinforced a dominant position in the market for international voice telephony services on the UK-US route. In this respect a great deal of attention was paid to the parties' capacity entitlements on existing transatlantic submarine cables between the UK and the US because, according to responses obtained from both competitors and customers, for a number of technical reasons satellite does not currently provide a satisfactory substitute for cable in the supply of international voice telephony services at the required quality and performance standards. As a result of the merger, BT/MCI would be able to carry UK-US traffic over its own end-to-end international transmission facilities, thereby internalising the payments (based on current accounting rates which are still not significantly above cost) which any telecoms operator has at present to make to a foreign correspondent carrier in order to have outgoing international calls terminated in the destination country. At least in the short to medium term these cost advantages could not be easily achieved by the parties' existing competitors since in any event they would need BT's consent to a reconfiguration of their cable capacity holdings currently

matched with BT's half circuits at the UK end in order for them to be able to replicate the merged entity's more competitive cost structure. Furthermore, the combination of BT's and MCI's cable capacities would allow the merged entity to further restrict or control the opportunities for entry by the new prospective new operators which have been recently granted an international facilities license in the UK.

The impact of the merger on the UK market for audioconferencing services was also carefully examined, taking into account both the parties' very high combined market share (over 80%) and the specific features of the market. In this respect, the Commission's enquiry has shown that, despite the relatively low investments necessary to set up an audioconferencing business, entry into this market on a sufficiently large scale might prove difficult. This is mainly because market growth is to a major extent accounted for by a more intensive use of the service by established customers rather than by the customers' base becoming larger and the reputation and proven record of incumbents would be difficult to challenge, as demonstrated by both BT's and MCI's increasing market shares over the last years. For these reasons the Commission has concluded that the merger was likely to create or reinforce a dominant position in the UK audioconferencing market.

#### Undertakings proposed by the parties

In order to address the Commission's competition concerns, the parties have offered the following commitments which will be monitored by the Commission: (i) to make available to new international facilities operators in the UK, without delay and at prices corresponding to BT's true cost of purchasing capacity from the cable consortium, all of their current and prospective overlapping capacity on the UK-US route resulting from the merger on the transatlantic cable TAT 12/13; (ii) to sell BT's capacity currently leased to other operators on the UK-US route at their request and on the same terms and conditions as illustrated above; (iii) to sell to other operators, at their request and without delay, Eastern end matched half circuits currently owned by BT in order for them to be able to provide international voice telephony services on the UK-US route on an end-to-end basis; (iv) to arrange for the divestiture of MCI's audioconferencing business in the UK.

In view of the above commitments submitted by the parties, the Commission has concluded that, provided these undertakings are properly discharged, they should be such as to address the competition concerns raised by the proposed merger.

Willy MELIN 299 73 22  
Lone Mikkelsen 286 08 87

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ANTHONY C. EPSTEIN

202-639-6080

July 1, 1997

FOR SETTLEMENT PURPOSES ONLY

By Fax

Mrs. Yvette Benguerel  
Attorney, Telecommunications Task Force  
Antitrust Division  
U.S. Department of Justice  
555 Fourth Street, N.W.  
Washington, D.C. 20001

Re: MCI/BI Merger

Dear Yvette:

As you requested, this letter sets forth the ranges of prices that MCI expects to charge for backhaul facilities under the terms and conditions that it will propose to the FCC. The ranges are for facilities between the cable head-ends (Greenhill, RI, and Shirley, NY) and two points on MCI's existing backhaul rings (Crystal Lake, NJ, and New York, NY).

E-1 Circuits

<u>Term in Years</u>	<u>Recurring Charges</u>	<u>Non-Recurring Charges</u>
1	\$4,500-5,200	\$9,000-9,500
2	4,300-4,900	9,000-9,500
3	4,100-4,700	9,000-9,500
4	3,800-4,400	9,000-9,500
5	3,400-4,000	9,000-9,500

Ms. Yvette Benguerel  
July 1, 1997  
Page 2

DS-3 Circuits

<u>Term in Years</u>	<u>Recurring Charges</u>	<u>Non-Recurring Charges</u>
1	\$20,000-25,000	\$90,000-95,000
2	19,000-23,000	90,000-95,000
3	18,000-22,000	90,000-95,000
4	17,000-21,000	90,000-95,000
5	16,000-20,000	90,000-95,000

Please call me with any questions.

Sincerely yours,

*Tony.*

Anthony C. Epstein

cc: Mary L. Brown (by fax)  
David J. Saylor (by fax)

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ANTHONY C. EPSTEIN

202-639-6080

July 2, 1997

By Messenger

Ms. Yvette Benguerel  
Attorney, Telecommunications Task Force  
Antitrust Division  
U.S. Department of Justice  
555 Fourth Street, N.W.  
Washington, D.C. 20001

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.

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

Exhibit D

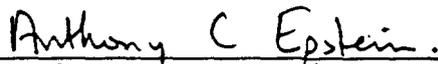
Ms. Yvette Benguerel  
July 2, 1997  
Page 2

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



**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202 887 2551  
FAX 202 887 2204

**Mary L. Brown**  
Senior Policy Counsel  
Federal Law and Public Policy

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 147 E-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 63 E-1 circuits available on the date that the Commission releases its order approving the merger; capacity equivalent to a total of 42 additional E-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.

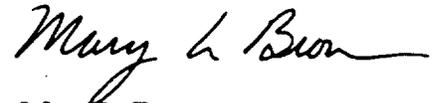
e. The obligation to make these circuits available shall end two years after the date of the release of the order.

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

Peter F. Cowhey -- 7/7/97

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

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

MODIFIED FINAL JUDGMENT

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

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

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

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

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

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

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

## I

### **Jurisdiction**

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

## II

### **Substantive Restrictions and Obligations**

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

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

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

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

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

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

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

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

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

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

- (i) the types of circuits (including capacity) and telecommunications services provided;
- (ii) the actual average time intervals between order and delivery of circuits (separately indicating average intervals for analog circuits, digital circuits up to 2 megabits, and digital circuits 2 megabits and larger) and telecommunications services; and
- (iii) the number of outages and actual average time intervals between fault report and restoration of service for circuits (separately indicating average intervals for analog and for digital circuits) and telecommunications services;

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

5. A list showing:

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

(ii) on an annual basis, separately for analog IPLCs and for digital IPLCs jointly provided by BT and MCI between the United States and the United Kingdom, the number of outages and actual average time intervals between fault report and restoration of service, for any outages that occurred in the international facility, in the cablehead or earth station outside the United States, or the network of a telecommunications provider outside the United States, indicating separately the number of outages and actual average time intervals to restoration of service in each such area; and

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

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

shall similarly be required to disclose such information in the same manner as NewCo.

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

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

authorize BT to use such providers' proprietary information for some other purpose if such authorization is in writing and specifically sets forth the purpose for which such information is to be used. Such written authorizations shall be appended to any reports required to be filed with the Department of Justice pursuant to Section V herein. Nothing in this Section II.B shall prevent Concert or BT from disclosing any information to any governmental authority as required by law or regulation.

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

authorize BT to use such providers' proprietary information for some other purpose if such authorization is in writing and specifically sets forth the purpose for which such information is to be used. Such written authorizations shall be appended to any reports required to be filed with the Department of Justice pursuant to Section V herein. Nothing in this Section II.C shall prevent Concert, MCI or BT from disclosing any information to any governmental authority as required by law or regulation.

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

### III

#### **Applicability and Effect**

The provisions of this Modified Final Judgment shall be binding upon defendants, their affiliates, subsidiaries, successors and assigns, officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Modified Final Judgment by personal service or otherwise. Defendants shall cooperate with the United States Department of Justice in ensuring that the provisions of this Modified Final Judgment are carried out. Neither this Modified Final Judgment nor any of its terms or provisions shall constitute any evidence against, an admission by, or an estoppel against the defendants. The effective date of this Modified Final Judgment shall be the date upon which it is entered. /

### IV

#### **Definitions**

For the purposes of this Final Judgment:

A. "BT", prior to the consummation of the Merger Agreement and the creation of Concert, means British Telecommunications plc, and any subsidiary, affiliate, predecessor, successor, or assign of British Telecommunications plc, and following the consummation of the Merger Agreement and the creation of Concert, BT means any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and providing interconnection or

other telecommunications services within the United Kingdom or from the United Kingdom to the United States, but does not include MCI or NewCo.

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

C. "Correspondent" means a bilaterally negotiated arrangement between a provider of telecommunications services in the US or the UK and a provider of telecommunications services in the other of the US or the UK for provision of an international telecommunications or enhanced telecommunications service, by which each party undertakes to terminate in its country traffic originated by the other party. A service managed by NewCo, and provided without correspondent relationships with any other provider, shall not be deemed to constitute a correspondent service.

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

E. "Disclose," for purposes of ¶¶ II.A.1-6, means disclosure to the United States Department of Justice Antitrust Division, which may further disclose such information to any United States corporation that directly or through a subsidiary or affiliate holds or has applied for a license from either the United States Federal Communications Commission or the United Kingdom Department of Trade and Industry to provide international telecommunications services between the United States and the United Kingdom. Disclosure by the Department of