

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. _____
)	
v.)	(Antitrust)
)	
U S WEST, INC. and)	
CONTINENTAL CABLEVISION, INC.,)	
)	
Defendants.)	

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, having filed its Complaint herein on November 5, 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 hereinbelow;

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 Teleport 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 Sections 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 defendants' 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 hours 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