Anthropology, University of Utah, and the U.S. Department of the Interior, National Park Service, acting on behalf of the Bureau of Reclamation during the archeological inventory for the Glen Canyon Archeological Project. No known individual was identified. No associated funerary objects are present.

Archaeological evidence indicates that the human remains are Native American from the protohistoric or contact period. Geography, kinship, anthropology, and linguistics evidence, and expert opinion indicate that the remains are those of a member of the Escalante Band of the Southern Paiute, who inhabited this area during the protohistoric and contact period, and who are most closely associated with the contemporary Paiute Indian Tribe of Utah.

In 1962, human remains representing two individuals were collected from a site near Escalante, Garfield County, UT, under a memorandum of agreement between the Department of Anthropology, University of Utah, and the U.S. Department of the Interior, National Park Service, acting on behalf of the Bureau of Reclamation during the archaeological inventory for the Glen Canyon Archaeological Project. No known individuals were identified. No associated funerary objects are present.

Material culture near the interments indicate that the human remains are Native American from the contact period. Geography, kinship, anthropology, and linguistics evidence, and expert opinion indicate that the remains are the two individuals are those of members of the Escanlante Band of the Southern Paiute, who inhabited this area during the protohistoric and contact period, and who are most closely associated with the contemporary Paiute Indian Tribe of Utah.

Based on the above-mentioned information, officials of the Bureau of Reclamation have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains above represent the physical remains of three individuals of Native American ancestry. Officials of the Bureau of Reclamation also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Paiute Indian Tribe of Utah.

This notice has been sent to officials of the Paiute Indian Tribe of Utah; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; White Mesa Ute Tribe; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Nancy Coulam, Regional Archaeologist, Bureau of Reclamation, 125 South State Street, Salt Lake City, UT 84138–1102, telephone (801) 524–3684, before February 12, 2001. Repatriation of the human remains to the Paiute Indian Tribe of Utah may begin after that date if no additional claimants come forward.

Dated: January 4, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–1111 Filed 1–11–01; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

DATE AND TIME: January 18, 2001 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–865–867 (Final) (Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines)—briefing and vote. (The Commission is currently scheduled to transmit its determination and commissioners' opinions to the Secretary of Commerce on January 29, 2001.)
5. Outstanding action jackets: (1.) Document No. INV–00–223: Approved of final report in Inv. No. TA–204–3 (Lamb Meat).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 9, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–1204 Filed 1–10–01; 2:15 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Worldcom, Inc & Intermedia Communications, Inc.

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, Stipulation and Competitive Impact Statement have been filed with the United States District court for the District of Columbia, Washington, D.C. in *United States of America* v. *WorldCom. Inc. & Intermediate Communications, Inc.* Civil Action No. 00–2789. On November 17, 2000, the United States filed a Complaint alleging that the proposed acquisition by WorldCom of the Internet backbone business assets of Intermedia Communications, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires WorldCom to divest all of Intermedia's assets except for Intermedia's interest in the capital stock of Digex, Inc. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donald Russell, Chief, Telecommunications Task Force, Suite 8000, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: (202) 514–5621).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *Acquirer* means the entity to whom defendants divest the Intemedia Assets.

B. *WorldCom* means defendant WorldCom, Inc., a Georgia corporation with its headquarters in Clinton, Mississippi, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and their directors, officers, managers, agents and employees.

C. *Intermedia* means defendant Intermedia Communications, Inc., a Delaware Corporation with its headquarters in Tampa, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

D. *Digex* means Digex, Inc., a Delaware Corporation with its headquarters in Beltsville, Maryland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

E. *Capital Stock of Digex* means the capital stock of Digex, regardless of class, owned by Intermedia.

F. *Intermedia Assets* means all of assets of Intermedia, except for the Capital Stock of Digex, including:

1. All tangible assets that comprise the Intermedia business, including research and development activities; all networking equipment and fixed assets, personal property, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the Intermedia Assets; all licenses, permits and authorizations issued by any governmental organization relating to the Intermedia Assets; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Intermedia Assets, including supply agreements, all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Intermedia Assets;

2. All intangible assets used in the development, production, servicing and sale of Intermedia Assets, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Intermedia Assets, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Intermedia Assets, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

G. *Merger* means the proposed merger of WorldCom and Intermedia pursuant to the merger agreement dated September 5, 2000.

II. Objectives

The final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Intermedia Assets for the purpose of preserving a viable competitor in the provision of Internet backbone and access services in order to remedy the effects that the United States alleges would otherwise result from WorldCom's acquisition of Intermedia. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Intermedia Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by WorldCom, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action, and venue of this action is proper in the United States District Court for the District of Columbia. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon 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), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the term and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

G. The United States and Defendants, WorldCom and Intermedia, by their respective attorneys, have consented to the entry of this Hold Separate Stipulation and Order without trial or adjudication of any issue of fact or law, and without this Hold Separate Stipulation and Order constituting any evidence against or admission by any part regarding any issue of fact or law.

V. Hold Separate Provisions

A. Until the closing of the Merger contemplated by the Final Judgment:

1. Intermedia shall preserve, maintain, and continue to operate the Intermedia Assets as an independent, ongoing, economically viable competitive business, with management, sales, and operations of such assets held entirely separate, distinct, and apart from those of WorldCom's operations. WorldCom shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under any of the Intermedia Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and

Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

2. Intermedia shall use all reasonable efforts to maintain and increase the sales and revenues of the services provided by the Intermedia Assets, and shall maintain at 2000 or previously approved levels for 2001, whichever are higher, all promotional, advertising, sales, technical assistance, network capacity configurations and expansions, marketing and merchandising support for the Intermedia Assets.

3. Intermedia shall take all steps necessary to ensure that the Intermedia Assets are fully maintained an operable condition at no less than their current capacity and sales, including projected capacity expansions currently planned or planned prior to negotiations between the defendants relating to the Merger, and shall maintain and adhere to normal repair and maintenance schedules for the Intermedia Assets.

4. Intermedia shall not remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Intermedia Assets.

5. WorldCom shall not solicit to hire, or hire, any employee of any business that is a part of the Intermedia Assets.

6. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Intermedia Assets.

B. After the closing of the Merger and until the divestiture required by the Final Judgment has been accomplished.

1. Defendants shall preserve, maintain, and continue to operate the Intermedia Assets as an independent, ongoing, economically viable competitive business, with management, sales, operations of such assets held entirely separate, distinct, and apart from those of WorldCom's other operations. WorldCom shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under any of the Intermedia Assets. Within twenty (20) days after the closing of the Merger, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

2. Defendants shall take all steps necessary to ensure that (1) the Intermedia Assets will be maintained and operated as independent, ongoing, economically viable and active competitor in the provision of telecommunications services currently offered by Intermedia; (2) management of the Intermedia Assets will not be influenced by WorldCom (or Digex); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning provision of services by any of the Intermedia Assets will be kept separate and apart from WorldCom's other operations.

3. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the services provided by the Intermedia Assets, and shall maintain at 2000 or previously approved levels for 2001, whichever are higher, all promotional, advertising, sales, technical assistance, network capacity configurations and expansions, marketing and merchandising support of the Intermedia Assets.

4. WorldCom shall provide sufficient working capital and lines and sources of credit to continue to maintain the Intermedia Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and (B).

5. WorldCom shall take all steps necessary to ensure that the Intermedia Assets are fully maintained in operable condition at no less than its current capacity and sales, including projected capacity expansions currently planned or planned prior to negotiations between the defendants relating to the Merger, and shall maintain and adhere to normal repair and maintenance schedules for the Intermedia Assets.

6. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Intemedia Assets.

7. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of products produced, distributed or sold utilizing the Intermedia Assets.

8. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Intermedia Assets.

9. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary or employment agreements for any Intermedia employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order is a member of Intermedia's management. Further, during the tendency of this Hold Separate Stipulation and Order, and consistent with the Final Judgment, defendant WorldCom shall not solicit to hire, or hire, any employee of any business that is a part of the Intermedia Assets.

C. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

D. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: November 17, 2000.

Respectfully submitted;

For Plaintiff, United States of America

Charles F. Rule,

For Defendant, WorldCom, Inc.

Brad E. Mutschelknaus,

For Defendant, Intermedia Communications, Inc.

Order

It is so ordered by the Court, this _____day of _____, 2000.

_____

United States District Judge

Proposed Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on November 17, 2000, and plaintiff and defendants, WorldCom Inc. (''WorldCom'') and Intermedia Communications, Inc. (''Intermedia''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And Whereas, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree 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 the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. *Acquirer* means the entity to whom defendants divest the Intermedia Assets.

B. *WorldCom* means defendant WorldCom, Inc., a Georgia corporation with its headquarters in Clinton, Mississippi, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

C. *Intermedia* means defendant Intermedia Communications, Inc., a Delaware Corporation with its headquarters in Tampa, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

D. *Digex* means Digex, Inc., a Delaware Corporation with its headquarters in Beltsville, Maryland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

E. *Capital Stock of Digex* means the capital stock of Digex, regardless of class, owned by Intermedia.

F. *Intermedia Assets* means all of assets of Intermedia, except for the Capital Stock of Digex, including:

1. All tangible assets that comprise the Intermedia business, including research and development activities; all networking equipment and fixed assets, personal property, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the Intermedia Assets; all licenses, permits and authorizations issued by any governmental organization relating to the Intermedia Assets; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Intermedia Assets, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Intermedia Assets;

2. All intangible assets used in the development, production, servicing and sale of Intermedia Assets, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Intermedia Assets, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Intermedia Assets, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

G. *Merger* means the proposed merger of WorldCom and Intermedia pursuant to the merger agreement dated September 5, 2000.

III. Applicability

A. This Final Judgment applies to WorldCom and Intermedia, as defined above, and all other persons in active concert or participation with any of them who receive 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 Intermedia Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestitures

A. Defendants are ordered and directed, within one hundred eighty (180) calendar days from the closing of the Merger following the receipt of all required approvals by the Federal Communications Commission and state authorities, to divest the Intermedia Assets as an ongoing, viable business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period for up to thirty (30) calendar days after regulatory approvals required to close the divestiture of the Intermedia Assets have been obtained. The United States shall notify the Court in the case of such an extension. Defendants agree to use their best efforts to divest the Intermedia Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Intermedia Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Intermedia Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Intermedia Assets customarily provided in a due diligence process except such information or documents subject to attorney-client privilege or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the management of the Intermedia Assets and personnel engaged in the provision and selling of services offered by the Intermedia Assets in order to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ any Intermedia employee who works at, or whose primary responsibility concerns, any business that is part of the Intermedia Assets. Further, for a period of twelve (12) months following the closing of the Merger, defendants shall not solicit to hire, or hire, any Intermedia employee who, within six (6) months of the date of the sale of the business that is part of the Intermedia Assets that employs the individual, receives a reasonable offer of employment from the approved Acquirer of the Intermedia Assets, unless such employee is terminated or laid off by the Acquirer.

D. Defendants shall permit prospective Acquirers of the Intermedia Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Intermedia Assets any and all environmental, zoning, and other permit or license documents and information, and to make inspection of the Intermedia Assets, and have access to any and all financial, operational, business,

strategic or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to any Acquirer of the Intermedia Assets that the assets will be fully operational on the date of sale.

F. Defendants shall not take any action, direct or indirect, that will impede in any way the operation, sale, or divestiture of the Intermedia Assets.

G. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV or by trustee appointed pursuant to Section V of this Final Judgment shall include all Intermedia Assets and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Intermedia Assets can and will be used by the Acquirer as a viable, ongoing business engaged in the provision of Internet backbone and access services. Unless the United States otherwise consents in writing, the divestitures required by Section IV or V shall be made to a single Acquirer. If, after making a reasonable, good faith effort, Defendants are unable to effect a sale to a single Acquirer, they may submit more than one Acquirer for approval by the United States which, in its sole discretion, may determine whether to permit such a sale. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to an Acquirer for whom it is demonstrated to the United States's sole satisfaction that: (1) The Acquirer has the capability and intent of competing effectively in the provision of Internet backbone and access services; and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the provision of Internet backbone and access services. Such divestiture shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives any defendant the ability unreasonably to raise the Acquirer's costs, lower the Acquirer's efficiency, or otherwise interfere in the ability of the Acquirer to compete effectively.

H. Nothing herein shall be construed to provide to any person or entity that is not a party to this Final Judgment any rights with respect to its enforcement, modification or termination.

V. Appointment of Trustee

A. In the event that defendants have not divested the Intermedia Assets within the time specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee to be selected by the United States and approved by the Court to effect the divestiture of the Intermedia Assets.

B. After the appointment of the trustee becomes effective, only the trustee shall have the right divest the Intermedia Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable efforts of the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(D) 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, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestiture. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to an Acquirer acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of each asset 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 money shall be paid to defendants and the trust 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 divested Intermedia Assets 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, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Intermedia Assets, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. 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 interest in the Intermedia Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Intermedia Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall file promptly 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. 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 report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the

trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. 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 offered, or expressed an interest in or desire to acquire any ownership interest in the Intermedia Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, or any other potential Acquirer. 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.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed, pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding thirty days 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 interest in the Intermedia Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Intermedia Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve and maintain the Intermedia Assets and to comply with Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate the Intermedia Assets as a viable active competitor; to maintain separate management, staffing, sales, marketing, and pricing the Intermedia Assets; and to maintain the Intermedia Assets in operable condition at current (and currently projected future) capacity configurations. Defendants shall deliver to the United States and affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Intermedia Assets until one year after such divestiture has been completed.

D. Defendants shall promptly inform the United States of any change in the management or operation of the Intermedia Assets that would affect the defendants' ability to fulfill their obligations under this Final Judgment or the Hold Separate Stipulation and Order. Such notice shall include a description of all the steps defendants have taken or will take regarding the subject of such notice.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during office hours of defendants to inspect and copy, or at the option of the United States, to require defendants to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint of interference by the defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an 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 the United States, 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 the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Intermedia Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

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

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

Competitive Impact Statement

The United States of America, 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

On November 17, 2000, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of Intermedia Communications, Inc. (''Intermedia'') by WorldCom, Inc. (''WorldCom'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that WorldCom and Intermedia are two leading providers of Internet backbone service. As explained below, the acquisition of Intermedia by WorldCom will substantially lessen competition in the market for Tier 1 Internet backbone services in violation of Section 7 of the Clayton Act.

The request for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing WorldCom and Intermedia from merging; and (3) such other relief that the Court deems proper.

Shortly before the United States filed its Complaint, the United States and defendants reached agreement on the terms of a proposed Final Judgment. The proposed Final Judgment would permit WorldCom and Intermedia to complete their merger, and thus enable WorldCom to acquire ownership of a controlling stock interest in Digex, Inc. now owned by Intermedia, but it would require WorldCom thereafter to divest all of Intermedia's businesses and assets (except for the Digex stock) as an integrated, ongoing concern. Subject to the possibility of extensions under certain limited circumstances, the divestiture must occur within one hundred eighty days of WorldCom's closing of the Intermedia transaction. The proposed Final Judgment, along with the Hold Separate Stipulation and Order, also contain provisions restricting WorldCom from interfering in the ongoing operations of Intermedia's business, or from participating in the management or governance of Intermedia, in order to minimize the risk of competitive harm that otherwise might arise pending completion of the divestiture.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the 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. The United States and defendants have also stipulated, consistent with the proposed Final Judgment, to a number of requirements designed to maintain the business and assets of Intermedia as a fully separate, competitive business pending entry of the proposed Final Judgment and pending the divestiture.

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

A. The Defendants and the Proposed Transaction

WorldCom, Inc., formerly known as MCI WorldCom, Inc., is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Clinton, Mississippi. It is one of the largest global telecommunications providers. WorldCom's 1999 annual revenues totaled approximately $37 billion.

WorldCom's UUNET subsidiary is by far the largest provider of Internet backbone services in the world, whether measured by revenues or Internet traffic carried. UUNET offers a wide range of retail and wholesale Internet backbone services, including ''dial-up'' (i.e., through shared modem banks) and dedicated Internet access (i.e, through direct connections to the customer), as well as value-added services such as Internet protocol virtual private networks (''IP/VPNs''), web site hosting, applications hosting, and Internet security services.

Intermedia Communications, Inc. is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Tampa, Florida. Intermedia is a broad-based, integrated telecommunications provider that primarily offers local and long distance voice and data communications solutions to business and government customers. In addition to its other voice and data business, Intermedia operates a significant nationwide Internet backbone network, offering a broad suite of dedicated and dial-up Internet connectivity services to Internet Services Providers (''ISPs''), businesses and government customers. In 1999, Intermedia served approximately 90,000 business and government customers, and had consolidated revenues of approximately $906 million. Intermedia also owns a controlling stake—approximately 94% of the voting securities and 62% of all outstanding common shares—in Digex, Inc., a publicly traded Delaware corporation headquarted in Beltsville, Maryland. Digex is a leading provider of managed web site hosting and related services. Digex's revenues during the last twelve months were approximately $108 million.

On September 5, 2000, WorldCom and Intermedia entered into an agreement whereby WorldCom will acquire Intermedia by assuming Intermedia's debt and issuing its stock in exchange for the Intermedia shares. The transaction is valued at approximately $6 billion, which reflects

approximately $3 billion in equity and $3 billion in debt and preferred stock.

On October 23, 2000, the Defendants filed an application for the transfer of control of various licenses issued by the FCC to Intermedia that are necessary for it to conduct its business. Unless and until their FCC application is granted, the Defendants cannot consummate the merger.

B. Markets To Be Harmed By the Proposed Merger

The explosive growth of the Internet over the past several years has transformed the American economy as well as the lifestyles of millions of American consumers and businesses. Indeed, the Internet is fast becoming as much a part of daily life as the television and the telephone. From a basic network that served primarily the military and academic institutions, the Internet has expanded into a global network of public and private networks which enables end users to communicate with each other and access large amounts of information data, and educational and entertainment services. These end users—individuals, businesses, content providers, governments, and universities—obtain access to the Internet either through a ''dial-up'' modem or other consumer Internet access connection (*e.g.*, cable modem or digital subscriber line service), or through a dedicated high-speed facility (''dedicated access'') provided by one of thousands of ISPs. ISPs provide access to the Internet on a local, regional, or national basis. While ISPs operate their own networks of varying size, most have limited facilities.

An ISP can connect any customer on its network to any of the other customers on its network. In order to allow its customers to communicate with the many end users connected to other networks, however, an ISP must establish direct or indirect interconnections with those other networks. Interconnection agreements between networks are voluntary and consensual in nature, and are not subject to governmental regulation.

Because the Internet comprises thousands of separate networks, direct interconnections between each of those networks and all other networks would be impractical. Instead, an Internet ''backbone'' provider (''IBP'') aggregates the connections between these smaller networks into a large ''network of networks'' served by that backbone. These large IBP networks are able to use high-capacity long-haul transmission facilities to interconnect their own customers with each other. In addition, these IBPs can establish interconnections with other IBPs to provide access to the ultimate ''network of networks'' known generally as the Internet, in which customers of one IBP are able to connect with customers of another network. This hierarchical structure dramatically reduces the number of direct and indirect interconnections that have to be negotiated, created and managed. One impact of the hierarchical structure of the Internet is that a large IBP controls the physical path of access to a large base of customers.

Physically, connectivity between networks is similar whether the connection is from an end user to an ISP, from an ISP to an IBP, or between two IBPs, in that a transmission interface between the two sides of each data exchange is established and packets of data are sent from one side of the interface to the other and processed based on a common standard. The precise type of infrastructure chosen and method of payment for the data exchange vary depending on the relative bargaining positions and capabilities of the parties on each side of the interconnection. Sometimes the transmission facilities are dedicated solely to data exchanges between two parties and sometimes there are shared access facilities for interchange, such as modem banks or the public interconnection facilities—the Network Access Point (''NAPs'') and Metropolitan Area Exchanges (''MAEs''[1]

There are a variety of relationships at the pints of interconnection. Mass market customers typically pay an ISP for the right to connect, typically using the shared public telephone infrastructure, to ISP's network and through it to all the networks to which the ISP is connected directly or indirectly. Corporate customers typically pay an ISP for a dedicated connection to the ISP's network and to the other networks to which it is connected. Likewise, the relationship between an ISP and an IBP typically involves the ISP buying access to the IBP's own network and through it to the other IBP networks and, thus, to the ISPs who chose to connect first to the other IBPs.

In contrast, the connectivity IBPs offer to each other is more variable. Some IBPs interconnect over private facilities, sharing the cost evenly and without regard to the balance of traffic flowing in each direction, but agreeing only to deliver packets addressed to users on their own network (and those of their customers). Such a relationship is often referred to as a ''private peering'' agreement. ''Peering'' stands in stark contrast to ''transit'' agreements where one IBP offers another IBP interconnection on the same kinds of terms as it offers connectivity to other customers, *i.e.*, the ability to interconnect with the transit provider's customers and the customers of any other network to which the IBP is connected. Intermediate arrangements, such as ''paid peering'' and peering only at public interconnection sites also occur between IBPs.[2]

An IBP's willingness to peer privately with another IBP typically depends in large part on the relative volumes of traffic the IBPs would send to or receive from one another. A small number of IBPs have such large networks of customers that they have the ability to ensure that they always receive interconnection with other IBPs that are on terms at least as favorable to themselves as to the other side of the interconnection and the ability to ensure as much as possible any desired level of quality for the interconnection. These large IBPs (''Tier 1 IBPs'') typically connect with each other through private, unpaid peering connections. In contrast, smaller IBPs are frequently customers—either transit customers of Tier 1 IBPs or paid peering customers—or have lower quality interconnection because they peer only at public interconnection points. These arrangements for connectivity between IBPs are, in effect, resold as a bundle when an IBP offers to provide general Internet connectivity (*i.e.*, the kind of arrangement typically sold by an IBP to its dedicated access customers), and the terms of these IBP-interconnection arrangements are important determinants of an IBP's ability to compete for sales of the bundled product. IBPs with less traffic that must purchase a significant amount of their connectivity to other IBPs operate at a substantial cost disadvantage compared

[1] The NAPs and MAEs are public interconnection facilities operated private parties, through which an ISP or IBP can exchange traffic with another network if both chose to do so. UUNET owns and operates three of the largest and busiest public interconnection points (MAE-East, MAE-West, and MAE-Central), along with four smaller regional public MAEs.

[2] During the past few years, the explosive growth of the Internet has overwhelmed the public interconnection points. Despite the expansion of existing public access points and the addition of new public access points to accommodate this growth, the NAPs and MAEs remain chronically congested. Private interconnections thus tend to offer considerably higher quality connections between networks in part because the quality is not affected by the volume of traffic coming from or between other networks, as it would be at a congested public facility.

to Tier 1 IBPs, which tend to rely exclusively on peering.

Tier 1 IBPs also have significant competitive advantages compared to lower tier IBPs in terms of their ability to provide higher-quality general Internet connectivity service. A customer purchasing general Internet connectivity from a Tier 1 IBP will more often be exchanging data efficiently over direct and private interconnections than would be the case for the same customer purchasing general Internet connectivity from a lower-tier IBP that has to rely more on indirect transit service or on the inferior and congested public interconnection points.

Because of these differences, the provision of Tier 1 backbone services is distinguished from that provided by other IBPs for customers seeking general Internet connectivity. For connectivity limited to the specific network (and customers) of a Tier 1 IBP, connectivity to a different IBP is not an effective substitute.

A relevant product market affected by this transaction is the provision of Internet connectivity by Tier 1 IBPs. Because providing customers with Tier 1 IBP connectivity in the United States requires domestic operations, such customers are unlikely to turn to any foreign providers that lack these domestic operations in response to a small but significant nontransitory increase in price.

C. Anticompetitive Consequences of the Merger

WorldCom's wholly owned subsidiary, UUNET, is by far the largest Tier 1 IBP by any relevant measure and is already approaching a dominant position in the Internet backbone market. Based upon a study conducted by the Department of Justice in February 2000, UUNET's share of all Internet traffic sent to or received from the customers of the 15 largest Internet backbones in the United States was about 37%, more than twice the share of the next-largest Tier 1 IBP, Sprint. Although far smaller than UUNET, Intermedia is also a significant provider of Internet backbone to dedicated Internet access customers. The 15 largest backbones represent approximately 95% of all U.S. dedicated Internet access revenues.

As is true in network industries generally, the value of Internet access to end users becomes greater as more and more end users can easily be reached through the Internet. The benefit that one end user derives from being able to communicate effectively with additional users is known as a ''network externality.'' Under some conditions, this network externality creates strong incentives for IBPs to negotiate efficient interconnection arrangements between one another. By doing so, each IBP can improve the quality and minimize the cost of the services it offers to its own customers.

When two IBPs are comparable in size, they are likely to be in position of rough parity with one another in negotiating interconnection arrangements. A substantial size disparity between IBPs, however, may alter the bargaining leverage between those IBPs. In this context, the smaller IBP may suffer greater harm than the larger IBP from a failure to achieve interconnection, since that failure would adversely affect the cost and quality of a larger proportion of the communications of the smaller IBP's customers than of the communications of the larger IBP's customers. In an extreme case, when a IBP grows to a point at which it controls a substantial share of the total Internet end user base and its size greatly exceeds that of any other network, the dominant IBP may be able to ''tip'' the market. By degrading the quality or increasing the price of interconnection with smaller networks it can obtain advantages in attracting customers to its network. Customers will recognize that they can communicate more effectively with a larger number of other end users if they are on the largest network, and this effect feeds upon itself and becomes more powerful as larger numbers of customers choose the largest network. Faced with a reduction of quality or an increase in the cost of interconnection with the dominant IBP, rivals may be unable to compete on a long-term basis and may exit the market. If rivals decide to pass on these costs, users of connectivity will respond by selecting the dominant network as their provider. Once this occurs, restoring the market to a competitive state could require extraordinary means, including some form of government regulation.

Given UUNet's current position in the IBP market, a significant increase in UUNet's size relative to other IBPs would create an unacceptable risk of anticompetitive behavior. UUNet might be able to charge higher prices for interconnection to another IBP, convert non-paying IBPs to paying IBPs, avoid giving better prices to small IBPs, or lower the quality of interconnection to the smaller IBPs, increasing the likelihood of a ''tipping'' of the Internet backbone market towards monopoly.

Entry into the Tier 1 Internet backbone services market would not be timely, likely, or sufficient to remedy the proposed merger's likely anticompetitive harm. Entry barriers are already high, and the proposed transaction will raise barriers to entry even higher. Entry sufficient to offer a significant competitive constraint on the provision of connectivity by Tier 1 IBPs requires substantial time and enormous sums of capital to build a network of sufficient size and capacity to attract the relevant base of customers, and to attract and retain the scarce, highly skilled technical personnel required for its operations. Through this transaction, UUNET/Intermedia would enhance its ability to control and inhibit successful entry by refusing to interconnect with new entrants or by limiting those connections in order to control the growth of its rivals. By degrading the quality of interconnection and raising its rivals' costs, UUNET/Intermedia would further prevent entry and expansion by other IBPs. Moreover, through its control of public interconnection facilities (*e.g.,* MAE-East, MAE-West) and its refusal to upgrade these facilities, UUNET would be able to limit opportunities for existing rivals and new entrants to build their traffic volumes through public peering.

For these reasons, the United States concluded that the WorldCom/Intermedia merger as proposed may substantially lessen competition in violation of Section 7 of the Clayton Act, in the market for the provision of Internet connectivity by Tier 1 IBPs.

III. Explanation of the Proposed Final Judgment

A. Divestiture Requirement

The proposed Final Judgment will preserve competition in the market for the provision of Internet connectivity by Tier 1 IBPs by limiting UUNET's increase in its control over Internet traffic. Section IV of the proposed Final Judgment requires WorldCom, within one hundred eighty (180) calendar days from the closing of WorldCom's underlying acquisition of Intermedia, to divest all of the Intermedia assets, except for the voting interest in Digex, as an ongoing, viable business to an acquirer acceptable to the United States. Thus, although the proposed Final Judgment permits WorldCom to retain Intermedia's interest in Digex, it prohibits UUNET from acquiring Intermedia's Internet backbone connectivity network, business, customer relationships and traffic.

Through the sale of Intermedia assets, the proposed Final Judgment's prohibitions will help to prevent UUNET from increasing its level of customer traffic relative to other Tier 1

IBPs and thus will help to preserve competition. Absent these prohibitions, the likely result of a combined WorldCom and Intermedia would be higher prices and lower output than there otherwise would be for connectivity to Tier 1 IBPs. As discussed above, Digex is primarily provider of managed web-hosting services.

Intermedia and Digex currently operate as independent companies with virtually no shared employees. Intermedia has a controlling voting interest in Digex which it will transfer to WorldCom. The entity that currently constitutes Intermedia, which includes the Internet backbone provider business, will be divested as a whole. The proposed Final Judgment, along with the Hold Separate Stipulation and proposed Order, ensures that the Intermedia assets and businesses are maintained wholly separate from WorldCom pending both the closing of the WorldCom-Intermedia merger and the divestiture of Intermedia to a qualified buyer. Section XI of the proposed Final Judgment prohibits WorldCom from reacquiring any part of the divested Intermedia assets during the ten year term of the decree. In the Event that WorldCom has not completed the divestiture within the specified time period, including possible extension pursuant to Section IV(A), Section V provides for the appointment of a trustee who shall have the power and authority to accomplish the divestiture.

B. Other Decree Provisions

In order to monitor and ensure compliance with the Final Judgment, Section IX requires periodic affidavits on the fact and manner of defendants' compliance with divestiture and the Final Judgment. Section X gives the United States various rights, including the ability to inspect the defendant's records, to conduct interviews and to take sworn testimony of the defendant's officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and any information the United States obtains using these powers is protected by specified confidentiality obligations.

The Court retains jurisdictions under Section XII, and Section XIII provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended 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 courts to recover three times the damages a person has suffered, as well as costs and reasonable attorney's 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 the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and 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 United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses 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, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides in Section XII that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the WorldCom/Intermedia merger and a full trial on the merits. The United States is satisfied, however, that the divestiture of Intermedia as an ongoing business and other relief contained in the proposed Final Judgment will preserve competition in the market for the provision of Internet connectivity by Tier 1 IBPs. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the Complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if Intermedia is sold in the manner required by the proposed Final Judgment.

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 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 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.'' [3] 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 Case. (CCH) ¶ 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. 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.[4]

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.' '' *United States* v. *American Tel. & 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).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutional discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are not determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Consequently, the United State has not attached any such materials to proposed Final Judgment.

Dated: December 21, 2000.

Respectfully submitted,

Donald J. Russell,
Chief.

A. Douglas Melamed,
Acting Assistant Attorney General.

Constance K. Robinson,
Director of Operations and Merger Enforcement.

David F. Smutny (DC Bar No. 435714),
J. Parker Erkmann,
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Trial Attorneys, U.S. Department of Justice, Antitrust Division.

Telecommunications Task Force, 1401 H. Street, N.W., Suite 8000, Washington, D.C. 20530 (202) 514–5621.

Certificate of Service

I hereby certify that copies of the foregoing Competitive Impact Statement was served, as indicated below, this 21st day of December, 2000 upon each of the parties listed below:

Charles F. Rule, Esq. (BY HAND), Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004–2401, (202) 662–5119, Counsel for WorldCom, Inc.

Brad E. Mutschelknaus, Esq. (BY HAND), Kelley Drye & Warren, LLP, 1200 19th Street, N.W., Suite 500, Washington, DC 20036, (202) 955–9600, Counsel for Intermedia Communications, Inc.

David F. Smutny,
Counsel for Plaintiff.

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[3] 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, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N 6535, 6538.

[4] *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); *Gillettee,* 406 F. Supp. At 716. *See also 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' '').

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation, Justice.

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and eight states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

The meeting will be a strategic planning session to devise short and long term goals and to define the mission statement of the Compact Council.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Ms. Cathy L. Morrison at (304) 625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on February 13, 2001.

ADDRESSES: The meeting will take place at the Sheraton Uptown Albuquerque, 2600 Louisiana Boulevard, N.E.,