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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of the Non-Accounting )  
Safeguards of Sections 271 and 272 )  
of the Communications Act of 1934, )  
as amended )

CC Docket No. 96-149

REPLY OF TIME WARNER CABLE TO OPPOSITIONS  
TO PETITION FOR RECONSIDERATION/CLARIFICATION

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16 April 1997

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**REPLY OF TIME WARNER CABLE TO OPPOSITIONS  
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Time Warner Cable, a division of Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys and pursuant to section 405 of the Communications Act, as amended, and section 1.429 of the Commission's rules,<sup>1</sup> hereby submits its reply to the oppositions filed with regard to its petition for reconsideration/clarification of certain aspects of the Commission's First Report and Order in the above-captioned proceeding.<sup>2</sup>

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<sup>1</sup> See 47 U.S.C. § 405; 47 C.F.R. § 1.429.

<sup>2</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (released December 24, 1996) ("Section 272 Order").

Several Regional Bell Operating Companies ("RBOCS") oppose Time Warner's petition.<sup>3</sup> Time Warner's petition seeks clarification of the Commission's finding as to the applicability of the statutory exemption for "incidental interLATA services" ("Incidental InterLATA Services").<sup>4</sup> Time Warner's understanding of the Section 272 Order is that the Commission refined its interpretation of the Incidental InterLATA Services exemption from the section 272 separate affiliate requirement to draw a distinction between the telecommunications service transmission underlying a video programming service and the video programming service itself. The transmission component is exempt from section 272 as an Incidental InterLATA Service, while the video programming service is not.<sup>5</sup> The transmission component of such services represents the traditional "basic service" or "telecommunications service" subject to common carrier regulation, whereas the content being transmitted represents the unregulated (or specially regulated) activity.

The RBOCs generally characterize Time Warner's request for clarification "as an attempt to limit the Section 272(a)(2)(B)(i) exemption solely to the transmission component of video programming. . . ."<sup>6</sup> However, it is sections 271 and 272 of the 1996 Act and the Commission's proper interpretation of those

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<sup>3</sup> See Ameritech Comments at 21-24; BellSouth Opposition at 1-4; US West Response at 15-18; SBC Opposition at 12-13; Bell Atlantic/NYNEX Comments at 8.

<sup>4</sup> See 47 U.S.C. § 272(a)(2)(B)(i).

<sup>5</sup> See Section 272 Order at ¶ 94.

<sup>6</sup> BellSouth Opposition at 3.

provisions which limit the applicability of the section 272(a)(2)(B)(i) exemption. Time Warner merely asks for clarification of this interpretation in light of the Commission's earlier pronouncements on the subject. None of the RBOCs raise any persuasive argument that the Commission's interpretation is incorrect.

Time Warner herein responds specifically to two arguments raised against application of the separate affiliate requirement to BOC interLATA provision of video programming. First, SBC argues that only interLATA information services are subject to the section 272 separate affiliate requirement, and that once the telecommunications service transmission component is removed, there is no interLATA transmission, thereby effectively shielding the video programming service from the requirements of section 272.<sup>7</sup> This argument is unavailing, because it renders meaningless the Incidental InterLATA Services exemption. For the Incidental InterLATA Service exemption, the transmission component is exempted to allow the BOC to provide the specified interLATA services using transmission facilities of its choosing. It does not alter the regulatory classification or treatment of a service as interLATA for the purposes of section 272.

Second, US West argues that the separate affiliate requirement should not be applied to BOC provision of video programming because such a requirement would impose Title II

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<sup>7</sup> See SBC Opposition at 12-13. See also Bell Atlantic/NYNEX Comments at 8 ("[t]o the extent that programming is considered separately from the transport using the OVS platform, it is not an interLATA service.").

regulation on BOC provision of video services, which US West asserts is contrary to section 653(c)(3)<sup>8</sup> for OVS systems, or 651(a),<sup>9</sup> for other non-common carrier and non-radio-based systems.<sup>10</sup> This argument confuses regulation of the BOC with regulation of a BOC affiliate's video programming. The language of section 653(c)(3), stating that the OVS "requirements ... shall apply in lieu of, and not in addition to, the requirements of title II," does not preclude requiring a BOC to provide video programming separately from its telephone services. Similarly, no such construction can be wrung from the language of section 651(a)(3)(A), which states that LEC provision of video services outside of the OVS, common carrier or radio-based methods, are to be regulated under Title VI. The separate subsidiary is a requirement imposed on the BOC as a regulated common carrier, not on a BOC as provider of video programming.<sup>11</sup> In this sense, the requirement should apply to a BOC whether it enters the video business as an OVS operator, a cable operator, or any other type of MVPD.

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8 47 U.S.C. § 573(c)(3).

9 47 U.S.C. § 571(a)(3)(A).

10 See US West Response at 17; see also BellSouth Opposition at 4.

11 GTE Service Corp. v. FCC, 474 F.2d 724, 731 (1973).

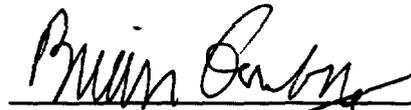
**CONCLUSION**

For the reasons set forth above, Time Warner requests that the Commission clarify (1) that only interLATA telecommunications service transmissions underlying BOC video programming services are exempt from the section 272 separate affiliate requirement, and (2) that BOC interLATA video programming services remain subject to the section 272 separate affiliate requirement.

Respectfully submitted,

**TIME WARNER CABLE**

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## CERTIFICATE OF SERVICE

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