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September 8, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CC Docket No. 95-185/96-98

Dear Ms. Salas:

On September 7, 1999, Don Shepheard of Time Warner Telecom and I along with representatives from Allegiance, MediaOne, BellSouth and MCI WorldCom met with Commissioner Susan Ness, Linda Kinney and David Fligor to discuss the availability of directory assistance service and SS7 as unbundled network elements ("UNEs"). Time Warner Telecom's presentation at the meeting summarized its reply comments and written ex partes in the above-referenced proceeding.

Sincerely,

Thomas Jones

Attachment

cc: Commissioner Susan Ness
Linda Kinney
David Fligor

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Implementation of the Local Competition Provisions In the Telecommunications Act of 1996 (UNE Remand)

Don Shepheard
VP-Federal Regulatory Affairs
Time Warner Telecom

- Time Warner Telecom's experience with Directory Assistance, Operator Services, and SS7 signaling demonstrate the inadequacy of wholesale alternatives for these network elements at this point in time.

  - Time Warner Telecom is a full facilities-based provider of local services.
    - Have built SONET rings and installed switches in 16 markets nationwide.
    - Original market entry relied on ILEC only for interconnection trunks, local number portability, and collocation.

  - Experience of lower quality/reliability and higher costs with third-party wholesale providers of directory assistance and SS7 services led Time Warner Telecom to conclude that parity with ILECs was unattainable. Subsequently, Time Warner Telecom migrated to ILEC network elements.

- Time Warner Telecom's use of alternative providers for directory assistance resulted in lower quality service at considerably higher costs.

  - ILECs have a unique advantage because they have the <u>only</u> complete and reliable directory assistance databases, which are updated in real time. Comments indicate 95% accuracy in ILEC databases compared to 80% accuracy from other sources.

- Alternative providers have limited call centers nationwide, requiring costly trunking from CLEC switches.
  - Time Warner Telecom trunking costs to its vendor's single national call center cost was approximately $500,000 annually. Total cost 4 times ILEC UNE costs.
  - Use of 8 third-party call centers reduces trunking costs to $200,000. Total cost still twice ILEC UNE costs.

- Time Warner Telecom does not have the capital nor scale economy to invest in real estate, buildings, switch facilities, personnel, and training necessary to self-provision directory assistance.
  - Call volumes would need to increase nearly 14 times current levels to meet UNE cost level.

- BellSouth *ex parte* cites an $.85 per call retail tariff rate available to CLECs. BellSouth's UNE rate per call ranges from $.20 to $.31. The ability to charge rates at over three times TELRIC is not indicative of a robust wholesale market for directory assistance.

- Other commenters cited in the USTA "UNE Fact Report" as major CLEC providers of DA also support the need for a directory assistance network element (Cox, AT&T, McLeodUSA, MCIWorldcom, GST Telecom).

- It is especially noteworthy that other facilities-based CLECs like TWTC have asked for DA <u>service</u> as a UNE (Cox, MediaOne, Allegiance, Teligent).

Time Warner Telecom Directory Assistance Cost Estimates

Avg. Cost Per Call Using Incumbent LECs' DA Platform[1]	$0.40
Avg. Cost Per Call Using Third-Party Vendor Platform (8 call centers)[2]	$0.82
Avg. Cost Per Call Using Third-Party Vendor Platform (one call center)[3]	$1.19
Avg. Cost Per Call Using a TWTC DA Platform (See Below)	$5.47

Estimated Costs of Constructing and Operating a Single National Call Center:

Capital Costs[4]	$4,312,000
Start-Up Costs[5]	1,517,940
Total One-Time Costs	$5,829,940
Annualized Capital Costs[6]	$ 582,994
Annual Operating Costs[7]	$2,724,000
Annual Messages	604,776 (16 cities)[8]

[1] Includes the cost of ILEC wholesale DA charges plus transport to ILEC call centers, based on TWTC's experience.
[2] Includes the cost of vendor's DA charges plus transport to 8 regional call centers, based on an analysis of third-party vendors' service offerings.
[3] Includes the cost of vendor's DA charges plus transport to single national call center, based on TWTC's experience.
[4] Estimated capital costs consist of the costs of purchasing a switch and building construction, call center building construction, and operator equipment.
[5] Estimated start-up costs consist of technical/engineering costs, Management Information System (MIS) costs, operator training, project management, and establishment of a listings database.
[6] Amortized over ten years.
[7] Estimated operating costs consist of building lease, operator salaries, trunking from end-office switches, and daily/weekly listings downloads.
[8] Based on actual DA call data for July and August 1998 in 9 cities.

- Alternative providers of signaling do not offer the reliability, functionality or ubiquity of the ILECs' SS7 networks.

  - Third-party signaling systems lack the diversity in signaling links of ILEC signaling networks, causing more frequent outages. Consequences of outages are more severe with alternative signaling systems, as larger portions of network affected by a single failure.

  - Time Warner Telecom relied upon an alternative provider's signaling system from 1996 - 1998, and experienced numerous system failures with widespread effects.

  - Lack of diversity and ongoing service problems caused Time Warner Telecom to establish SS7 signaling arrangements with ILECs. None of the third-party vendors evaluated by Time Warner Telecom offered anything close to the reliability of the ILECs' SS7 network.

  - ILEC efforts to tie the signaling UNE to the switching UNE must be rejected. Most CLECs who have deployed switches have not deployed their own regional or national signaling networks. Time Warner Telecom does not have the scale necessary to justify the investment to replicate the diversity of the ILECs' signaling network.

  - Without significant quality improvement in third-party signaling systems, lack of access to ILEC signaling systems will put CLECs at a severe competitive disadvantage, and will threaten overall network reliability.

Ex Parte Submission By Time Warner Telecom
In CC Docket Nos. 95-185; 96-98 (*UNE* Remand)

Time Warner Telecom Holdings Inc. d/b/a Time Warner Telecom ("TWTC") hereby submits this ex parte filing to put to rest once and for all the question of whether directory assistance ("DA") service must be classified as an unbundled network element ("UNE").[1] As is explained in detail in the following narrative and as demonstrated in the attached cost analysis, it is beyond dispute that TWTC as well as other similarly-situated CLECs would be impaired in their ability to compete with incumbent LECs if they were unable to obtain DA service as a UNE.

In the case that gave rise to the instant remand proceeding, the Supreme Court held that, in construing Section 251(d)(2)(B), the Commission must account for "the availability of elements outside the incumbent's network" and may not assume, as it did initially, that just "*any* increase in cost (or decrease in quality)" constitutes impairment. See AT&T v. Iowa Utils. Bd., 119 S.Ct. 721, 734-35 (1999) (emphasis in original). In light of the Supreme Court's decision, Section 251(d)(2) should be construed to require that an ILEC provide a facility or piece of equipment as a UNE so long as a competing carrier cannot either efficiently self-provision the element or alternatively purchase the element in a competitive wholesale market. In no sense is DA available under these terms to TWTC today.

First, TWTC simply cannot obtain DA from a third party provider that comes close to matching the ILECs' UNE offerings in terms of quality and price. This is in part because the ILECs are the only source of accurate DA listings, and, as many parties have explained in this proceeding, ILECs refuse to provide DA listings to their competitors in the DA business on nondiscriminatory terms and conditions.[2] This problem is

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1 In now overturned rules, the Commission established DA service as well as DA listings and other components of DA service as UNEs. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶¶ 534-538 ("Local Competition Order"). This ex parte presentation focuses on the need to retain DA service as a UNE in the instant remand proceeding. Moreover, since no party has offered any basis for concluding that DA service should be considered proprietary under Section 251(d)(2)(A), this ex parte focuses solely on whether DA meets the "impairment" standard set forth in Section 251(d)(2)(B).

2 See, e.g., Comments of AT&T at 131-134 (describing unreasonable restrictions on access, unreasonably prices, and unreasonable use restrictions); Comments of Teltrust at 8-9 (describing unreasonable prices); Comments of Metro One

apparently equally serious for carriers, which theoretically have a right to DA listings as UNEs, and non-carriers, which have no such right.[3] In order to charge competitive prices, third party DA service providers must rely on non-ILEC sources for directory listings, and such sources are 15% less accurate than the ILECs' databases. See, e.g., Comments of Metro One at 3.[4]

This disparity may not be a big problem for carriers such as CMRS providers or some IXCs that do not compete directly with the ILECs' fixed local service and that (in the case of CMRS providers) often do not charge a separate fee for DA calls. But fixed local service providers such as TWTC must at least match the ILECs' service quality, and inferior DA service harms TWTC's reputation with its customers. Indeed, a customer may have as much direct interaction with TWTC's DA service as any other aspect of the local service provided by TWTC.

If DA service were not available as a UNE, problems associated with gaining access to accurate DA listings would by themselves force TWTC either to pay much more for service that matches the ILECs' in quality or purchase degraded service and harm its reputation. For example, BellSouth recently stated in an ex parte in this proceeding that its tariffed DA service rate is $.85 per call. See BellSouth ex parte in CC Docket No. 96-98, Aug. 2, 1999 ("BellSouth ex parte"). But the UNE rates for DA service throughout the BellSouth region are between $.20 and $.31 per call.[5] Furthermore, while it is possible in some cases to

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at 8-11 (describing unreasonable restrictions on access, and unreasonable prices); Comments of MCI WorldCom at 72 (describing unreasonable restrictions on access).

3 See, e.g., Reply Comments of Teltrust 2-3 (a non-carrier) (explaining that because of problems it has encountered in obtaining access to ILEC DA databases, "Teltrust simply cannot compete with ILECs' DA wholesale pricing"); Comments of MCI WorldCom at 71-72 (explaining that, "despite MCI WorldCom's strong preference for providing customers served on our own switches our own DA service, we have made the market-driven decision not to do so unless we have access to complete bulk DA data at cost-based rates").

4 As noted below, in some cases third party vendors are able to obtain access to accurate ILEC directory listings. In those cases, however, the ILECs have successfully raised their rival DA service providers' costs, thus forcing the third party vendors to charge per call prices far above the ILECs' UNE rates.

5 The per call UNE prices for DA service in the BellSouth region are as follows: Alabama ($.26), Florida ($.25), Georgia ($.21), Kentucky ($.31), Louisiana ($.20),

purchase DA from third party vendors with listings as accurate as the ILECs', such service costs $.50-$.60 per call. Given this disparity between cost-based UNE prices and wholesale prices for service of similar quality, it is clear that the wholesale market for DA is far from competitive.

Nor would the establishment of more rules governing access to ILEC DA listings, by itself, obviate the need to retain DA service as a UNE. It is certainly necessary for regulators to try to ensure that ILEC databases are available at TELRIC-based prices and in a form that enables efficient third party DA providers to compete. But ILECs have been required to provide DA listings as UNEs since 1996. Notwithstanding this obligation, ILECs have demonstrated that they are able to raise their rival DA service providers' costs by increasing the cost and degrading the quality of third party access to ILEC DA listings. Merely adopting rules (even assuming they are adequately comprehensive) would not make the wholesale DA market competitive. Adequate wholesale competition will only develop if regulators are successful in implementing the relevant rules.[6] Until such success is achieved, TWTC will continue to be impaired if it is unable to purchase DA service as a UNE.

In addition to problems associated with DA listings, TWTC also must pay much higher trunking costs when purchasing DA from a third party vendor. This is because ILECs' DA call centers are located closer than third party call centers to TWTC's switches in the 16 areas in which TWTC operates. See Reply Comments of TWTC at 15-16.

When the high cost of obtaining accurate DA listings and the high cost of transporting DA traffic to third party call centers are taken into account, it is clear that third parties cannot come close to competing with the ILEC DA UNE offering when selling to fixed local service providers. For example, the attached cost analysis compares the cost TWTC currently incurs in purchasing DA service from ILECs with the cost TWTC incurred when

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Mississippi ($.26), North Carolina ($.27), and South Carolina ($.26). There is currently no price set in Tennessee.

6 In addition, such rules may be inherently limited in their effect because there is a serious legal question as to whether the Commission can require ILECs to provide access to DA listings to third party DA providers that are not also telecommunications carriers. See 47 U.S.C. § 251(c)(3) (limiting access to UNEs to requesting telecommunications carriers); id. at § 251(b)(3) (limiting LECs' obligation to provide access to directory listings to competing LECs and IXCs).

purchasing DA from a third party vendor with a single national call center that used non-ILEC sources for DA listings. In response to requests from other parties and the Commission staff, TWTC has also included an analysis of the costs it would incur if it were to purchase DA from a third party vendor with multiple call centers that uses DA listings as accurate as the ILECs' (thus charging TWTC $.50 per call). As the attached analysis demonstrates, TWTC's per call DA service costs would increase twofold if it were to purchase service from a third party using 8 centrally-located call centers[7] and three-fold if TWTC were to return to the third party that has one central call center. There is no question that TWTC would be impaired in its ability to compete under either scenario.

Second, the situation would be even worse if TWTC were forced to self-provision DA. As demonstrated in detail in the attached cost analysis, self provisioning would cause TWTC to incur average DA per call costs of more than ten times what it pays the ILECs for DA service. This is largely a matter of scale. Given the high fixed costs of establishing DA service, TWTC does not have enough DA traffic to self-provision DA efficiently.

Nothing on the record in this proceeding refutes the point that TWTC, and no doubt other similar CLECs, would be impaired if DA service were no longer a UNE. For example, Ameritech and BellSouth have argued that TWTC could have avoided paying high transport costs if it purchased DA from a third party vendor with multiple call centers. See Ameritech ex parte, July 30, 1999 ("Ameritech ex parte"); BellSouth ex parte at 2. But as TWTC explained above, even if it were to connect with eight centrally-located third party call centers, TWTC would still pay twice as much as when it purchases DA from ILECs as a UNE.

Ameritech has also asserted that "it is highly unlikely" that third party DA prices are several times more expensive or that self-provisioning would be ten times more expensive for TWTC than purchasing DA as a UNE since otherwise "third party vendors and self-suppliers would not be able to survive in the marketplace." See Ameritech ex parte at 3. But Ameritech overlooks the fact that self-supply can be efficient for firms, such as AT&T and MCI, with large enough call volumes (economies of scale). TWTC simply has not reached that point yet.

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[7] In this analysis, TWTC used the locations among the 25 Metro One call centers that are closest to the 16 areas in which TWTC operates. Metro One has the largest number of call centers among the major third party vendors (25). It should be noted that while Metro One states in its comments that it has 20 call centers, Metro One representatives recently informed TWTC that it currently has 25 call centers.

Moreover, as mentioned, TWTC would be forced to pay more for a third party DA service because TWTC must pay a premium to obtain directory listings that are as accurate as the ILECs' and because of high trunking costs TWTC would be forced to incur. These problems may not be relevant to a carrier (such as an IXC or a CMRS provider) that does not compete directly with the ILEC's fixed local service and that already has a national network in place. In fact, third party vendors may offer certain services that are especially valuable to such carriers (such as driving directions to a particular location, a service that would seem especially useful to CMRS users) for which TWTC has little need. In any event, the fact remains that for TWTC, and national CLECs of similar scale, the only efficient option is ILEC DA service.[8]

More recently Bell Atlantic Mobile ("BAM") has argued that third-party vendors offer adequate substitutes for ILEC DA. See Bell Atlantic Mobile ex parte, Aug. 10, 1999. BAM states that it has selected third party providers in part because they provide services such as call completion. See id. But BAM makes no effort to demonstrate why call completion would be as important to fixed service customers as mobile service customers. Indeed, common sense would seem to indicate just the opposite, since mobile service users place a much higher premium on convenience than is the case with fixed service users. Furthermore, while BAM vaguely states that its selection of third party vendors is "based upon actual competitive bidding and serious market scans," see id., BAM offers no specific cost data, rendering its conclusions impossible to analyze.

Thus, under any reasonable construction of the term, TWTC would be "impaired" if it were not able to obtain DA service as a UNE from ILECs. Given TWTC's experience in the marketplace and the detailed cost information submitted in this ex parte filing, the Commission would be hard-pressed to sustain a refusal to classify DA service as a UNE in the face of an appellate challenge. The facts on the record in this proceeding simply cannot support such a conclusion.

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8 Not surprisingly, many CLECs with facilities-based entry strategies similar to TWTC's have urged the Commission to retain DA service as a UNE. The carriers describe the same quality and price issues discussed in this ex parte. See, e.g., Comments of MediaOne at 11-13; Comments of Cox at 32-34; Reply Comments of Teligent at 6-8; Comments of Allegiance Telecom at 22-24.

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Avg. Cost Per Call Using Third-Party Vendor Platform (one call center)[3]	$1.19
Avg. Cost Per Call Using a TWTC DA Platform (See Below)	$5.50 to $6.50

Estimated Costs of Constructing and Operating a Single National Call Center

Capital Costs[4]	$4,312,000
Start-Up Costs[5]	1,517,940
Total One-Time Costs	$5,829,940
Annual Operating Costs[6]	$2,724,000
Annual Messages	604,776 (16 cities)[7]

Cost per Call

10-Year Amortization ((5,829,940/10) + 2,724,000)/604,776 = $5.47/call

7-Year Amortization ((5,829,940/7) + 2,724,000)/604,776 = $5.88/call

5-Year Amortization ((5,829,940/5) + 2,724,000)/604,776 = $6.43/call

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1 Includes the cost of ILEC wholesale DA charges plus transport to ILEC call centers, based on TWTC's experience.

2 Includes the cost of vendor's DA charges plus transport to 8 regional call centers, based on an analysis of third-party vendors' service offerings.

3 Includes the cost of vendor's DA charges plus transport to single national call center, based on TWTC's experience.

4 Estimated capital costs consist of the costs of purchasing a switch and building construction, call center building construction, and operator equipment.

5 Estimated start-up costs consist of technical/engineering costs, Management Information System (MIS) costs, operator training, project management, and establishment of a listings database.

6 Estimated operating costs consist of building lease, operator salaries, trunking from end-office switches, and daily/weekly listings downloads.

7 Based on actual DA call data for July and August 1998 in 9 cities.