BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions	)	
in the Local Telecommunications Act of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon	)	
for Elimination of Mandatory Unbundling of	)	
High-Capacity Loops and Dedicated Transport	)	
Competitive Local Exchange Carriers	)	

REPLY COMMENTS OF TIME WARNER TELECOM

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ATTORNEYS FOR
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June 25, 2001

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REPLY COMMENTS OF TIME WARNER TELECOM

Time Warner Telecom ("TWTC"), by its attorneys, hereby submits these reply comments in opposition to the Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Transport ("Joint Petition").

DISCUSSION

TWTC files these reply comments to provide the Commission with the perspective of one of the largest providers of competitive high-capacity transport and switched service on the assertions made in the Joint Petition. As explained briefly below, it is TWTC's experience that there are simply no efficient alternatives to ILEC high capacity loops connections to many of the buildings TWTC seeks to serve.

TWTC offers dedicated and switched competitive offerings to mostly large business customers in 39 urban markets throughout the U.S. In the geographic areas in which it operates, TWTC deploys its own switches and transport. It also builds its own loop connections to end user customers whenever possible. But there are many circumstances in which TWTC cannot use its own facilities to link its fiber transport network to the end user. For example, some customers seek products that, by themselves, do not generate enough revenue to justify building loop facilities to the buildings in which the customers are located. This would be the case where an occupant of a small building located in a suburban area that TWTC's network does not reach wants to purchase only a T-1 connection from TWTC. Other customers with multiple locations in a particular city (such as banks) want to buy all of their telecommunications service from the same source, but one or more of their business locations may be too far from TWTC's transport network to justify constructing loop facilities. At other times customers need service turned up more quickly than TWTC can build its own connection to the end user.

In cases where TWTC cannot rely on its own facilities to construct loop facilities, TWTC prefers to rely on non-ILEC alternative sources for these facilities. Unfortunately, third-party sources are usually unavailable. To begin with, as the Commission has recognized, landlords often impose unreasonable demands and excessive delays on competitors' efforts to serve tenants in particular buildings.[1] Neither TWTC nor other competitors can efficiently serve tenants in such buildings. Moreover, it has been TWTC's experience that other competitive carriers generally do not have high-capacity loop facilities in place and are unwilling to build such facilities to connect buildings for which TWTC cannot deploy its own loop facilities. This is

especially true in the suburban areas where many of the office parks have been constructed over the past decade. Indeed, despite the misleading representations made in the Joint Petition, very few competitive providers have deployed networks outside the core areas of the large urban areas. Furthermore, multiple competitive carriers have deployed facilities in the core areas of the big cities, with the result that multiple competitive networks often serve the same buildings in those areas. Even where alternative facilities are available that meet TWTC's service quality standards, some third-party providers are in such precarious financial condition that they cannot be relied upon as suppliers. It is simply too risky for TWTC to purchase a critically important input from a firm that may in the foreseeable future be forced to sell its assets, turn off part of its network, or change its business plan.

TWTC's experience in the market is therefore flatly inconsistent with the factual assertions regarding non-ILEC sources for high-capacity loop facilities. TWTC therefore opposes the Joint Petition.

This is not to say that TWTC supports the unqualified availability of high-capacity loop and transport services as unbundled network elements. TWTC has been a consistent supporter of the local usage requirement for unbundled loop-transport combinations.[2] TWTC has supported this requirement because it is concerned that TELRIC pricing for loop-transport combinations would unnecessarily distort the substantial, but still developing, facilities-based competition in the special access market. It is one thing to limit the unfettered use (and associated arbitrage opportunities) of loop-transport UNE combinations in order to promote the independent goal of

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[1] See *In re Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and FNPRM, 15 FCC Rcd 22983, ¶¶ 17-24 (2000).

facilities-based competition in the provision of a particular service. The Commission has full discretion to do just this, regardless of whether requesting competitors would otherwise be impaired if they were not able to obtain the UNEs in question.[3] It is something entirely different to assert, as do the BOCs in the Joint Petition, that high capacity loops should not be available at all because the non-ILEC supply is so substantial. TWTC strongly opposes this argument as unsustainable as a matter of fact and extremely therefore dangerous as a matter of national regulatory policy.

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[2] *See e.g.*, Comments of Time Warner Telecom, CC Docket No. 96-98 (Apr. 5, 2001)

[3] Specifically, Section 251(d)(2) states that the Commission shall consider "at a minimum" the impairment test when selecting UNEs. *See* 47 U.S.C. § 251(d)(2). As the Commission held in the UNE Remand Order, this phrase allows it to consider factors other than the impairment analysis when choosing UNEs. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶ 101 (1999). One of the factors the Commission has decided to consider is the effect of unbundling on facilities-based competition. *See id*, ¶ 101. Thus, even where requesting carriers would be impaired in the absence of a particular UNE, the Commission has decided that it may still decide not to make the element available as a UNE because of the detrimental effect such unbundling would have on facilities-based competition.

CONCLUSION

The Commission should reject the Joint Petition for the reasons described herein and in the comments filed by other parties in opposition to the Joint Petition.

Respectfully submitted,

/s/Thomas Jones

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