BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
2002 Biennial Regulatory Review	)	WC Docket No. 02-313
	)	

REPLY COMMENTS OF TIME WARNER TELECOM

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ATTORNEYS FOR
TIME WARNER TELECOM

November 4, 2002

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Time Warner Telecom Corporation ("TWTC"), by its attorneys, hereby submits these reply comments in response to the Public Notice[1] in the above-referenced proceeding.

The comments filed in this proceeding raise two basic issues of relevance to competitive local exchange carriers such as TWTC. First, the commenters, especially Verizon and USTA, invite the Commission to address many important local competition issues that have been squarely raised in other proceedings. For example, Verizon and USTA argue that the Commission should eliminate regulations applicable to broadband service provided by ILECs and should eliminate rules that currently prohibit BOCs from sharing operating, installation, and maintenance services with their Section 272 affiliates. Verizon Comments at 11-14; USTA Comments at 10-11, 14. But of course these issues are being addressed comprehensively in separate Commission proceedings.[2] There is therefore no need to address these matters further in the instant proceeding.

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[1] *See The Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations within the Purview of the Wireline Competition Bureau*, Public Notice (rel. Sept. 26, 2002) ("Public Notice").

[2] *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (addressing regulatory classification of ILEC broadband services); *Review of Regulatory Requirements for Incumbent LEC Broadband Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (addressing whether ILECs should be deemed non-dominant in the provision of broadband

Second, USTA argues, as it has over and over, that the Commission should either eliminate or significantly scale back the ARMIS reporting requirements. *See* USTA Comments at i (asserting that ARMIS reports should be eliminated). But there is, at the very least, no basis for eliminating ARMIS reporting requirements that measure the extent of ILEC market power in the provision of interstate services and the extent to which ILECs are abusing that market power. Indeed, the question should be whether the relevant reporting requirements can be made more comprehensive and accurate, not whether they should be eliminated. For example, ARMIS Report 43-01 contains data regarding "net return" for special access (line 1915, column s) and "average net investment" for special access (line 1910, column s). This information can be used to determine an ILEC's rate-of-return for interstate special access. Notwithstanding the fact that the Commission has granted the ILECs substantial pricing flexibility in the provision of these services, TWTC remains concerned that such flexibility was granted prematurely, leaving the ILECs with the opportunity to leverage their control over high-capacity end user connections to harm their competitors in the provision of special access service. One of the most meaningful measures of the ILECs' continued market power in the provision of special access is the rate-of-return they have received in the provision of these services. Indeed, AT&T recently used ILEC ARMIS 43-01 Reports to calculate ILEC interstate rates-of-return for special access in support of

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services); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002) (addressing the extent to which Section 272 separate affiliate requirements should continue to apply).

its petition seeking the re-regulation of ILEC interstate special access.[3] Without addressing whether the remedies sought by AT&T in its petition are appropriate, it should not be disputed that its underlying assessment of ILEC market power in the provision of special access is critically important. That assessment would not have been possible without ARMIS 43-01 Reports.[4]

Once one accepts that the ILECs possess market power in the provision of interstate special access service, it becomes necessary for the Commission to ensure, pursuant to Sections 201 and 202 of the Act, that the ILECs are not exploiting that market power to harm competition and consumer welfare. One way in which ILECs can achieve this result is by engaging in non-price discrimination. The only way for the Commission to determine the extent to which the ILECs are in fact acting on their incentives to engage in non-price discrimination is to impose adequate service quality measurements, standards, reporting requirements and penalties on ILEC special access service. Currently, ARMIS Report 43-05, Table 1 contains the only available information reported by ILECs as to special access service quality. As TWTC has explained, these reporting requirements are not detailed or comprehensive enough to adequately monitor

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[3] *See* AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM No. 10593 (filed Oct. 15, 2002), Tab A, Declaration of Stephen Friedlander.

[4] Similarly, the Commission relied on ARMIS reported rate-of-returns for ILEC price cap baskets as the basis for determining how to target reductions in switched access rates in the CALLS order. *See Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶ 170, n.376 (2000). Moreover, ILEC interstate special access rates-of-return are also highly relevant to whether current price cap regulations allow ILECs to be adequately compensated for the business risks in the current market or whether ILECs should instead be permitted to impose new deposit and/or advance payment obligations on their access customers. *See e.g., BellSouth Telecommunications, Inc. Tariff FCC No. 1, Transmittal No. 657*, WC Docket No. 02-304, Order, ¶ 11 (rel. Sept. 18, 2002).

ILEC behavior.[5] Nonetheless, they are the only reporting requirements currently applicable to ILEC interstate service. They must therefore be retained until the Commission replaces them with more effective requirements being considered in the Commission's special access performance measurement proceeding.[6]

Respectfully submitted,

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[5] *See* Reply Comments of Time Warner Telecom in CC Docket No. 00-229 (Feb. 16, 2001) at 6-9; Comments of Time Warner Telecom and XO Communications, Inc. in CC Docket No. 01-321 (Jan. 22, 2002) at 41-45.

[6] *See Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001).