

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )  
 )  
Petition of SBC Communications Inc. for ) WC Docket No. 04-29  
Forbearance Under Section 10 of the )  
Communications Act from Application of Title )  
II Common Carrier Regulation to “IP Platform )  
Services” )

**COMMENTS OF TIME WARNER TELECOM**

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May 28, 2004

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Time Warner Telecom, Inc. ("TWTC"), by its attorneys, hereby submits these comments in response to the petition for forbearance filed by SBC in the above-referenced proceeding.

**DISCUSSION**

In the petition for declaratory ruling filed as a companion to the forbearance petition at issue in this proceeding, SBC argued that the so-called "IP platform services" as well as IP networks that are the subject of the Petition for Forbearance should be exempted from Title II common carrier regulation or regulation under any other title in the Act (other than Title I).<sup>1</sup> In the event either the Commission or a court classifies some or all IP platform services or networks as common carrier/telecommunications services, SBC argues in the Petition for Forbearance that the Commission should forbear from applying the requirements of Title II to such services or networks.

In comments filed today in response to the IP platform petition for declaratory ruling and the Commission's notice of proposed rulemaking in the IP-Enabled Services proceeding

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<sup>1</sup> See Petition of SBC Communications Inc. For A Declaratory Ruling Regarding IP Platform Services (Feb. 5, 2004).

(“TWTC Comments”),<sup>2</sup> TWTC demonstrates that the Commission must require SBC and other incumbent LECs to offer IP-enabled loops that are successors to DS1 and DS3 circuits and associated transport facilities as special access under Title II of the Act.<sup>3</sup> The arguments presented in those comments also demonstrate that the instant petition for forbearance should be denied.

Under Section 10(a), the Commission is required to forbear from applying regulations applicable to a telecommunications service or carrier if enforcement of the regulation is not necessary to ensure that rates, terms, and conditions are just, reasonable, and not unjustly or unreasonably discriminatory; enforcement of the regulation is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. § 160(a). Section 10(b) clarifies further that the Commission may find that the public interest is met if forbearance will promote competition among providers of telecommunications services. *See id.* § 160(b).

As TWTC explains in the attached comments, SBC and other incumbent LECs have substantial and persisting market power over the transmission inputs needed to provide IP services to business customers. *See TWTC Comments at 9-13.* The incumbents also have the incentive and the opportunity to exploit this market power to harm competition, increase rates, and stunt innovation. *See id.* at 13-15. The only way to diminish the opportunities for the incumbents to act on their inefficient incentives is to retain common carrier regulation for IP-enabled successors to the DS1 and DS3 loops and transport. *See id.* at 15.

In light of these facts, there is no way that the Commission could conclude that the Section 10 standards are met with regard to IP-enabled loops needed to serve medium and large

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<sup>2</sup> *See IP-Enabled Services*, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004).

<sup>3</sup> Those comments are attached hereto as an Appendix.



## **APPENDIX**