

J. Phillip Carver
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street, N.E
Atlanta, Georgia 30375-0001
Telephone: 404-335-0710
Facsimile: 404-658-9022

October 28, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 96-98, 01-321, 01-338, RM No. 10593

Dear Ms. Dortch:

This letter is in response to a letter from Time Warner Telecom ("Time Warner"), dated September 8, 2004. The Time Warner letter advised of an *ex parte* meeting that took place on September 7, 2004, and included as an attachment a presentation distributed at that meeting ("*ex parte*"). Time Warner's *ex parte* makes a number of broad sweeping claims, but is notably devoid of facts. Further, the facts (described below) belie Time Warner's allegations.¹

Time Warner has alternatives to the purchase of access services from BellSouth. The existence of these alternatives serves as an effective check upon the price, terms and conditions of BellSouth's access services. Likewise, the fact that Time Warner does not hesitate to fully utilize these alternatives has allowed it to negotiate favorable prices and terms for the special access services it purchases from BellSouth.

¹ The claims of Time Warner touch briefly upon a myriad of significant issues that are before the Commission in a variety of proceedings. It is not BellSouth's purpose in writing this letter to try to provide a detailed, thorough analysis on every topic that Time Warner mentions. To do so would likely require a response of several hundred pages. Moreover, BellSouth has addressed all of the issues raised by Time Warner in other proceedings, and will continue to provide additional information in these proceedings as appropriate. (*See* BellSouth Reply Comments, Affidavits of Nancy Starcher and Alphonso J. Varner, filed October 19, 2004 in WC Docket 04-313 and CC Docket 01-338; *see generally*, BellSouth Comments filed in CC Docket Nos. 96-98 (filed Apr. 5, 2001), 01-321 (filed Jan. 22, 2002), & 01-338 (filed Apr. 8, 2002), RM No. 10593 (filed Dec. 2, 2002) and WC Docket No. 02-112 (filed June 30, 2003).) Instead, BellSouth will provide below a limited response that goes only to the broad factual claims of Time Warner that are inconsistent with BellSouth's experience with Time Warner.

Time Warner states in Section I.A. that it generally builds its own transport and loop facilities, but that, in some instances, it must rely upon ILECs' special access transmission facilities.² Time Warner also claims, without factual support, that when this is the case, "there are no viable alternatives to the ILEC transmission facility."³

The first part of Time Warner's statement, that it "generally builds its own transport and loop facilities," appears accurate, but does not convey the level of success that Time Warner has achieved in its efforts to utilize its own facilities to reach customers. In a recent presentation to investors, Time Warner described its network as including nearly 19,000 route miles, including facilities that constitute the "[l]ast mile" local loop.⁴ Time Warner also heralded its network as including lit fiber to over 4,500 buildings and "[n]etwork proximity to thousands of buildings."⁵ In the same presentation, Time Warner stated that it derives approximately "70% of revenue from services fully on [its] fiber network."⁶ Time Warner also informed investors earlier this year that, in 2003, it increased by 17% the number of buildings it directly serves with fiber, and that half of this increase occurred in the fourth quarter of 2003.⁷

Still, Time Warner contends that in the instances in which it chooses not to use its own facilities, it has no alternative but to purchase access services from ILECs. However, Time Warner has told BellSouth precisely the opposite, i.e., that not only do competitive alternatives exist, but that Time Warner has every intention of using them. Time Warner purchases access services from BellSouth pursuant to a Pricing Flexibility Contract Tariff. The parties are currently negotiating a new agreement, which would provide incentives for Time Warner to continue to purchase special access services from BellSouth. Throughout the course of recent negotiations, Time Warner has repeatedly stated to BellSouth that if BellSouth does not meet its demands relating to terms, conditions, and pricing, it will obtain special access services (or the equivalent) elsewhere. Specifically, Time Warner has mentioned wireless providers and competitive access providers ("CAPs") as service alternatives.

Thus, while Time Warner tells the Commission that it has no choice but to purchase access services from ILECs, it tells investors of its extensive network and the ever-growing opportunity for further network development, and tells BellSouth that it will also not hesitate to utilize other carriers. Combined, these representations demonstrate that—between self-

² *Ex parte* at 1.

³ *Id.*

⁴ Investor Presentation, September 2004, "Time Warner Telecom: The Power Driving Your Network," at 12 (This document was posted on Time Warner's website, www.twtelecom.com, but was subsequently removed; a copy is attached as Exhibit 1).

⁵ *Id.*

⁶ *Id.* at 4 (emphasis added).

⁷ Time Warner Telecom Earnings Conference Call, Feb. 2, 2004, Transcript at 3 (CCBN Street Events).

provisioning, wireless providers and CAPs—Time Warner has a variety of alternatives to purchasing ILEC access services.

In section I.C. of the *ex parte*, Time Warner contends that when ILECs control the provision of special access service, they have the incentive to “degrad[e] the quality of the special access TWTC purchases.” (*ex parte* presentation at 1). However, an escalation process exists between BellSouth and Time Warner that allows Time Warner to bring performance concerns to the attention of BellSouth management. In the last eighteen months, Time Warner has not escalated any major issues regarding alleged “degradation” in the quality of special access service purchased from BellSouth. Moreover, during this timeframe, a Service Level Agreement (“SLA”) between Time Warner and BellSouth has been in place. The SLA includes service performance penalties for multiple measurement categories that are crucial to Time Warner’s business, and is a part of the Pricing Flexibility Contract Tariff. This agreement provides negotiated levels of service on key service metrics in the areas of ordering, provisioning and maintenance, and also provides credits to Time Warner if the service provided fails to meet the negotiated standards. Although BellSouth and Time Warner are currently negotiating the terms and conditions of the SLA that will apply in the future, Time Warner has never expressed to BellSouth any displeasure with the above-described approach to ensuring service quality, and Time Warner has raised no specific service complaints during these negotiations. Thus, once again, the reality of the business relationship between BellSouth and Time Warner contradicts the unverified claims that Time Warner puts forth in its *ex parte* presentation.

In Section II. B. of the *ex parte*, Time Warner states that “[i]n order to obtain special access at reasonable prices TWTC is being asked to make volume/term commitments that limit TWTC’s ability [to] deploy fiber and to transition to other technologies such as WiFi and other DSL providers.”⁸ Since Time Warner does not identify the ILEC(s) making this demand, it is impossible to know whether this statement is true of any ILEC. However, it is certainly not true of BellSouth. While BellSouth does provide more favorable pricing to Time Warner (and to other special access customers) with a contractual commitment to purchase a certain volume of special access services from BellSouth, BellSouth has never required that Time Warner purchase from BellSouth all the service necessary to meet its access requirements. Further, Time Warner has never complained about the term and volume arrangements offered by BellSouth, or claimed that these arrangements have, in any way, impeded Time Warner’s ability to pursue other alternatives.

Further, Time Warner’s statement that ILECs have “asked” it to make these volume and term commitments (and the implication that ILECs are engaged in some sinister gambit to “lock up” customers) is belied by the fact that Time Warner has actively pursued term and volume discounts in its negotiations with BellSouth. In fact, Time Warner has requested that BellSouth tailor a unique volume and term arrangement to meet its specific requirements.

Finally, it is very unlikely that term and volume commitments in the typical contract for special access services could function as an impediment to pursuing other alternatives. Contracts

⁸ *Ex parte* at 1.

for special access services are typically for a three to five year term. If a customer such as Time Warner makes a decision to pursue alternatives to special access service by self-deploying or purchasing from an alternative provider, this is generally not a decision that can be implemented instantly. In other words, planning is necessary, and it is also necessary to arrange for network reconfigurations or to take other steps to implement alternative arrangements. Thus, if a purchaser of special access service decided to utilize some other vehicle to meet its particular service needs, it would typically do so after the end of its current contract.

In Section II.C.1, Time Warner claims that “unbundled loops and transport” provide “the one meaningful regulatory check on ILEC special access pricing behavior.”⁹ This statement ignores the existence of the true check on access service pricing: the availability of other alternatives. The fact that Time Warner derives approximately 70% of its revenue from services provided over its own fiber establishes beyond contradiction that self-provisioning has proven to be a viable alternative to purchasing special access from ILECs. Further, the access services that Time Warner purchases from BellSouth have been the subject of vigorous negotiation between the parties. Again, during these negotiations, Time Warner has repeatedly stated to BellSouth its intention to take its business elsewhere if BellSouth does not provide it with the prices, terms and conditions it seeks. The ability of Time Warner (and others) to do so, combined with the ability to deploy economically its own network facilities, provide the most meaningful check on special access prices in this competitive environment.

Finally, among its numerous requests for regulatory restrictions in Section IV, Time Warner states that it is necessary to “[a]dopt comprehensive performance reporting, measurements and standards for special access.”¹⁰ However, Time Warner already has in place an agreement (described above) whereby it receives a negotiated level of service from BellSouth. Further, this service level is guaranteed, and credits are provided (as also explained above) if the guaranteed service levels are not met. Moreover, even if Time Warner had the need for an additional measurement plan, the *ex parte* ignores the fact that BellSouth has proposed for use in a number of proceedings¹¹ a performance measurement plan that is based upon the requirements of Section 272(e)(1), which would enable the Commission to effectively evaluate all special access performance.

Again, the purpose of this letter is not to comment at length on the substance of the many areas that the Time Warner’s *ex parte* touches upon in passing. Instead, BellSouth’s intention is simply to note that the vague and conclusory claims of Time Warner’s *ex parte* presentation are

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ See Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, FCC, and attached presentation, WC Docket No. 02-112, EB Docket No. 03-197, CC Docket Nos. 01-321 & 96-149 (May 11, 2004).

Ms. Marlene H. Dortch
October 28, 2004
Page 5 of 6

based on incorrect statements and unsupported allegations. Given this, BellSouth submits that Time Warner's assertion as to the need for regulatory restraints upon ILECs should be rejected.

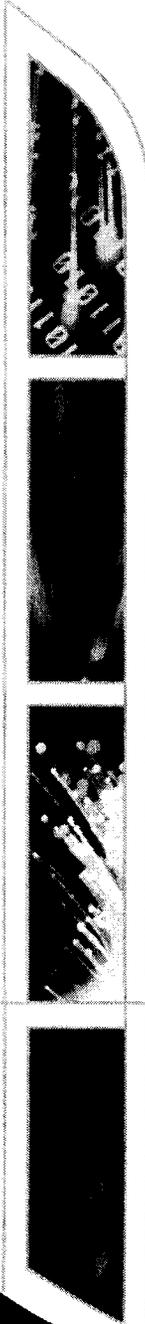
Respectfully submitted,

J. Phillip Carver

cc: Commissioner Michael Copps
Jessica Rosenworcel
Commissioner Kevin Martin
Dan Gonzalez

TIME WARNER TELECOM

THE POWER DRIVING YOUR NETWORK



Investor Presentation
September 2004



TIME WARNER  **TELECOM**
THE POWER DRIVING YOUR NETWORK

Company Overview

Safe Harbor Statement . . .

Statements made during today's presentation may include certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on management's current expectations and are subject to risks and uncertainties. These risks include the risks summarized in the Company's filings with the SEC, especially the section entitled "Risk Factors" in its Annual Report on Form 10-K.

Time Warner Telecom Inc. is under no obligation, and expressly disclaims any obligation, to update or alter its forward-looking statements whether as a result of new information, future events or otherwise.

Time Warner Telecom . . .

We Are ---

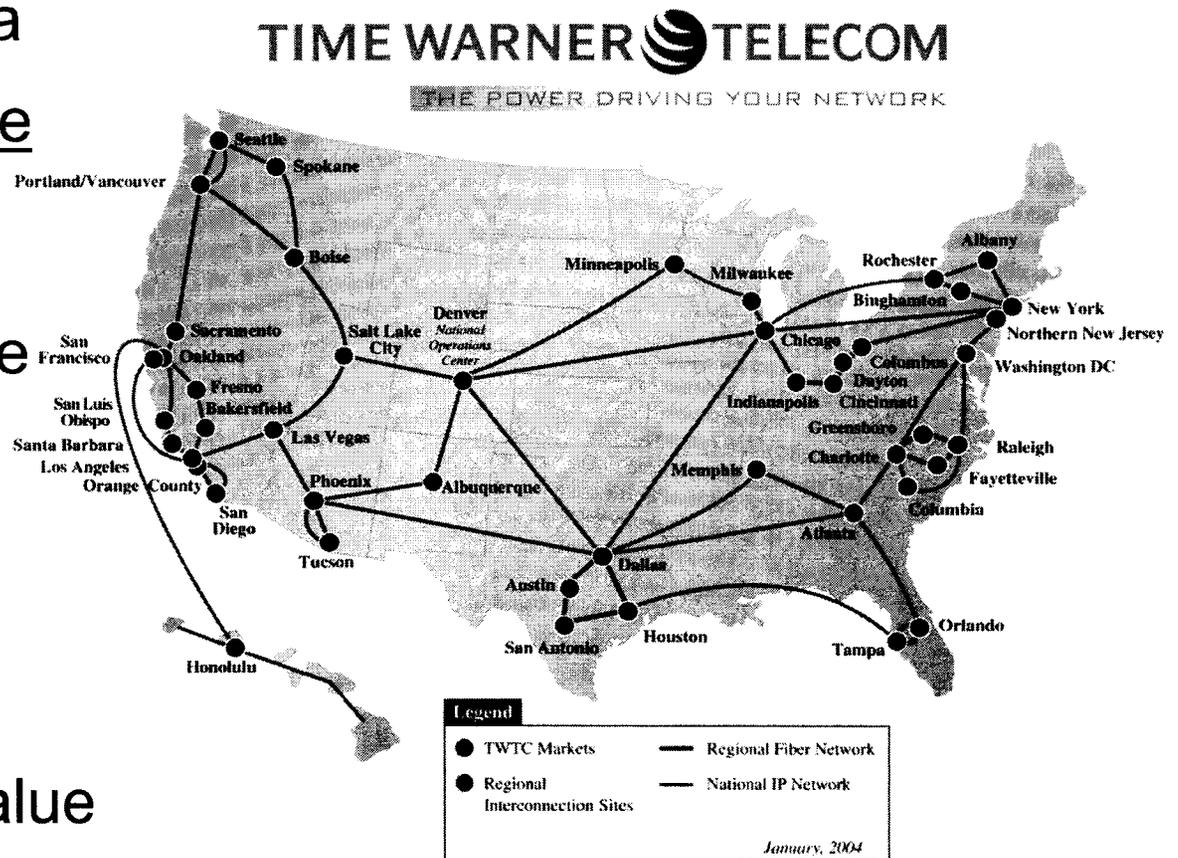
- Metro focused w/ national presence
- Data & telecom service provider
- Generating ~70% of revenue from services fully on our fiber network
- Serving larger enterprise customers

We Are Not ---

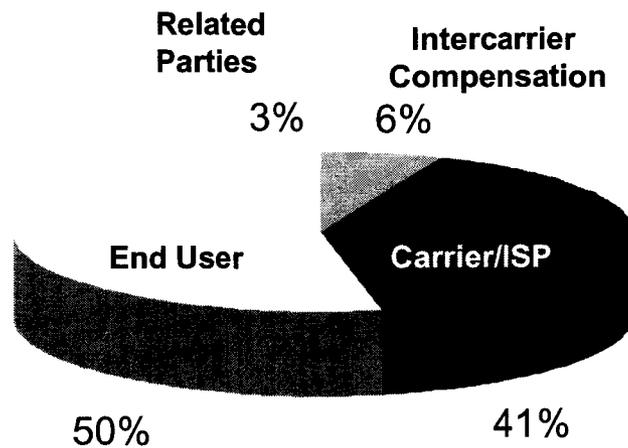
- a long-haul transport provider
- a seller of dark fiber
- not dependent on a UNE/UNE-P reseller strategy
- a seller of residential or “sub-T-1” services

Local Networks Integrated w/ Nat'l IP Network . . .

- Local company with a national presence
- Network Integrator
- Complex data & voice solutions
- Local fiber facilities
- Nat'l IP backbone
- Delivering a better value



Higher Quality Customer & Revenue Mix ⁽¹⁾



	<i>A year ago</i>	<i>Today</i>
Enterprise/End Users	44%	50%
Carrier & ISP	43%	41%
Related Parties ⁽²⁾	5%	3%
Intercarrier Compensation	8%	6%
	<u>100%</u>	<u>100%</u>

(1) Adjusted revenue for the three months ended June 30, 2004 and 2003. See reconciliation to GAAP at www.twtelecom.com.

(2) Related parties include Time Warner Inc. and Advance/Newhouse.

Expected Revenue Trends . . .

- ***Enterprise revenue*** – continued growth
- ***Carrier & ISP revenue*** – stabilizing
- ***WorldCom/MCI revenue*** – stabilizing
- ***Related Party revenue*** – decrease over next several quarters resulting in reduction of total quarterly revenue by ~ \$1M
- ***Intercarrier Compensation*** – ~ \$2M revenue decrease in third quarter due to full impact of Q2 switched access rate reduction (*subject to fluctuations in minutes of use*)

Quarterly Revenue Mix . . .

\$ in millions

	<u>Q1 03</u>	<u>Q2 03</u>	<u>Q3 03</u>	<u>Q4 03</u>	<u>Q1 04</u>	<u>Q2 04</u>
Adjusted Revenue⁽¹⁾						
Enterprise	\$66.9	\$72.3	\$74.3	\$76.2	\$78.9	\$81.6
Carrier						
Carrier & ISPs	64.4	60.5	64.4	60.9	58.9	61.3
WorldCom	<u>11.7</u>	<u>8.9</u>	<u>5.4</u>	<u>4.7</u>	<u>5.0</u>	<u>4.8</u>
	76.1	69.4	69.8	65.6	63.9	66.1
Related Parties	<u>7.7</u>	<u>7.7</u>	<u>9.4</u>	<u>8.6</u>	<u>5.6</u>	<u>5.1</u>
Service Revenue	150.7	149.4	153.5	150.4	148.4	152.8
Inter-carrier Comp.	<u>14.3</u>	<u>13.4</u>	<u>9.9</u>	<u>9.8</u>	<u>10.9</u>	<u>10.0</u>
Adjusted Revenue	<u>\$165.0</u>	<u>\$162.8</u>	<u>\$163.4</u>	<u>\$160.2</u>	<u>\$159.3</u>	<u>\$162.8</u>
Adj. EBITDA⁽¹⁾	<u>\$48.7</u>	<u>\$50.2</u>	<u>\$50.5</u>	<u>\$49.7</u>	<u>\$49.3</u>	<u>\$55.2</u>
Adj. EBITDA Margin⁽¹⁾	<u>29%</u>	<u>31%</u>	<u>31%</u>	<u>31%</u>	<u>31%</u>	<u>34%</u>

(1) Excludes WorldCom settlements and reciprocal compensations settlements. See reconciliation to GAAP at www.twtelecom.com.

Strong Liquidity ⁽³⁾ . . .

	<u>(\$'s in millions)</u>
Trailing 12 mo. EBITDA ¹	\$205
Forward 12 mo. Interest Expense ²	110
Cap-x guidance for 2004	<u>150-175</u>
Annualized Cash burn ³	\$55-80
June 30, 2004 Cash & investments	\$477
Un-drawn revolver	\$150

¹ Prior 12 month adjusted EBITDA as of June 30, 2004. For reconciliation to GAAP see www.twtelecom.com.

² Subject to interest rate fluctuations and changes in debt and cash balances.

³ This is not the Company's estimate of future performance, but hypothetical cash usage based on the historical and estimated figures presented.

Financial Summary . . .

- No debt maturities until 2008
- Disciplined capital spending program
- Selling services with cash flow contribution
- Improving revenue mix
- Excellent liquidity

TIME WARNER  **TELECOM**
THE POWER DRIVING YOUR NETWORK



Product Overview

Our Unique Assets . . .

The Network ⁽¹⁾ --

- Fiber facilities –nearly 19,000 route miles
- Last mile local loop
- Lit fiber to over 4,500 buildings
- National IP backbone -- diverse connection of metro networks
- Network proximity to thousands of buildings

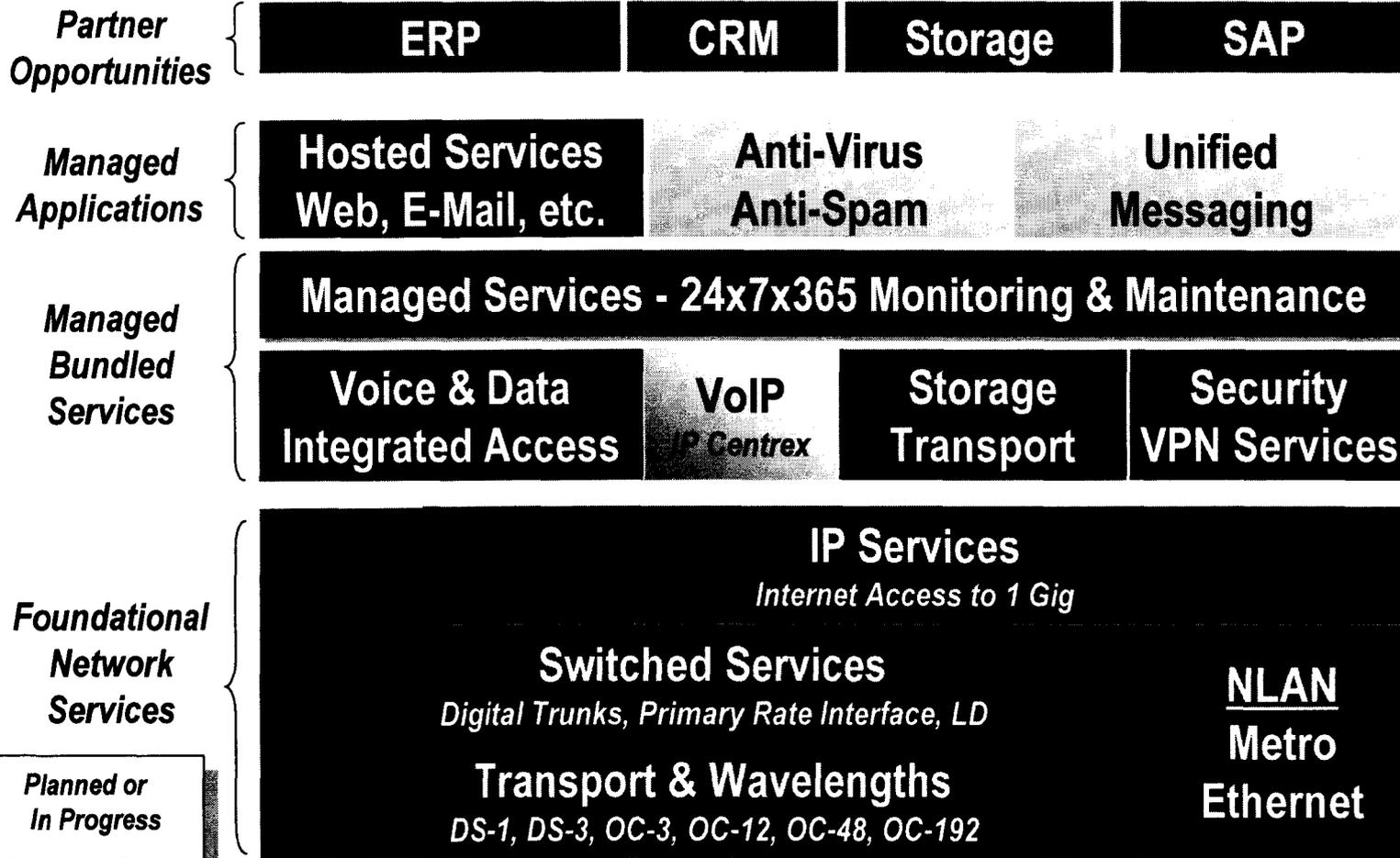
(1) As of June 30, 2004



Its Value --

- Quality of Service for demanding enterprise customers
- Diverse alternate network
- Meets multi-location needs of our customers
- Increased control over margins

Products and Services Evolution – Bundled Services, Increasing Share of Wallet

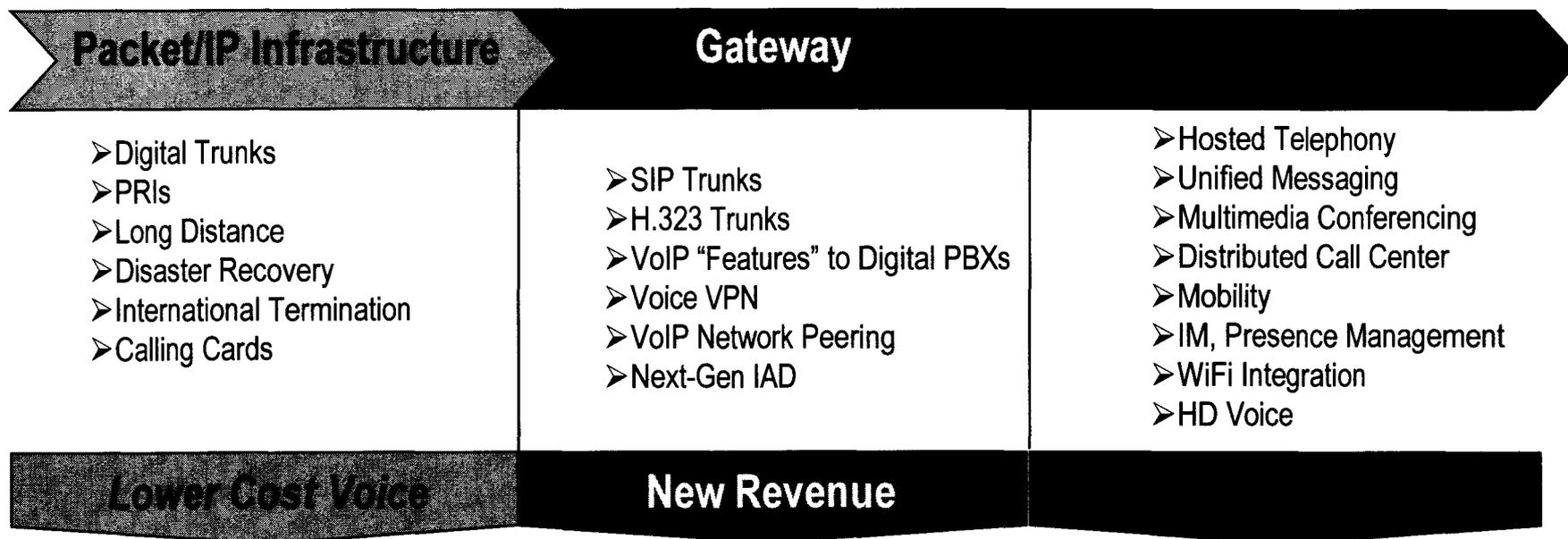


Increasing Customer Value

 **Planned or In Progress**
 **Available Today**

Our VoIP Product Strategy . . .

- *Rapidly develop and implement new services that create new and incremental sources of revenue*
 - Cap Legacy Switching Infrastructure – Grow Next-Gen Capabilities
 - Implemented Traditional Services Driving New Revenue
 - Implement Value Added Services, Creating Customer Loyalty, Stickiness

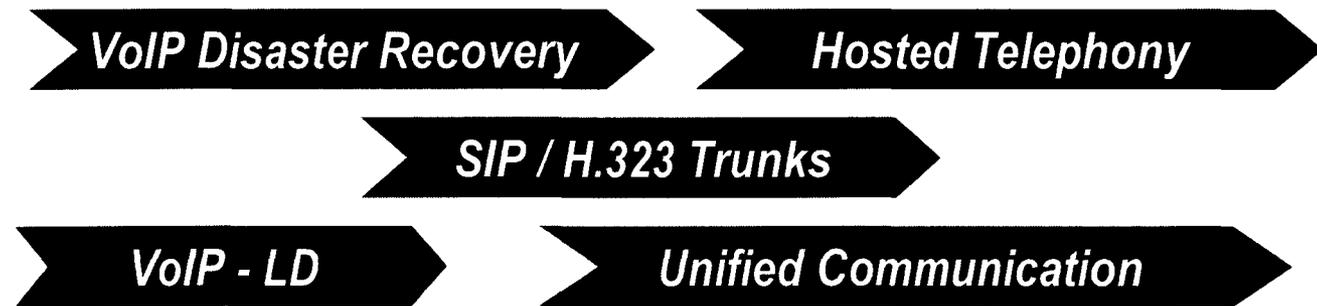


Continued Product Development . . .

Data & Internet



Switched Services



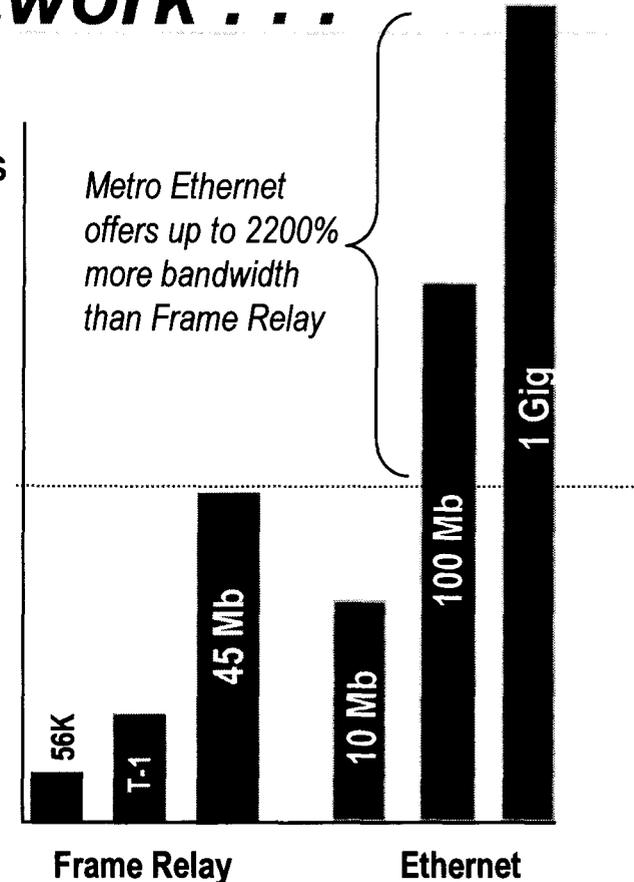
Transport



. . . To expand market opportunity

Why Ethernet is the New Public Network . . .

- *Pervasive – It's Everywhere In The Enterprise*
 - Networking technologies -- around for over 30 years
 - LAN components - Highly commoditized
 - Built into virtually all PCs
 - Ports available to nearly every business desktop
 - In every router, switch at a fraction of the cost of a SONET or DS-n interface
- *Familiar to Customers*
 - Virtually all businesses use Ethernet
 - Known and understood bandwidth management
 - Can carry both Voice and Data
- *Highly Scalable*
 - 10 Megabits per second to 10 Gigabits – TODAY!
 - 10 Meg = 6 T-1s; 1 Gig = 24 DS-3s or 672 T-1s

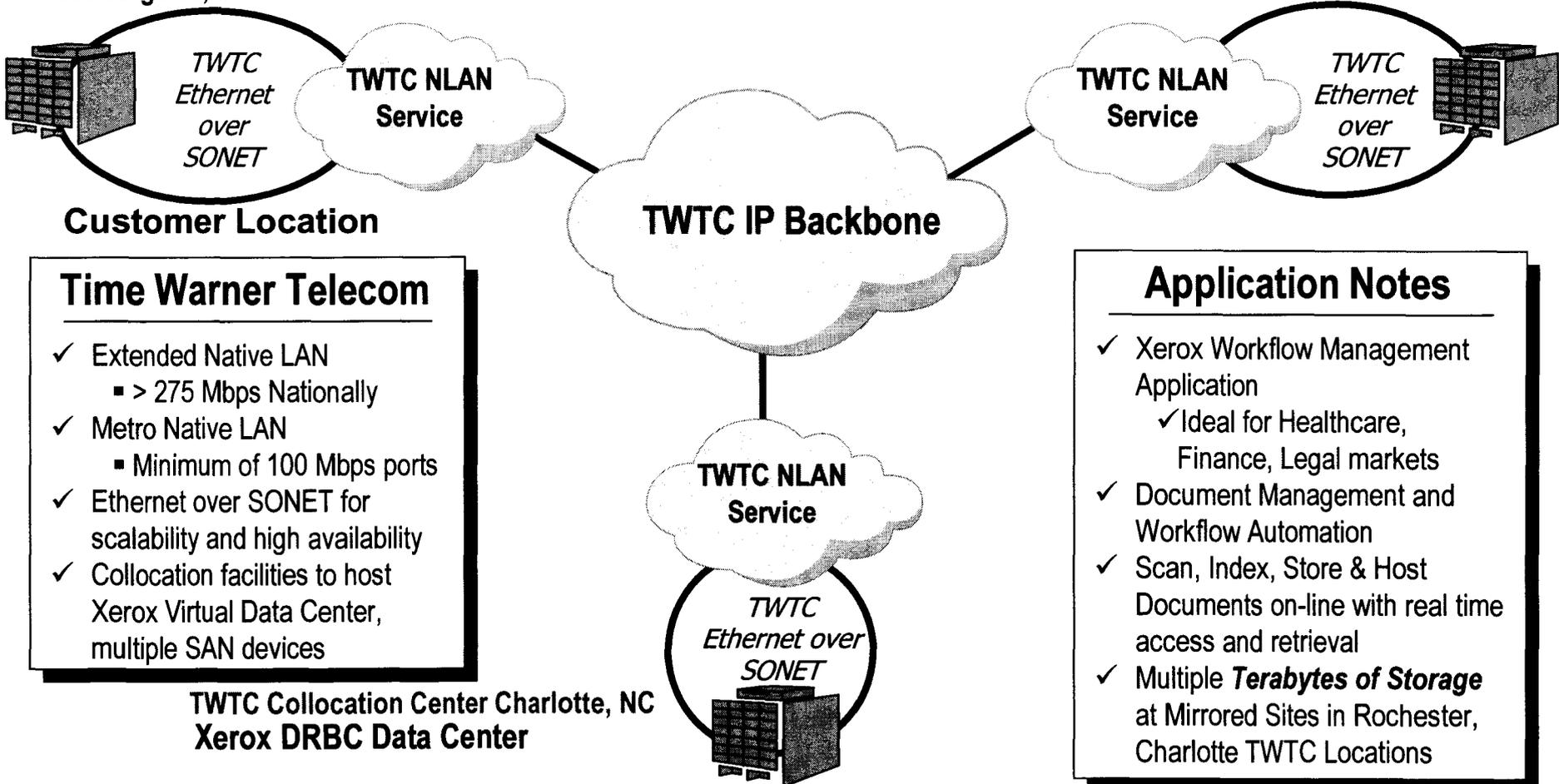


A Logical Migration of LAN → **Wide Area**

Customer Case Study: Extended NLAN Xerox Corporation

Xerox Corp
Los Angeles, CA

TWTC Collocation Center/Rochester, NY
Xerox Corp Primary Data Center



Time Warner Telecom

- ✓ Extended Native LAN
 - > 275 Mbps Nationally
- ✓ Metro Native LAN
 - Minimum of 100 Mbps ports
- ✓ Ethernet over SONET for scalability and high availability
- ✓ Collocation facilities to host Xerox Virtual Data Center, multiple SAN devices

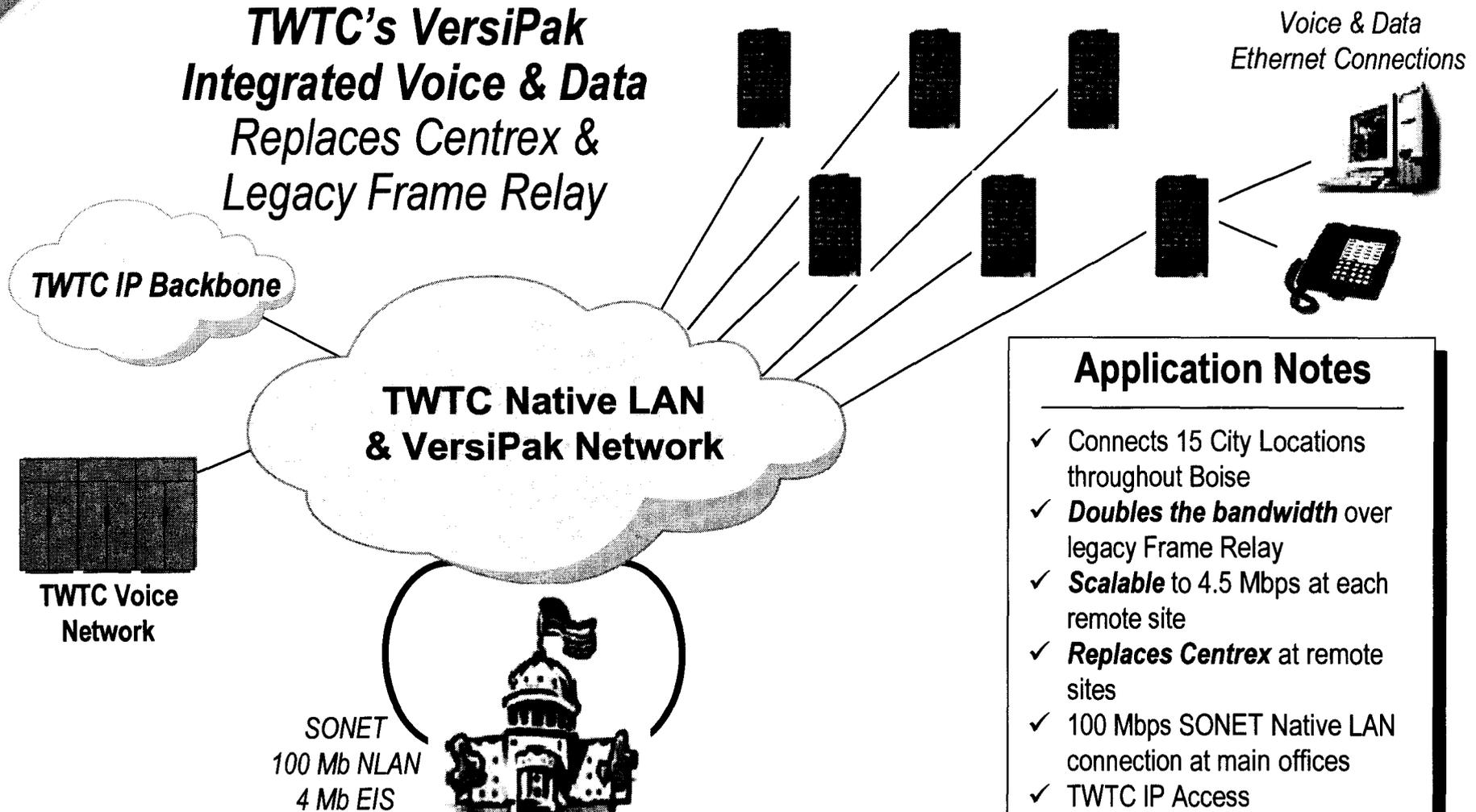
TWTC Collocation Center Charlotte, NC
Xerox DRBC Data Center

Application Notes

- ✓ Xerox Workflow Management Application
 - ✓ Ideal for Healthcare, Finance, Legal markets
- ✓ Document Management and Workflow Automation
- ✓ Scan, Index, Store & Host Documents on-line with real time access and retrieval
- ✓ Multiple **Terabytes of Storage** at Mirrored Sites in Rochester, Charlotte TWTC Locations

Customer Case Study – City of Boise

**TWTC's VersiPak
Integrated Voice & Data
Replaces Centrex &
Legacy Frame Relay**



Application Notes

- ✓ Connects 15 City Locations throughout Boise
- ✓ **Doubles the bandwidth** over legacy Frame Relay
- ✓ **Scalable** to 4.5 Mbps at each remote site
- ✓ **Replaces Centrex** at remote sites
- ✓ 100 Mbps SONET Native LAN connection at main offices
- ✓ TWTC IP Access

We offer a better value & solution . . .

TWTC Offers a Lower Total Cost of Ownership

- ***Can't Do This Application With Frame Relay***
- ***Lower CPE Cost for customer***
- ***More than 40% Less Expensive than RBOC Private Line***
- ***More than 40% Less than RBOC ATM***

Native LAN Value

- ***Plug 'n Play***
- ***Ethernet ports typically in place***
- ***Highly Scalable
(well beyond Frame Relay)***
- ***2 Mb to 1 Gig***
- ***Robust Internet Access***
- ***Easily Layer on Additional Applications***
- ***Voice over IP Platform***
- ***Ethernet Ports Much Less Expensive***

Issues For Our Competitors

Fiber deployment to end-user buildings

Metro Ethernet requires new infrastructure deployment

Cannibalizes Frame Relay and ATM network service revenues

Continuing Objectives . . .

- **Lever extensive local fiber networks**
- **Expand service offerings**
- **Target enterprise customers**
- **Drive operational efficiencies**
- **Deliver highest quality customer care and innovation**