

REDACTED-FOR PUBLIC INSPECTION

September 13, 2006

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 06-74

Dear Ms. Dortch:

On September 12, 2006, the undersigned as well as Graham Taylor, Kelsi Reeves, and Don Shephard of Time Warner Telecom Inc. and Stan Besen of CRA International Services met with Scott Deutchman, legal advisor to Commissioner Copps. The attached presentation and pricing chart formed the basis of the discussion.

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), a copy of this notice, presentation, and a redacted version of the pricing chart are being filed electronically in the above referenced proceeding. This notice, attached presentation, and a confidential version of the pricing chart are also being filed with the Secretary.

Sincerely,

/s/

Thomas Jones

Attachment

cc: Scott Deutchman

**OUTLINE OF FCC PRESENTATION RE AT&T-BST MERGER
(Sept. 12, 2006)**

- I. AT&T and BellSouth Possess And Have Exploited Their Market Power To Harm Competition In The Business Market
- A. Control of Bottleneck Facilities: AT&T and BellSouth control bottleneck local transmission facilities needed to serve business customers. TWTC deploys its own local transmission facilities more aggressively than any other competitor in the business market. Nevertheless, for the vast majority of commercial buildings in the AT&T and BellSouth territories, TWTC has not deployed and cannot deploy its own loop facilities and AT&T/BST own the only local transmission facility (i.e., loop and sometimes transport) serving those locations.
- B. Customer Demand Patterns: TWTC's reliance on AT&T/BST local transmission facilities has only increased as customers demand that carriers serve most or all of their customer locations. Increasingly, TWTC cannot serve customer locations that are on-net for TWTC unless TWTC can also serve the customer's other, smaller locations which can be reached only via ILEC loops.
- C. Examples of AT&T Abuse of Market Power: AT&T has in the past abused its market power to slow roll and raise TWTC's costs and it will do so again in the future as long as AT&T controls bottleneck local transmission facilities.
1. TWTC has in the past provided Ethernet service to customers that TWTC could serve primarily over its own network. TWTC can only expand its offer of Ethernet service if it can obtain access to Ethernet transmission facilities at reasonable rates, terms and conditions from AT&T and BST. But AT&T has refused to provide Ethernet to TWTC on reasonable rates, terms and conditions; the unreasonableness of the AT&T offer is clearly illustrated by contrasting the rates, terms and conditions that TWTC offers its own wholesale Ethernet customers (including AT&T). By denying TWTC the inputs it needs to expand its Ethernet offerings, AT&T is slow rolling TWTC's expansion of its Ethernet product until AT&T can expand the scope of its own Ethernet service offering. In particular:
 2. As long as AT&T/BST retain their control over local transmission facilities, they will continue to engage in this kind of conduct. New, advanced service offerings present the easiest targets for "deny, delay and degrade" tactics because the wholesale arrangements are new and subject to claims by the ILEC that wholesale services are no yet technically feasible or cannot be offered for some other reason.

- II. The Proposed Merger Will Increase Merged Firm's Incentive And Ability To Raise Rivals' Costs
- A. Big Footprint: description of why the increased size of the merged firm's network footprint in this case will materially increase the merged firm's incentive to engage in anticompetitive conduct
 - B. Benchmarking: description of why the elimination of BST as an independent BOC will reduce or eliminate regulators' ability to rely on benchmarking as a means of regulating the merged AT&T-BST (and Verizon)

Illustrative Monthly Rate Comparison

	AT&T Federal Tariff Rates	AT&T Volume/ Term Offer to TWTC Rates	Rates Charged by TWTC at Wholesale
One Gbps Ethernet loop (port and bandwidth charges included)	\$4,175	[redacted]	[redacted]
One Gbps Cross-Connect (port and bandwidth charges included)	\$3,975	[redacted]	[redacted]
Total	\$8,150	[redacted]	[redacted]