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August 10, 2007

VIA E-MAIL **EX PARTE**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington D.C. 20554

Re: WC Dkt. No. 06-125

Dear Ms. Dortch:

On August 9, 2007, Don Shepheard of Time Warner Telecom Inc. ("TWTC"), the undersigned and Jonathan Lechter on behalf of TWTC, and Anna Gomez of Sprint held separate meetings with Ian Dillner, legal advisor to Chairman Martin and Scott Bergmann, legal advisor to Commissioner Adelstein. The attached talking points comprised the substance of each of the meetings. Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), a copy of this notice is being filed electronically in each of the above-referenced proceedings. Please contact me if you have any questions.

Respectfully submitted,

/s/
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202-303-1111

enclosure

cc: Ian Dillner
Scott Bergmann

TIME WARNER TELECOM PRESENTATION
REGARDING QWEST'S "ME TOO" PETITION FOR FORBEARANCE
WC Dkt 06-125

- In its petition, Qwest seeks the total elimination of any regulation governing its packetized and optical services, including services such as switched local Ethernet and OC-3/0C-12 services over which Qwest has overwhelming market power. There is simply no basis for concluding that Qwest can meet the Section 10 requirements for forbearance.

- OCn and Ethernet services are key inputs to services demanded by medium and large business customers in the Qwest region. Ethernet in particular is quickly replacing Frame Relay and ATM services as the most important transmission platform for medium and large business customers. The consequences for the economy of eliminating regulation of this service would be severe.

- Qwest has offered no justification for the relief requested in its petition. It has merely stated that it should receive the same exemption from common carrier regulation that Verizon received because the Verizon order is a Commission precedent and because differential treatment places it at a competitive disadvantage. Neither assertion has any merit.

    - Qwest relies on the Verizon default grant as precedent and assumes that the FCC "decided" to grant Verizon's petition. But the FCC itself has argued before the DC Circuit in the appeal of the Verizon default forbearance grant that "the Commission did not render any decision on Verizon's forbearance petition" (FCC Br. at 9); instead, the Commission has asserted that the deemed grant was the result of a "congressional directive that takes effect when the Commission *fails to act*" (*id.* at 16 emphasis in original). The Commission cannot now take the view that the Verizon default grant is a binding agency precedent requiring equal treatment for Qwest.

    - Qwest argues that the Verizon default forbearance grant places Qwest at a competitive disadvantage *vis a vis* Verizon, but there is no basis for this assertion: (1) the only information Qwest has provided in support of this proposition is a single chart showing market shares of Verizon/MCI and Qwest; Qwest has not provided a shred of evidence that Verizon's deregulated status has in any way disadvantaged Qwest in the marketplace; and (2) this is not surprising since, where Qwest competes with Verizon in Verizon's region, both Qwest and Verizon are unregulated; where Qwest competes with Verizon in Qwest's ILEC region, Qwest has overwhelming market power and a huge competitive advantage over Verizon.

    - The proper focus of this proceeding is the extent to which Qwest retains a dominant position in the provision of local transmission facilities needed to provide packetized

and OCn services. Qwest has not even attempted to show that it should no longer be deemed dominant in this market. The evidence supplied by TWTC demonstrates that it remains dominant.

- Qwest is the dominant firm in the provision of OCn and Ethernet local transmission facilities and it is currently abusing its market power in the provision of these services in a manner that harms consumer welfare and competition.

  - TWTC is critically dependent on ILEC OCn and Ethernet transmission facilities.

    - There are many locations to which TWTC cannot construct its own loop facilities because the revenue opportunities are insufficient when compared to the revenues associated with the deployment of the facilities. Overall, legacy TWTC serves 20,221 customer locations, but it has constructed loop facilities to only 7,884 of these (28 percent on-net). These numbers exclude legacy Xspedius, acquired by TWTC, which has a much higher percentage of off-net loop facilities.

    - Competitors have deployed transmission facilities to a small percentage of even the buildings with very large telecommunications service demand. The GAO found that competitors had deployed loops to only 25 percent of buildings with two or more DS3s worth of demand. *See* GAO Report at 20. It is also relevant to the deployment of Ethernet loops that the GAO found that competitors had deployed loops to only 6 percent of buildings with DS1 demand or above. Id. at 22.

  - Qwest's prices for OCn and Ethernet services are far above levels it would charge in a competitive market.

    - Qwest's practice of selling Ethernet cross-connects only in One Gigabit increments, rather than in smaller increments as competitive wholesalers like TWTC do, is a targeted ploy to raise rival Ethernet service providers' costs. Only wholesale purchasers purchase Ethernet cross-connects and forcing competitors to purchase in only One Gigabit increments vastly increases the incremental costs of providing service in any case where the fill factor for the cross-connect is low.

  - Qwest is actively engaged in leveraging its market power over Ethernet facilities to place TWTC in a price squeeze wherever it must rely on off-net facilities. This is a result of the combination of extremely high Qwest wholesale prices and selective reductions in Qwest's retail prices to meet the limited competition from competitors like TWTC.

  - This inability to rely on Qwest facilities effectively restricts TWTC's addressable market for Ethernet services to customer locations that TWTC can serve on-net -- which is a small percentage of locations.

- Changes in customer demand patterns are causing TWTC's addressable market to shrink further as customers increasingly demand that TWTC serve customer locations to which Qwest has the only local transmission facility.

- It is not possible for TWTC to rely on TDM DS-1/DS-3 facilities as inputs to its Ethernet offerings.

  - TWTC has relied on DS-1/DS-3 facilities as inputs to its Ethernet services as an interim matter, but this is an unsustainable practice.

  - Relying on TDM inputs causes TWTC to purchase more capacity than it needs, thereby artificially increasing its price. This is because the rigid capacity increments of TDM services do not fit well with Ethernet service capacity increments.

    - For example, a DS-3 can support 45 Megabits of capacity. If TWTC wants to provide a 50 Megabit Ethernet loop via TDM inputs, it would need to purchase two DS3s or 90 Megabits of capacity. As a result, TWTC would be forced to purchase 40 Megabits of capacity that it never uses.

  - Relying on TDM inputs causes TWTC to purchase a completely redundant and unnecessary set of electronics, those used to provide TDM service, in addition to Ethernet electronics. As a result

    - TWTC pays for facilities it does not need, thereby further increasing its costs

    - The extra set of electronics introduces extra points of potential service failure, thereby reducing TWTC's ability to compete with the ILEC in the provision of high quality Ethernet services

    - TWTC incurs extra costs and delay when identifying the source of service problems since it must determine which set of electronics is the source of the service problem