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Federal Communications Commission
Office of the Secretary

October 2, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25

Dear Ms. Dortch:

On August 13, 2007, Time Warner Telecom Inc. ("Time Warner") filed an *ex parte* presentation in WC Docket No. 05-25, the special access pricing docket. As the centerpiece of that *ex parte* presentation, Time Warner filed four graphs comparing "rates" of Time Warner and Qwest for three services, claiming that Qwest's prices were dramatically higher than those of Time Warner. The focus of the graphs was Time Warner's claim that Qwest's Ethernet prices were wildly out of line with Time Warner's own prices for Ethernet services.

The comparisons are startling, showing Qwest rates as much as triple the Time Warner rates for purportedly the same services. The services "analyzed" by Time Warner -- identified as "OC3 One Year Term Pricing," "Ethernet Pricing" and "Qwest Metro Optical Ethernet Pricing" -- are all new services based on new technologies and are subject to intense competition. In particular, they are not traditional DS1 and DS3 services. Qwest has no inherent advantage based on its position as an incumbent local exchange carrier ("ILEC") in constructing these facilities and offering these services. As a practical matter, it seems impossible that Qwest's prices for any services would exceed those of Time Warner for the identical services by a factor of 400%, as Time Warner alleges.

In point of fact, the Time Warner filing is totally unreliable in two material aspects:

- Time Warner's pricing information is misleading and wrong.[1]

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[1] As is discussed below, we focus mainly on Time Warner's allegations concerning Optical Ethernet pricing.

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- Time Warner's implication that it is a bit player in the Ethernet market, compared to a dramatically greater presence by Qwest, is simply wrong and is contradicted by Time Warner's own public statements.

First, the price "comparisons" presented by Time Warner are, at the very least, based on an inaccurate representation of Qwest's prices.[2] For example, Time Warner's comparison of the companies' prices for Ethernet services dramatically overstates the price of certain elements in Qwest's Ethernet service. Time Warner represents the price of a cross connect in Qwest's service as $6.460, when in reality an Ethernet cross connect is sold by Qwest for approximately $10.00. This error appears to account for much, if not all, of the purported price differences alleged by Time Warner for Ethernet services. The following attachments (appended to the non-redacted version of the submission) illustrate the valid price comparisons (as best they can be reconstructed) for Qwest and Time Warner Ethernet services, and show that the price differentials among Ethernet services offered by Qwest and Time Warner are dramatically less than alleged by Time Warner.[3]

- Attachment A-1: Time Warner Purported Comparison between Time Warner Ethernet Pricing Scenarios and Qwest Q-MOE Prices
- Attachment A-2: Corrected Comparison of Same Services
- Attachment A-3: Time Warner Purported Comparison between Time Warner Wholesale Ethernet Pricing Scenarios and Qwest Q-MOE Prices
- Attachment A-4: Corrected Comparison of Same Services
- Attachment A-5: Time Warner Purported Comparison between Time Warner Wholesale Discounted Pricing Scenarios and Qwest Q-MOE Services
- Attachment A-6: Corrected Comparison of Same Services

The fundamental errors in Time Warner's comparisons for Ethernet services call into question its analysis of other Qwest and Time Warner services, such as OC3 services, in the August 13 *ex parte*. Based on the competitiveness of the market for these services, it simply cannot be the case that Qwest's prices wildly exceed Time Warner's.[4] But Time Warner has not

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[2] Qwest has no way of testing whether Time Warner's prices shown in the August 13 *ex parte* are accurate or whether Time Warner has presented a valid one-to-one comparison between the companies' products. Any comparison, in order to be valid and verifiable, would need to be accompanied by a detailed methodological explanation. Qwest's Metropolitan Optical Ethernet service is based on a ring configuration, and does not lend itself to simple comparisons based on concepts such as channel terminations and interoffice mileage. Indeed, those terms are not used in Qwest's service offering, which instead is based on what are called "bandwidth profiles."

[3] These comparisons take the Time Warner calculations at face value and attempt to compare them with what appear to be comparable Qwest Ethernet services.

[4] This is, of course, not to say that Qwest's prices may not in many cases be higher than those of Time Warner based on a variety of factors. For example, if Time Warner chose to serve only

provided sufficient information about its own prices and service configurations to permit Qwest to actually test Time Warner's assertions. In the event Time Warner provides more information, Qwest stands willing to comment on the validity of the other price comparisons in the August 13 *ex parte*.

Furthermore, given Time Warner's strong position in the enterprise market, Qwest could never sustain the price differences alleged by Time Warner. While Time Warner continues to contend to this Commission that Qwest dominates the Optical Ethernet market, its public statements make exactly the opposite claim. Time Warner implies in the August 13 *ex parte* that Qwest's Optical Ethernet services (including Qwest Metropolitan Ethernet (QMOE) service) dominate Time Warner's comparable services. But this is not Time Warner's actual position. About a scant week later, on August 22, 2007, Time Warner issued a press release on Ethernet, entitled "Time Warner Telecom Grows Ethernet Market Share."[7] In this press release, Time Warner claims that its Ethernet market share is now 13.7%, as compared to Qwest's 8.4%, and that its market share has increased by "28 percent, over the last six months." Typical of the content of the release, a Senior Vice President of Time Warner is quoted as saying:

> Businesses are benefiting from our innovation in delivering services based on this very easy to use, scalable, reliable and secure technology. Our Ethernet services easily connect their businesses from doorstep to doorstep, and city to city across the country. This report continues to prove that our decision to offer metro Ethernet four years ago to all our customers was the right one.

A different Time Warner employee is further quoted:

> Time Warner Telecom continues to be a leader in delivering Ethernet to businesses across the country, as evidenced by impressive gains from our year-end 2006 port share results[.]

Oddly, this is not the first time that Time Warner has made conflicting statements to the Commission and to the public. Time Warner made similar claims in the ACS forbearance docket.[8] On August 20, 2007, a week after the Time Warner *ex parte* had been filed in WC Docket No. 05-25, the Commission made the following observation about Time Warner's ACS forbearance claims in its *ACS Order*:

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high density, low cost customers, its prices would be lower than those of a company serving a broader array of customers.

Appended hereto (both the non-redacted and redacted versions) as Attachment B.

[8] *See In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Opposition of Time Warner Telecom, Inc., *et al.* (Aug. 11, 2006).

> We reject Time Warner Telecom's assertion that TDM-based loops cannot in many instances be used to provide packetized broadband services to enterprise customers. We find that assertion to be inconsistent with Time Warner Telecom's public statements that Time Warner Telecom can 'cost-effectively deliver . . . Ethernet [services] to customers anywhere,' even 'where it may be uneconomical' to build facilities connecting Time Warner Telecom's network to the customers' premises. Indeed, we observe that time Warner Telecom has been able to compete in the provision of Ethernet services by relying on special access TDM loops (in addition to its own facilities).[7]

Time Warner's self-contradiction is inevitable, because the Optical Ethernet services that form the heart of its complaint are new services that utilize new technology that is equally available to Time Warner and Qwest. Qwest's Optical Ethernet services are based on fiber optic rings that are generally constructed as part of Qwest's own efforts to modernize and advance its networks and services. Whatever legacy advantages Qwest has in more traditional telephony services do not translate to Optical Ethernet services. As Time Warner boasts in its public statements, it is perfectly capable of constructing its own Ethernet facilities itself without subsidies from either Qwest or from the government.

In conclusion, while Qwest continues to believe that even traditional special access services such as DS1 and DS3 merit substantial deregulation, and certainly do not warrant increased regulation, Time Warner's efforts to expand regulation to include new technologies such as Optical Ethernet, where Time Warner's market presence far exceeds that of Qwest, is particularly ill-founded.

Finally, pursuant to the June 8, 2005 Order and Protective Order in WC Docket No. 05-25, Qwest has marked Attachment A, which contains confidential information as follows: "**CONFIDENTIAL INFORMATION -- SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25**". Although this cover *ex parte* includes no confidential information, it is included with both the non-redacted and redacted versions of the submission. Attachment A is confidential in its entirety and thus is included only with the non-redacted version; Attachment B contains no confidential information and is included with both versions. The redacted version of the *ex parte*, which does not have appended to it the confidential Attachment A, is marked "**REDACTED – FOR PUBLIC INSPECTION**". Qwest is submitting one hard copy of the non-redacted version and two hard copies of the redacted version of the submission. In addition an extra copy of each version is provided, to be stamped as received and returned to the courier.

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[7] *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149 (rel. Aug. 20, 2007), at ¶ 102 (footnotes omitted).

Sincerely,

/s/ Craig J. Brown

Attachment

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ATTACHMENT B

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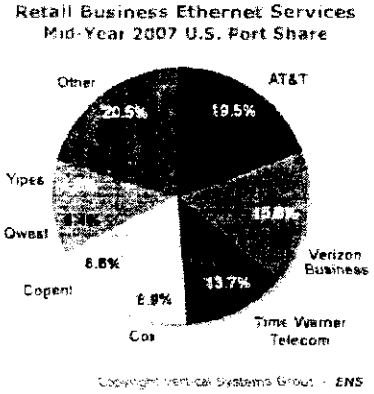
Time Warner Telecom Grows Ethernet Market Share

-Company increases share of Ethernet ports by 3 market share points
-Vertical Systems Group Ranks Time Warner Telecom One of Top 3 Providers-
-Company continues to see high demand for Ethernet services

LITTLETON, Colo.—August 21, 2007—According to a recent Ethernet market share analysis from Vertical Systems Group, Time Warner Telecom (NASDAQ: TWTC), a leading provider of voice, Internet and data solutions to businesses across the country, has increased its share of Ethernet ports in service by 3 market share points, or 28 percent, over the last six months. Vertical Systems Group provides in-depth, accurate, defensible statistics and analysis on networking markets with a focus on Ethernet services, IP VPNs, Frame Relay, Private Lines, ATM, DSL, MPLS, VPLS, and Internet Access.



"As customers realize the important benefits of Ethernet, our percentage of market share increases significantly," said Mike Rouleau, Senior Vice President, Strategy and Business Development for Time Warner Telecom. "Businesses are benefiting from our innovation in delivering services based on this very easy to use, scalable, reliable and secure technology. Our Ethernet services easily connect their businesses from doorstep to doorstep, and city to city across the country. This report continues to prove that our decision to offer metro Ethernet four years ago to all our customers was the right one."

"Time Warner Telecom continues to be a leader in delivering Ethernet to businesses across the country, as evidenced by impressive gains from our year-end 2006 port share results," said Erin Dunne, Director of Research Services for Vertical Systems Group. "The company's strategy to focus on delivering Ethernet to business customers has established them as one of the top 3 providers of retail Business Ethernet services in the U.S."

Time Warner Telecom grew by 3 market share points, while AT&T, which this year also included ports it acquired from Bell South, actually shrunk by nearly 3 market share points. This halved the gap between Time Warner Telecom and AT&T and firmly establishes the company as one of the top 3 Ethernet service providers in the industry. The mid-year 2007 U.S. Ethernet port share totals are calculated using the installed base of actual U.S. Business Ethernet installations as of June 30, 2007. The report also underscores the fact that business customers are abandoning older Frame Relay and ATM technologies for the speed, flexibility and affordability of Ethernet.

Time Warner Telecom's metro Ethernet services are available in speeds from 1 Mbps to 10 Gbps, with national connectivity at speeds up to 1 Gbps. The company sells its Ethernet-based offerings to medium and large enterprise customers that require sophisticated and versatile high-bandwidth connections. Enterprise businesses that benefit from Ethernet connectivity are medical providers, financial institutions, military, government and education. Time Warner Telecom offers its Ethernet-based solutions to customers in 75 metropolitan markets across the U.S. and the District of Columbia as well as extending that coverage between markets with its more than 25,000 route mile fiber network and IP backbone.

About Time Warner Telecom

Time Warner Telecom Inc., headquartered in Littleton, Colo., provides managed network services, specializing in Ethernet and transport data networking, Internet access, local and long distance voice, VoIP and security, to enterprise organizations and communications services companies throughout the U.S. As a leading provider of integrated and converged network solutions, Time Warner Telecom delivers customers overall economic value, quality, service, and improved business productivity. Please visit www.twtelecom.com for more information.

About Vertical Systems Group

Vertical Systems Group (http://www.verticalsystems.com) is recognized worldwide as a leading market research and strategic consulting firm specializing in defensible quantification of the networking industry. ***ENS*** is the industry's authoritative resource for "real world" analysis on broadband services, including *Ethernet, IP VPNs, MPLS / VPLS, Frame Relay, ATM, Private Lines, Access, Fiber* and more. To speak with an analyst at Vertical Systems Group, call Elizabeth Swanson at +1.781.329.0900 ext. 213 or eswanson@verticalsystems.com.