

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matters of |) | |
| |) | |
| Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act |) | GN Docket No. 09-137 |
| |) | |
| A National Broadband Plan for Our Future |) | GN Docket No. 09-51 |
| |) | |
| International Comparison and Survey Requirements in the Broadband Data Improvement Act |) | GN Docket No. 09-47 |
| |) | |

COMMENTS OF TIME WARNER CABLE INC. – NBP PUBLIC NOTICE #23

Time Warner Cable Inc. (“TWC”) hereby submits its comments in response to the Commission’s Public Notice in the above-captioned proceedings.¹ The Public Notice seeks comment on aspects of the draft study recently prepared by the Columbia Institute for Tele-Information (“CITI”), at the Commission’s request, to assess the projected deployment of new and upgraded broadband networks.² Below, TWC discusses several points relating to the CITI Draft Study’s utility and accuracy.

BACKGROUND

TWC, the nation’s second-largest cable operator, serves approximately 14.7 million customers in 28 different states over its technologically advanced broadband networks passing

¹ Public Notice, *Comment Sought on Network Deployment Study Conducted by the Columbia Institute for Tele-Information (NBP Public Notice #23)*, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 20, 2009) (“Public Notice”).

² *Id.* at 1; see also Robert C. Atkinson & Ivy E. Schultz, *Broadband in America: Where It Is and Where It is Going (According to Broadband Service Providers)*, Columbia Institute for Tele-Information (Nov. 11, 2009) (“CITI Draft Study”).

nearly 27 million homes. In addition to offering basic and digital cable services, TWC is a leading provider of broadband Internet access and facilities-based interconnected VoIP services to customers across its footprint. TWC has long been an innovator in the broadband arena, establishing a remarkably successful track record in the provision of broadband-based services to residential and enterprise customers for over a decade.³

By design, the CITI Draft Study relies largely (though not exclusively) on information provided by broadband service providers. In the interest of ensuring as complete and accurate a record as possible, TWC cooperated with CITI to provide information and data relevant to its analysis. TWC also has worked diligently to verify, to the best of its ability, the figures and data attributed to TWC in the draft version of the study. More broadly, TWC consistently has sought to work with the Commission and others to make pertinent broadband data available, in order to facilitate informed and data-driven policy decisions.⁴ TWC commends the Commission for taking this latest initiative to enhance the record through an independent, outside expert analysis of the broadband marketplace.

DISCUSSION

The Public Notice asks a series of questions about the utility and accuracy of the CITI Draft Study.⁵ TWC addresses these two issues separately.

³ Comments of Time Warner Cable Inc., GN Docket No. 09-51, at 3-4 (filed June 8, 2009) (“TWC Broadband Plan Comments”).

⁴ *See generally, e.g.*, Letter from Matthew A. Brill, Counsel to Time Warner Cable Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-51 (filed Oct. 29, 2009) (“TWC Broadband Ex Parte”) (providing an overview, comprised of confidential and public information, of TWC’s broadband Internet access services, including information regarding the speeds, tiers, and prices of those services).

⁵ Public Notice at 1.

1. Potential Utility and Value of the CITI Draft Study

On balance, the CITI Draft Study appears to be a useful summary of publicly announced broadband network deployments in the United States. It addresses a number of different technologies and contains a substantial amount of data, including specific information on a range of companies—though with a clear focus on larger providers.⁶ In this sense, the study offers a useful snapshot of providers' current plans to deploy and upgrade their broadband networks.

Of course, any such effort has an inherent limitation, particularly when undertaken in the broadband context. The broadband marketplace is dynamic and ever-changing, with service providers constantly developing new or modifying existing service offerings in response to the competition. As a result, any compilation of data describing the broadband marketplace has a limited shelf life. To illustrate, some of the data that TWC originally provided and which is included in the CITI Draft Study, generally reflecting its second-quarter operations, already has been superseded by TWC's third-quarter data, which it released on November 5, 2009 (less than a week before the release of the draft study).⁷ And by the time the Commission issues its national broadband plan in February, TWC (and other providers) will have yet more changed data. While the differences are not always substantial or material—for example, certain prices may have changed by small amounts—they nonetheless reflect the difficulty of maintaining information that is fully up-to-date.

⁶ See, e.g., CITI Draft Study at 6 (noting that smaller companies may be “reticent to provide information about their future [investment] plans”); *id.* at 69 (noting that smaller companies do not report this data and are not covered by investment analysts).

⁷ For example, the CITI Draft Study states that TWC passes 26.8 million homes (for broadband Internet access service) and has a broadband penetration rate of 33 percent, citing TWC's second-quarter data. See *id.* at 20-21 & Table 2, Figure 7. But as reflected in TWC's third-quarter financials, these figures increased to 26.9 million and 34.1 percent, respectively. In fact, the CITI Draft Study slightly understates even TWC's second-quarter penetration rate, which was reported as 33.7 percent rather than 33 percent as stated in the study.

The CITI Draft Study also includes facts and figures attributed to investment analysts and sources other than TWC.⁸ In such cases, and particularly where it cannot identify the source, TWC may not be able to verify the accuracy of that information and thus cannot completely vouch for its validity.

Nevertheless, these issues do not undermine the validity of some of the study's core conclusions, which are consistent with those of the Commission and numerous other parties. Overall, the CITI Draft Study, which details many service providers' efforts to build out and upgrade their infrastructure, is a testament to the massive private investment that is underway and that will be critical to the continued proliferation of broadband in this country.⁹ As a result of those efforts, the study notes that by 2013-14, broadband service providers expect to serve about 95 percent of U.S. homes with broadband, while increasing the speeds they can offer.¹⁰ It also notes that the majority of homes will have the choice of at least two wireline broadband services in addition to wireless options.¹¹ These findings accord with the more detailed showings of broadband availability and competition that TWC and others recently made in the national broadband plan proceeding and the Commission's section 706 inquiry, based on prior Commission findings as well as other independent sources.¹² In addition, the study corroborates the position, advanced by TWC and others, that broadband adoption may lag behind broadband

⁸ See *id.* at 6 (noting that study's reliance on data from reports by investment analysts and research firms, news reports, and information compiled by industry trade associations).

⁹ See, e.g., *id.* at 28 (noting that telecommunications service providers invested about \$62.8 billion in 2008).

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² See, e.g., TWC Broadband Plan Comments at 7-11; Comments of Time Warner Cable Inc., GN Docket Nos. 09-51, 09-137, at 8-10 & n.28 (filed Sept. 4, 2009) (citing findings by independent sources concerning the state of broadband deployment and competition).

availability¹³—and thus presents particular opportunities for policymakers. In other words, the CITI Draft Study supplements and reinforces the already robust record demonstrating the enormous success of broadband and the substantial efforts being made by the private sector to build on it. In this regard, the study can provide a useful resource for the Commission’s development of the national broadband plan.

2. Specific Corrections to the CITI Draft Study

As noted above, because the broadband marketplace is moving and evolving at a rapid pace, any compilation of information describing current provider practices is likely to remain accurate for only a brief period of time. Indeed, as also noted, some of the information that TWC provided about its operations for inclusion in the study already is out of date. TWC does not undertake to correct every detail in the CITI Draft Study, which would produce only a short-term benefit. However, TWC does identify below some changes and corrections that it considers material to the analysis or that would affect the study’s reliability and utility.

Correction to TWC Company Name. The CITI Draft Study frequently refers to TWC as “Time Warner.”¹⁴ To avoid any confusion with TWC’s former parent company, Time Warner Inc., TWC believes that any such references should be corrected to state “Time Warner Cable” or “TWC” in the final version of the study.

Qualification Concerning Variances in Service Information. Much of the pricing, speed, and other data set forth in the CITI Draft Study does not appear to fully account for some of the factors that may cause some variance within and between different geographic areas.¹⁵

¹³ CITI Draft Study at 7; *see also* TWC Broadband Plan Comments at 20-22.

¹⁴ *See, e.g.*, CITI Draft Study at 29, 34, 62, 64-68.

¹⁵ In one part of the study that does address promotions, which compares wireline broadband services offered by several companies including TWC, information on

Accordingly, TWC recommends that the final version of the study include a qualification that such information “does not reflect promotions, bundled service pricing, or regional differences.” This language could be added as a footnote under each chart, table, or other figure that purports to state specific pricing, speed, and related information. Indeed, this is precisely what TWC has done in its own filings with the Commission summarizing such data.¹⁶ At a minimum, this or comparable language should be included at the beginning of the document as a general disclaimer, applicable to all data recited in the study.

Chart Regarding TWC Deployment Plans. The chart describing TWC’s broadband deployment plans is inaccurate or incomplete in a number of respects.¹⁷ Accordingly, TWC has attached a revised version of that chart which includes appropriate changes, generally based on its recently released third-quarter financials.

Comparison of Broadband Pricing Plan. Table 9 of the CITI Draft Study purports to compare pricing plans offered by large telecommunications carriers and cable operators, including TWC.¹⁸ However, the chart omits or misstates certain details about TWC’s services. In particular, although TWC offers six pricing tiers, the chart excludes two of these—Road Runner Extreme (available in New York) and Residential Wideband Internet. In addition, the reference to Road Runner High Speed Online should be Road Runner Standard, which is the

promotional pricing is provided for all companies in the comparison except for TWC. See CITI Draft Study at 39, Table 9. That omission is misleading, as it suggests that TWC does not offer any such discounts—even though it does. The same chart states that the advertised speed for TWC’s highest-speed tier, Road Runner Turbo, is 10 Mbps, but in some areas, TWC advertises that speed as 15 Mbps where it is possible.

¹⁶ See TWC Broadband Ex Parte at 3, 4.

¹⁷ CITI Draft Study at A-32.

¹⁸ *Id.* at 38, Table 9.

accurate brand name for that tier. Finally, as noted, the advertised speed for TWC's highest-speed tier in some areas is 15 Mbps, rather than 10 Mbps as stated in the chart.

Bundled Pricing Examples. Table 8 of the CITI Draft Study states that the price for TWC's video and Internet bundle in New York is \$120.80/month.¹⁹ However, TWC's current advertised price for that bundle is actually \$111.95/month, which is much more in line with the other examples listed in the same table. Inclusion of the correct figure for TWC results in a recalculated average for the group of companies represented of \$109.55/month.

CONCLUSION

TWC believes that the CITI Draft Study has the potential to be a useful and reliable part of the national broadband plan record, provided that it includes the changes noted above.

Respectfully submitted,

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¹⁹ *Id.* at 6, Table 8.

TIME WARNER CABLE

*) Project not completed

| Technology Details | Announced Timeline | Current Deployment / Coverage Footprint | Expected Deployment/ Coverage Footprint | States | Expected Capital Outlays / Operating Expenditures | Expected Broadband Performance / Quality | Expected ARPU |
|--------------------|--|--|---|--|--|---|--|
| DOCSIS 3.0* | DOCSIS 3.0 is expected to be deployed in the remainder of the NYC service area by Spring 2010. ²⁰ | Manhattan, Staten Island, and Queens, NY. | | NY | | Residential Wideband Internet: Speeds up to 50 mbps down & 5 mbps up for 99.95. Business Class Wideband Internet: Speeds up to 50 mbps down & 5 mbps up or 20 mbps down & 2 mbps up. | |
| HSD, DOCSIS 2.0 | | As of September 30, 2009 TWC had approximately 14.6 million customer relationships. ²¹ Residential HSD subscribers increased to 8.874 million from 8.757 at the end of the 2Q09. Commercial HSD subscribers increased to 293 thousand from 289 at the end of the 2Q09. An estimated 26.9 million homes passed in 28 states in the 3Q09 for HSD. ²² | | AL, AZ, CA, CO, HI, ID, IL, IN, KS, KY, MA, ME, MI, MO, NE, NC, NH, NJ, NM, NY, OH, PA, SC, TX, VA, WA, WI and WV. | Total capital expenditures in the 3Q2009 were 758 million, or 16.9% as a percentage of total revenues. Total year to date 2009 capital expenditures were 2.3 billion. Total 2009 capital expenditures are projected to come in under 3.3 billion dollars. ²³ | TWC offers four tiers of its Road Runner high-speed data service in all of its systems: Turbo TM , Standard, Basic and Lite and, in New York City, it also offers Extreme. | Monthly ARPU for HSD services \$41.74. |

²⁰ "Time Warner Cable Launches Its Fastest Internet Yet in New York City with Time Warner Cable Wideband Internet & Business Class Wideband Internet." Online. Time Warner Cable. Available:

<http://www.timwarnercable.com/Corporate/about/inthenewsdetails.aspx?PRID=2686&MarketID=0> (24 September 2009).

²¹ "Time Warner Cable Reports 2009 Third-Quarter Results." Online. Time Warner Cable. Available: http://files.shareholder.com/downloads/TWC/743386773x0x329596/226e55ce-41a2-4a85-a45c-902f6224b287/TWC_News_2009_11_5_Financial.pdf (05 November 2009).

²² "Time Warner Cable Updated 2009 Trending Schedules." Online. Time Warner Cable. Available: <http://ir.timwarnercable.com/trending.cfm> (05 November 2009).

²³ "TWC - Q3 2009 Time Warner Cable, Inc. Earnings Conference Call." 05 November 2009 at 1:30PM GMT.