

**BEFORE THE
UNITED STATES SENATE
COMMITTEE COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON COMMUNICATIONS**

**TESTIMONY OF
LARISSA HERDA
CHAIRMAN, PRESIDENT AND CEO
TIME WARNER TELECOM**

**Time Warner Telecom Inc.
10475 Park Meadows Drive
Littleton, Colorado 80124**

March 6, 2002

Mr. Chairman and Members of the Subcommittee:

On behalf of Time Warner Telecom Inc. I would like to thank the committee for the opportunity to talk to you today about the impact the September 11th disaster had on the nation's communications infrastructure. My name is Larissa Herda and I am the Chairman, President and CEO of Time Warner Telecom ("TWTC"), which has grown to be one of the largest new competitive entities in the telecommunications industry. We exist today because of the pro-competitive policies adopted in the Telecommunications Act of 1996. We are unique in a number of respects.

TWTC builds its own local and regional fiber optic networks and delivers "last-mile" broadband data, dedicated Internet access, and voice services to small, medium and large businesses. We provide service to a diverse customer base across the country. The Company currently serves business customers in 44 U.S. metropolitan areas. Since the passage of the 96 Act, we have invested more than \$2.0 billion in building a network infrastructure and have created over 2,500 high-tech jobs nationwide.

The terrorist attacks on September 11 not only reinforced how essential communications is in times of crisis, but also raised important questions about the capabilities and durability of our nation's telecommunications infrastructure. As executives and governments across the world now attempt to anticipate and prevent similar disasters, the imperative of a sound and resilient communications

infrastructure has moved to the forefront of national consciousness, as a halt in communications would bring to a standstill airlines, the stock exchange, banks, television, radio to name just a few elements of everyday life.

In my testimony today I will provide a brief summary of TWTC's experience following the September 11th attack, explain how the existence, design and operation of our network provides essential disaster prevention and recovery solutions to public and private sector business customers and offer my recommendations as to the types of public policy decisions that will ensure that Americans have access to a robust and reliable communications network.

SEPTEMBER 11, 2001 New York City

Time Warner Telecom was instrumental in restoring communications service to the public and private sector after the 9.11 attack. Our network, fortunately, was only minimally damaged by the attack. Because of our significant fiber investment, and the redundancy and diversity that we built into our network, none of the customers that were exclusively on our network lost service. Unfortunately, New York's City Hall did lose its phone service following the attacks. Although TWTC was not providing service to the city building at the time, my team, working day and night pulling fiber into their building, was able to install 300 phone lines for City Hall in less than 48 hours -- in a difficult and dangerous environment I might add. This type of service would normally take a minimum of 21 days to install because of the need to

acquire permits to construct facilities in the right of way and gain the building owners permission to enter the building. (If our fiber was already into this building, we could have installed service within a few hours.)

Additionally, we participated in regular meetings with the city's Department of Information, Telephone and Technology (DOITT) to identify other municipal offices that needed service restored. With the cooperation of the incumbent telephone company and other telecom providers, the industry was able to identify which companies had network in place and restored service where it was needed. Although the incumbent telephone company was working valiantly to restore service, in such a dramatic situation it was clearly beneficial to have multiple providers in the market to restore critical services.

Disaster Recovery Requires both Prevention and Recovery

Many businesses understood the value of building redundancy into their communications and data systems prior to 9.11, but many more are focused on it today. The best way to minimize disruption to critical infrastructure is to avoid having a single point of failure through diverse and redundant network facilities.

Customers can obtain diversity primarily by obtaining services from two different facilities-based carriers. By doing so, customers decrease the likelihood of a complete service outage if one of their competing carriers' service goes down.

Also, having an established relationship with more than one carrier facilitates the replacement of services.

The Time Warner Telecom Network

We have constructed our network in a manner designed to eliminate single points of failure. For example, in NYC we have switches in two locations -- one on 61st street and one on 23rd. We build our network in a ring topology that provide a diverse and redundant electronics in order to reduce the likelihood that service will be lost in the event of a failure in any part of the network. I'd like to take a moment to explain our network architecture. [INSERT DIAGRAM OF TWTC NETWORK]

Since 9.11, we have increased security at all our facilities, implemented more thorough disaster prevention and recovery plans, and presented a series of seminars to educate the business community of the value and process of building redundancies into their communications systems. For illustrative purposes, I have provided the committee with the materials used for some of these seminars.

Policies that Promote Facilities-Based Competition Give Customers access to a critical tool needed to Plan against a single Point of Failure

Businesses must have access to more than one facilities-based carrier. This access is essential to minimize disruptions to critical infrastructure and to reduce

downtime and loss of major business functions in the event a disruption cannot be avoided. Government can ensure the public and private sectors have access to these services by reducing the barriers to construction that currently exist.

Barriers to Construction

In order to recognize the goal of true facilities-based competition, companies must physically construct their own fiber network. There is incredible demand for these services in the marketplace. But too often we are not able to meet that demand because we can't get the permits we need to access the right of way or we can't get the building owners permission to enter a building in a timely and cost-effective manner. These two barriers to construction -- the failure of building owners to open their buildings to competitors and the failure of municipalities to approve construction permits under reasonable terms, quickly and on a competitively neutral basis are a problem for me because they limit my ability to grow my business. But they also restrict access to a public good and deny businesses the ability to purchase critical services from providers of their choice.

Building Access

In order to serve customers with our own facilities, we need to take our fiber directly into the customer's buildings. In order to do this we must obtain access into the buildings in which are customers are tenants. In the initial aftermath of 9.11 we found building owners in NYC much more cooperative in providing

access to their buildings. Unfortunately, we are now seeing them return to the practice of delaying this access and imposing unreasonable costs on the price of access. How soon they have forgotten the lessons of 9.11. While I encourage you to address the building access issue for the entire marketplace, there is something that government can do easily today.

First, the federal government should be required to purchase local telecommunications services from at least two providers with distinct network facilities in each market where choice is available. Present law permits, but does not require, purchases from two or more vendors. This requirement is necessary to ensure that federal agencies have telecommunications services that are diverse and redundant. This is a crucial element to protect the ability of the federal government to remain in operation and communication with the public and others during a disaster or other emergency, and to increase the stability of our government's networks.

Diversity involves establishing physically different routes into and out of and a building, and different equipment; so as to better ensure continued operations in the event that one route or network is impacted adversely by a disaster or other form of interference.

Redundancy involves having extra capacity available, generally from more than one source, and also incorporates aspects of diversity. Not only does redundancy entail having capacity in reserve to handle sudden increases in demand or partial outages, but it also entails securing service from more than one provider where practicable. The use of multiple providers increases the probability that service will be maintained or restored in the event of a disaster, emergency, or carrier-specific problem, and decreases the chances that all communications capabilities will be affected in the same way at any given time. It ensures the availability of two distinct workforces to serve the customer and the opportunity to try two different approaches to solve a common or related problem.

This requirement will help the federal government to reap the benefits of continued competition. Having multiple providers and diverse facilities enables the federal government to increase or decrease the use of a provider or set of facilities, thus creating continued incentive on the part of the carriers to provide good service, favorable pricing and continued innovation and cooperation. A multi-vendor strategy provides valuable leverage to federal tenants.

Ensuring that multiple companies will have a greater opportunity to

provide local service and serve federal tenants is a way to promote and advance the goals of the Telecommunications Act of 1996 while at the same time providing a valuable benefit to the federal government in its capacity as a purchaser of telecommunications services. This requirement also would create an economic stimulus that would promote telecommunications investment, competition, and jobs.

Second, where the federal government seeks to lease space from a private landlord, absent special circumstances, the federal government should do so only in buildings where any telecommunication provider(s) it or any other tenant selects can have physical access to the building promptly at fair rates and on reasonable and nondiscriminatory terms.

This requirement is vital to ensure that federal lease dollars are spent only in buildings where federal and other tenants have the right to choose multiple facilities-based telecommunications providers in order to secure diversity and redundancy in telecommunications services to better ensure continued communications during a disaster or provider-specific emergency.

Without this requirement, building access by facilities-based telecommunications providers would be at the discretion of the current or future building owner. Even if federal or commercial tenants chose a *single* telecommunications provider, that choice could be thwarted, and the landlord could

choose a different carrier.

This requirement also is necessary to ensure that savings from the competitive procurement of local telecommunications services by the federal government can actually be realized—otherwise the chosen provider(s) may not be able to obtain building access on fair and reasonable terms.

Federal leasing dollars should not be showered on buildings that block, impede or delay telecommunications competition and thereby harm federal and other tenants—those dollars should be spent in a way that allows the federal government and other tenants to reap the benefits of the Telecommunications Act of 1996 and thus spurs the development of network facilities.

Even before the national security implications of access to diverse and redundant telecommunications service were highlighted, there has been bipartisan congressional concern to secure building access for telecommunications providers in buildings with federal tenants.

Last Congress, Senators Stevens, Hollings, Lott and Dorgan, and Congressmen Tom Davis and Rick Boucher, introduced legislation that would require, absent special circumstances, that federal tenants only lease space where telecommunications carriers can have nondiscriminatory access to them.

Congress, aware that the former Administration was considering the issuance of an Executive Order imposing a requirement similar to the one discussed here (the EO was drafted but never issued), adopted language last year in the Conference Report to accompany HR 4475, an appropriations bill, Report 106-940, noting that the conferees were “aware that...potential cost savings may be jeopardized by building access limitations for telecommunications providers.” The Conference Report noted the pendency of legislation on building access and then directed the executive branch to “identify building telecommunications barriers and take necessary steps to ensure that telecommunications providers are given fair and reasonable access to provide service to Federal agencies in buildings where the Federal government is the owner or tenant.”

President Bush, as Governor of Texas, signed landmark legislation going well beyond the modest step urged here of requiring that federal leasing dollars be committed only to buildings allowing facilities-based telecommunications carriers building access on fair, reasonable and nondiscriminatory terms so that they may serve a tenant who selects them. The Texas law signed by Governor Bush affords any tenant the right for a carrier with whom he, she or it contracts for service to obtain building access promptly on reasonable and nondiscriminatory terms. And it was implemented aggressively by the Governor’s appointees to the Texas Public Service Commission so as to deter landlords from thwarting consumer choice.

Access to Rights of Way

Timely and cost-effective access to municipal rights of way is also critical for the construction of alternative fiber optic networks. Too often municipalities delay this construction by attempting to charge unreasonable rates and impose unreasonable terms and conditions on this access. In conjunction with other telecommunications carriers – including long distance carriers, competitive local exchange carriers and incumbent local exchange carriers – TWTC has called for the FCC to intervene. The coalition has proposed the following recommended measures to promote reasonable access to public rights-of-way:

- Access to public rights-of-way should be extended to all entities providing intrastate, interstate or international telecommunications or telecommunications services or deploying facilities to be used directly or indirectly in the provision of such services (“Providers”).
- Government entities should act on a request for public rights-of-way access within a reasonable and fixed period of time from the date that the request for such access is submitted, or such request should be deemed approved.
- Fees charged for public rights-of-way access should reflect only the actual and direct costs incurred in managing the public rights-of-way and the amount of

public rights-of-way actually used by the Provider. In-kind contributions for access to public rights-of-way should not be allowed.

- Consistent with the measures described herein and competitive neutrality, all Providers should be treated uniformly with respect to terms and conditions of access to public rights-of-way, including with respect to the application of cost-based fees.
- Entities that do not have physical facilities in, require access to, or actually use the public rights-of-way, such as resellers and lessees of network elements from facilities-based Providers, should not be subject to public rights-of-way management practices or fees.
- Rights-of-way authorizations containing terms, qualification procedures, or other requirements unrelated to the actual management of the public rights-of-way are inappropriate.
- Industry-based criteria should be used to guide the development of any engineering standards involving the placement of Provider facilities and equipment.
- Waivers of the right to challenge the lawfulness of particular governmental requirements as a condition of receiving public rights-of-way access should be

invalid. Providers should have the right to bring existing agreements, franchises, and permits into compliance with the law.

- Providers should have a private right of action to challenge public rights-of-way management practices and fees, even to the extent such practices and fees do not rise to the level of prohibiting the Provider from providing service.
- The Commission should vigorously enforce existing law and use expedited procedures for resolving preemption petitions involving access to public rights-of-way.

About Time Warner Telecom

Company History

Time Warner Telecom began in 1993 as part of the Time Warner Entertainment Limited Partnership. The focus of the Company was to provide cable/phone services to residential and business customers using hybrid fiber coax (HFC) technology. After an extensive pilot program to test residential service, Time Warner Communications evolved into a company that offers business phone services over fiber-optic networks.

In 1997, the Company added voice circuit switches and began operating as a

business CLEC. In 1998, Time Warner Communications became a separate entity from Time Warner Entertainment and began to operate as Time Warner Telecom Inc. During 1999, TWTC became EBITDA positive, acquired an ISP, built a national IP backbone and went public, offering 18,000,000 shares on the NASDAQ exchange. We trade under the symbol: TWTC. In August 2000, TWTC successfully bid, during an open auction bankruptcy proceeding, for most of the assets of GST Telecommunications. This allowed us to double the size of the company and extend our operating footprint throughout the Western United States. By end of 2001, TWTC offered telecommunications services over its own fiber optic networks in 44 markets in 21 different states.

Ownership Structure

We are very proud to carry the Time Warner name. As I described earlier, TWTC was initially created as division of Time Warner Entertainment. While Time Warner Inc, now AOL Time Warner, owns 44% of Time Warner Telecom Inc. stock, Time Warner Telecom Inc. is an independently owned and operated company. The most important point, from both your perspective and mine, is that we have no financial backing from AOL Time Warner. We obtain the capital we need to do business the same way the rest of the independent CLECs obtain theirs, through debt and equity offerings in the financial markets and from operating cash flow.

Company Growth

During a time when the news is full of stories on bankruptcies and employee

layoffs we are expanding our network and hiring new people. In 1996 TWTC had 500 employees, the majority of them located in the corporate headquarters in Littleton, Colorado. Today we have approximately 2500 employees and are providing service and employing people in 21 states. Time Warner Telecom's growth plans focus on geographic expansion, extension into new market segments and development of new data and Internet-based products and services. Our success to date is the result of building and deploying our extensive local and regional fiber optic networks all the way to the end user's building and providing a diverse physical alternative to the incumbent LEC. Our expertise is in selling complex network services that customers want and need over these networks. We execute and deliver on a sound business plan. We provide high quality broadband service to a diverse segment of the small, medium and large businesses in the country. In 1996 we had already constructed 5000 route miles. Today that has almost doubled to approximately local 9800 route miles. TWTC has constructed more route miles than any other local competitive carrier in the U.S. The fiber optic infrastructure we have built is important because it allows us to continue to layer more products and services on our network. One of the distinguishing characteristics of our network is that we have been laying this fiber in metropolitan areas; and the networks are large, averaging 400 route miles per city. We're building fiber where it is needed most, the last-mile. However, it is important that Congress recognize that the largest competitor in all of our markets, the local ILEC, has the ability to stymie our growth. Vigorous enforcement of the Act is the only

elixir to the poison pill of anti-competitive behavior and abuse of market power.

Service Provided

This is how we do business. In every city that Time Warner Telecom lays fiber, the sales staff is required to prove in advance that there is business to be had. We don't build a network just to show growth, we build a network to provide a service that is desired. This serves our customers and our shareholders well because it ensures our continued viability in the marketplace. And I can assure you that there is demand for the service we provide. In many cases we supplement the services that the incumbent carrier provides. Often, companies will come to us for their new business or for a specific portion of their telecom needs. As we prove our ability to provide this service, they give us more and more of their business.

The fiber optic networks we have built allow us to offer our customers any technology, product or service solution. With virtually unlimited bandwidth, we can meet the rapidly changing demands of our customers. Our networks allow us to provide voice and data telecommunications services to a diverse customer base including public schools, private schools, universities, health care facilities, banks, the high-tech community, government agencies and military installations, law firms, public utilities, many small businesses, Internet Service Providers, insurance companies and most interestingly many of the telecommunications companies operating in the U.S.

Markets Served

Arizona: Phoenix, Tucson
Colorado: Denver
California: San Diego, Los Angeles/Orange County, Santa Barbara, San Luis Obispo, Bakersfield, Fresno, San Francisco, Oakland, Sacramento
Florida: Orlando, Tampa
Hawaii: Honolulu
Georgia: Atlanta
Illinois: Chicago
Indiana: Indianapolis
Minnesota: Minneapolis
New Jersey: Northern Jersey City
New Mexico: Albuquerque
New York: Albany, Binghamton, New York City, Rochester
North Carolina: Charlotte, Greensboro, Raleigh, Fayetteville
Ohio: Cincinnati, Columbus, Dayton
Oregon: Portland
South Carolina: Columbia
Tennessee: Memphis
Texas: Austin, Dallas, Houston, San Antonio
Washington: Seattle, Spokane, Vancouver
Wisconsin: Milwaukee

In Conclusion

The need for diversity highlights the important benefits of a competitive telecommunications market. There is no question that the telecom industry has been affected by the downturn in the economy. But the need for competition is more important now than ever. Businesses and government offices need access to diverse networks, and they need quality services at affordable prices. Policies that promote competition are critical, and strict enforcement of the 96 ACT remains the most important tool the government has to encourage competition.

Setting aside the advantages of competition, the attacks of September 11th and

the demonstrated support by competitive telecom entrants such as Time Warner Telecom in restoring critical services, proves the strategic value of competitive fiber facilities based providers.

Thank you for the opportunity to testify before you today. I am happy to answer any questions.