Question II.A.18 -- Response of tw telecom holdings, llc

tw telecom holdings, llc ("tw telecom") **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] differ significantly from the ILEC practice of requiring CLECs to "lock up" a certain percentage of their historic spend in order to receive a rate discount and/or circuit portability. This ILEC practice is not based on a true commercial negotiation but instead on the ILEC's ability, through its market power, to extract significant concessions from customers that deprive *Competitive Providers* of the ability to compete for large amounts of *Dedicated Services* business.

The ILECs achieve this outcome by exploiting market power that CLECs lack. For example, the ILECs face no facilities-based competition in many locations where customers demand *Dedicated Services*, so they are able to charge undiscounted rates (monthly recurring charges, non-recurring charges, and exorbitantly high early termination penalties for term plans) that are cost prohibitive. CLECs have no alternative but to agree to the ILECs' anticompetitive terms and conditions in order to obtain discounts and/or circuit portability that allow them to provide services to business end users at competitive rates. This has the effect of locking up the market for *Dedicated Services* because many CLECs that are subject to these requirements conclude that the large shortfall penalties, early termination fees and/or foregone discounts are more valuable than discounts offered by competitive wholesale providers of *Dedicated Services*.

In contrast, *Competitive Providers* serve only a relatively small number of locations with their own network facilities, generally face competition from multiple facilities-based competitors in every location in which they do offer such service, are unable to impose high undiscounted rates on buyers, and are therefore unable to lock up large volumes of demand. Furthermore, **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL], the discounts and *Non-Rate Benefits* available under the ILECs' plans are not usually tied to the particular aggregate volume of circuits a CLEC buys or the level of revenue the CLEC provides to the ILEC. Those plans are based, rather, on either the percentage (e.g., 95 percent) of the CLEC's overall, historic spend on circuits in a particular region that the CLEC gives to the ILEC or a total dollar spend commitment that is in fact based on the CLEC's historic spend with the ILEC. This means that a CLEC that commits 95 percent of its purchase volume of 100 circuits would often receive the same benefits as a CLEC that commits 95 percent of its purchase volume of 100,000 circuits.

These commitments thus are not rationally linked to the ILEC's costs or the revenue being provided to the ILEC. Instead, their primary function is to prevent the CLEC's spend on *Dedicated Services*, no matter how large, from going to competitive suppliers. These requirements reduce demand elasticity, shrink the number of competitive suppliers that can enter or a market, and cause pricing for *Dedicated Services* to be higher than they would otherwise be. This is an inherently anti-competitive practice that bears no resemblance to the reasonable practice of Level 3 and other CLECs to provide *Non-Rate Benefits* to customers based on a true commercial negotiation and their overall service profile.