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February 6, 2009

EX PARTE

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W. - Room TW-A325  
Washington, D.C. 20554

Dear Ms. Dortch:

Re: Special Access Rates for Price Cap Local Exchange Carriers,  
WC Docket No. 05-25

There is a broad consensus that federal communications policy must encourage companies to invest in and deploy the broadband networks and infrastructure of the future. Increased broadband investment is critically important to our nation: high-speed broadband services can improve the lives of Americans in countless areas (including public safety, homeland security, health care, and the efficient delivery of goods and services), and improved networks will both fuel vitally important job growth in the coming years and lay the foundation for America's global competitiveness and economic performance.

The Obama-Biden Administration and the reconstituted Federal Communications Commission have the opportunity to make a real and lasting difference with broadband policies that strongly and uniformly foster and reward investment and promote adoption and use of broadband services. Communications and technology companies and consumer, labor and education groups from across the political spectrum (including AT&T, Google, the Rural Cellular Association, Free Press, the Communications Workers of America, the National Education Association, and the Public Broadcasting Service) have come together in support of a comprehensive national broadband strategy that would stimulate high-speed broadband investment, adoption and use, set specific implementation goals and timetables, and collect the data necessary to ensure that the goals and timetables are met.<sup>1</sup> Others unfortunately seek to subvert the process to their own narrow interests, flying the broadband flag over discredited proposals of the past to revive monopoly era regulation and finagle naked wealth transfers that would undeniably chill investment and job creation, stifle innovation, and cause our broadband infrastructure to stagnate. That has always been the path to broadband failure, and never more so

<sup>1</sup> See "Call to Action," US Broadband Coalition, at <http://www.bb4us.net/id10.html>. See also *id.* at <http://www.bb4us.net/id8.html> for a list of signatories.

than in the current environment in which those that are expected to build the nation's broadband infrastructure already face the extraordinary economic headwinds of an unprecedented downturn, tight capital markets, and intense competition across all communications service markets.

I write this letter to respond to one such set of proposals submitted by tw telecom, inc ("tw").<sup>2</sup> tw's letter focuses on "special access," the high-bandwidth broadband connections to commercial buildings that are provided today by a host of facilities-based competitors from incumbent LECs, like AT&T, to traditional competitive LECs, like twt, to cable companies and many newer wireless and wireline entrants. Claiming that this vibrantly competitive marketplace "is hobbled by market failure," twt proposes that the government single out incumbent LECs for lopsided regulation that would, among other misguided proposals, arbitrarily cap our rates below market levels so that those who wish to lease our facilities, instead of building their own, can get them at cheaper rates. twt even proposes a return to monopoly era regulation for extremely high-capacity optical and packet-based circuits, notwithstanding that the *entire industry* (including twt), the FCC and the courts have all, for years, agreed that market entrants face *no* economic barriers to deploying their own facilities for such services.<sup>3</sup> twt's remarkably anti-investment proposals would deliver a double body blow: destroying incumbent LEC incentives to invest in new infrastructure and, by mandating the leasing of our facilities at below-market rates, also eliminating our competitors' incentives to invest in their own networks. twt's self-interested focus on the terms of access to existing facilities is thus directly at odds with the public's interest in the enormous new investments that are acutely needed to meet soaring bandwidth consumption, create and support good jobs, and establish the United States as the undisputed broadband leader.

What is more, there is no evidentiary basis whatsoever for any of twt's proposals. To the contrary, twt's entire "case" for its anti-investment proposals rests on sky is falling rhetoric and two sets of false premises. First, twt suggests that it is seeking a reversal of "failed" Bush Administration policies. In fact the rules it seeks to overturn are Clinton Administration rules that have been in place for nearly a decade and that took a very measured approach, granting incumbent LECs pricing flexibility only in the specific geographic areas where they could make detailed showings of substantial competitive market activity. Those rules have been an obvious success: special access purchasers have come to depend on the flexibility to negotiate terms

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<sup>2</sup> See December 22, 2008 letter from Paul B. Jones, Executive Vice President, General Counsel and Regulatory Policy, tw telecom, Inc. to Mr. Tom Wheeler, Agency Review Working Group, Obama-Biden Transition Project.

<sup>3</sup> See, e.g., Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 315 (2003) (finding that "carriers are not impaired . . . without access to unbundled . . . OCn loops because . . . loops can be . . . self-deploy[ed] at the OC3 and above level"); *USTA v. FCC*, 188 F.3d 521, 527 (D.C. Cir. 1999); *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313, 328-29 (5<sup>th</sup> Cir. 2001) (finding the FCC order twt cites at 8 n.16 to be unlawful); *USTA v. FCC*, 359 F.3d 554, 575 (D.C. Cir. 2004); Comments of Association for Local Telecommunications Services (together with 20 other CLECs), FCC WC Docket No. 04-313, at 34 (April 5, 2002) (advocating that "[t]he Commission should require that loops of every capacity and type *except* OCn be unbundled") (emphasis added); Worldcom Comments, FCC WC Docket No. 01-338, Fleming Decl. ¶ 10 (Oct. 4, 2004) (when customer demand is projected to be several DS3s or optical [OCn] a self-build decision is made); Comments of Time Warner Telecom, WC Docket Nos. 04-313, 01-338, at 3-4 (October 4, 2004) (explaining that it profitably deploys its own facilities for circuits that exceed DS3 capacity).

tailored to their individual circumstances, and they pay less and have more choices today than ever before. Second, using factual assertions that have repeatedly been shown to be outdated, unsupported and false, twt attempts to portray the special access marketplace as a competitive desert in which incumbent LECs face no competition and raise prices with abandon.

The actual *evidence* – and an enormous record has been compiled in the many proceedings the FCC has initiated to monitor the efficacy of its special access rules – tells quite a different story. The facts are that the special access marketplace exhibits all of the hallmarks of an intensely competitive market: falling prices, rising output, improving service quality, rapid innovation, and enormous expansion and entry by dozens of intramodal and intermodal competitors. Detailed unrefuted evidence confirms that special access prices have been steadily *declining* in all parts of the country and at all levels of special access circuit bandwidth and that incumbent LECs face robust facilities-based competition both within and outside the downtown and other commercial areas where special access demand is heavily concentrated.

In this regard, twt’s essential contention – that incumbent LECs are “free of competition” for special access services in the “vast majority” of commercial buildings – is simply false. In multiple FCC proceedings, AT&T, Verizon, Qwest, Embarq, and others have provided detailed internal data, analyses, maps, and sworn testimony that meticulously document the intense and growing competition they face from twt and scores of other competitors. These data show that (1) competitors have literally blanketed the commercial areas where most buildings with special access connections are located, and that these other competitors are already connected to or within easy striking distance of the vast majority of these buildings;<sup>4</sup> (2) incumbents have suffered substantial competitive losses to these competing networks;<sup>5</sup> and (3) there has been massive entry by competitors using new and existing technologies in both urban and suburban areas, in part to satisfy wireless carriers’ exploding demand for wireless “backhaul” connections caused by the data demands of modern 3G and 4G wireless services.<sup>6</sup> There are numerous new intermodal competitors in particular that have penetrated into every corner of the special access marketplace; for example, both wireless and cable companies already have facilities in the areas where wireless backhaul demand is exploding, and they are successfully competing for backhaul and other special access demand.<sup>7</sup> And in response to this intense competition, the data confirm that incumbent LECs have lowered prices, improved quality, increased investment and taken other measures to retain or try to win back customers.<sup>8</sup>

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<sup>4</sup> See, e.g., AT&T Reply Comments, FCC WC Docket No. 05-25, at 7-23 (filed August 15, 2007) (summarizing sworn testimony of AT&T, Verizon, Qwest and Embarq and identifying the detailed Exhibits submitted by these incumbents).

<sup>5</sup> See, e.g., *id.*

<sup>6</sup> See, e.g., *id.*, at 17 (wireless technologies already have captured the majority of the wireless backhaul demand in Europe, and nearly two thirds of the demand globally). The European head start in wireless broadband technologies is explained by the fact that U.S. special access prices have been substantially *lower* than the prices of those services in other countries.

<sup>7</sup> *Id.*, at 7-23.

<sup>8</sup> See, e.g., AT&T Comments, FCC WC Docket No. 05-25, at Casto Declaration, ¶¶ 55-60 (filed August 15, 2007); *id.* at ¶¶ 7-23.

Neither twt nor any other proponent of re-regulation has ever attempted to refute these data. Indeed, it is striking that while the incumbents have repeatedly submitted specific, granular, detailed and well-documented evidence from their internal business records in the various FCC proceedings on these matters, twt and other non-incumbent providers have refused, even after repeated requests by the FCC, to provide *any* of their own specific data showing the extent of their networks, facilities, service offerings and market successes. Not a *single* provider of alternative special access service – and there are scores of them – has supplied the FCC with specific information about its existing and planned footprint, the buildings it already does and readily could serve, or the special access business it has won or competed for. Not a *single* wholesale special access customer has supplied the Commission with *any* hard data about locations where alternative wireline and intermodal competitors have offered to or could supply services. They have not done so, because they recognize that the rhetoric underlying their claims for forced rate reductions could never be reconciled with the true marketplace facts. The new FCC should put an end to this gamesmanship by adopting rules that require *all* facilities-based broadband providers to report granular data on their broadband networks and services (rules that are currently the subject of a pending notice of proposed rulemaking but which twt and its allies have opposed).

In the absence of actual CLEC data on competitive facilities and services, twt's case rests on self-serving rhetoric or various secondary sources and rate comparisons that have been repeatedly discredited. For example, twt claims that FCC reports show that from 2001 to 2005 incumbent LECs' special access "market share" rose from 92.7 to 94.1 percent. The FCC has made no such findings. Although twt nowhere states its methodology, the figures it cites are calculated from unaudited revenue data reported by *carriers* in an FCC Form (499-A) that is used to determine how much carriers must contribute to the federal Universal Service Fund.<sup>9</sup> These forms reflect systematic underreporting and misallocation of revenues. The Commission itself has identified numerous instances of "underreporting" of revenues on these contribution forms, including, in particular, errors in reported "local private line service revenues,"<sup>10</sup> *i.e.*, the line item which competitive LECs use to report their special access revenues.

twt likewise contends that the Department of Justice ("DOJ") and the Government Accountability Office ("GAO") support its claims regarding high incumbent LEC market shares. But the DOJ made no findings regarding the overall state of competition for special access (and, indeed, did not have the data to make any such findings); rather, it alleged that the SBC-AT&T and Verizon-MCI *mergers* might *reduce* competition in a few hundred buildings scattered throughout the country,<sup>11</sup> and that limited concern was put to rest when AT&T and Verizon voluntarily agreed to divest fiber facilities serving those buildings.<sup>12</sup> twt's assertion that the GAO

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<sup>9</sup> See Sprint Ex Parte Letter to FCC, FCC WC Docket Nos. 06-125, 06-147, 05-25, Exhibit at 1 (filed August 31, 2007).

<sup>10</sup> *Universal Service Methodology*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, WC Docket No. 06-122, ¶¶ 30-32 & n.110 (rel. June 27, 2006).

<sup>11</sup> See Complaint, *United States v. SBC Communications, Inc. and AT&T Corp.*, No. 1:05-CV-02102 (D.D.C. Oct. 27, 2005); Complaint, *United States v. Verizon Communications Inc. and MCI, Inc.*, No. 1:05-CV-02103 (D.D.C. Oct. 27, 2005).

<sup>12</sup> See *SBC Commc'ns and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd. 18290, ¶ 24 (2005) ("We conclude, however, that the consent decree" by which "the Applicants agreed to certain divestitures . . .

“concluded” that there is competition in only “six percent of commercial buildings” is also false. The principal conclusion of the GAO Report, which is titled “FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services,” was that GAO lacked sufficient data to determine the full extent of competitive deployment. That is because twt and other competitors have steadfastly refused to provide data on their deployment. As the GAO explained:

[there is] limited data on competitors’ provision of dedicated access services . . . .  
[and] no specific or current data . . . on the extent to which competitors have extended their networks.<sup>13</sup>

Thus, the six percent number touted by twt was necessarily based on incomplete (and now quite stale) data. Beyond that, even with respect to that flawed data, the computation severely overstated the total number of buildings where incumbents have fiber (it assumes falsely that any building with 18 or more telephone lines has incumbent special access fiber) and severely understated the number of those buildings with competitive alternatives (for example, it completely ignores buildings where competitive fiber is very near and could readily be connected). Of course, the percentage of *buildings* with competitive fiber is a necessarily flawed measure in an additional respect because it fails to distinguish among the largest skyscrapers, which house numerous businesses, and small commercial buildings.

While twt’s market share claims are grossly out of line with reality, so too are its pricing claims. As it did in the FCC proceedings, twt asserts that incumbent LECs’ special access prices have gone up, that prices are higher in areas where pricing flexibility has been granted than in areas where rates remain capped by regulation, and that incumbent LECs’ prices are higher than competitive LECs’ prices by “orders of magnitude.” In reality, AT&T, Verizon, Qwest and others submitted hard data, from actual billing records, showing that the prices that customers have actually paid for special access services have *declined* across *all* services and in *all* areas since 2001, even for the lowest capacity circuits that twt claims face the least competition. These reductions have been substantial. AT&T showed that the prices its customers pay in pricing flexibility areas fell by more than 18% (DS1) and 10% (DS3) in real inflation-adjusted terms from 2001 through 2004, and fell again by 23.7% (DS1) and 20.9% (DS3) in real inflation-adjusted

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should remedy any likely anticompetitive effects”); *Verizon Comm’ns and MCI Inc., Applications for Transfer of Control*, 20 FCC Rcd. 18433, ¶ 24 (2005) (same); *United States v. SBC Communications, Inc.*, 489 F. Supp. 2d 1, 70 (D.D.C. 2007) (upholding the merger and finding the divestiture and other merger commitments to be “in the public interest”).

<sup>13</sup> Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-08, at 40 (Nov. 2006) (“GAO Report”); see also *id.* at 50-52 (“Data on the presence of relevant telecommunications equipment in businesses throughout the United States is not independently available from public sources. To conduct our analysis, we contracted with two firms: Telcordia Technologies, Inc., and GeoResults. . . . According to Telcordia, the information in the registry may be less comprehensive for competitive firms than for incumbent firms because some smaller competitive firms do not subscribe to the service, and there may be some underreporting of competitors’ locations due to competitive concerns. However, Telcordia is unable to estimate the extent to which competitors’ data are underreported”).

terms from 2004 through the first quarter of 2007.<sup>14</sup> Verizon and Qwest made similar showings. No one has refuted this evidence. Indeed, the GAO independently found that that incumbents' average revenues "for both DS-1 and DS-3" circuits declined (or remained the same) *everywhere* from 2001 through 2005.<sup>15</sup>

Also false is twt's assertion that incumbents' rates are uniformly higher in areas where they have been granted regulatory pricing flexibility. AT&T's rates in those areas are at or below its capped rates for the same services and will remain so through at least 2010.<sup>16</sup> Of course, the comparison is a red herring in all events. As explained by the GAO, "past regulation may have resulted in setting some prices below cost" and therefore "some price increases would be expected under [pricing] flexibility."<sup>17</sup> Indeed, when the FCC adopted the pricing flexibility regime in 1999, it explicitly acknowledged that with pricing flexibility "some access rate increases may be warranted, because our rules may have required incumbent LECs to price access services below cost in certain areas."<sup>18</sup> That is because price caps are an inherently imprecise way to set prices that cannot account for the numerous factors affecting prices in competitive markets.<sup>19</sup> The price caps were initialized based on rate-of-return regulation rates, and have been subjected to numerous regulatory adjustments over the years, some of the most important of which were judicially determined to be arbitrary and were never corrected.<sup>20</sup>

twt's supposed "actual" price comparisons of its and other competitors' prices to those of Qwest, AT&T, and Verizon for DS1, DS3, OC3 and Ethernet services are likewise completely counterfeit. What twt actually submitted was an apples-to-oranges comparison. twt compared undisclosed, undocumented alleged CLEC *offers* to sell service and their claimed and entirely undocumented "internal price floors" with incumbent LEC undiscounted list rates, even though, just as with automobiles, for example, list rates are not what customers actually pay.<sup>21</sup> Likewise, twt compared what incumbent LEC customers pay for long circuits to what competitive LEC customers pay for short circuits.<sup>22</sup> Even putting aside these blatant mismatches, twt's statement

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<sup>14</sup> See AT&T 2005 Reply Comments, FCC WC Docket No. 05-25, Casto Reply Declaration, ¶ 14 (filed July 29, 2005); AT&T 2007 Comments, FCC WC Docket No. 05-25, Casto Declaration, ¶ 57 (filed August 8, 2007). Not accounting for inflation, AT&T's prices still fell by more than 13% (DS1) and 5% (DS3) from 2001 through 2004, and fell again by 13.2% (DS1) and 10% (DS3) in from 2004 through the first quarter of 2007. See *id.*

<sup>15</sup> GAO Report at 13, 32-33.

<sup>16</sup> Even the most ardent proponents of special access rate re-regulation proponents concede that "there is no price caps/pricing flexibility differential throughout AT&T's twenty-two state region." Comments of Ad Hoc at 11, FCC WC Docket No. 05-25 (filed Aug. 8, 2007).

<sup>17</sup> GAO Report at 17.

<sup>18</sup> Price Cap Performance Review for Local Exchange Carriers, 14 FCC Rcd. 14221, ¶ 155 (1999).

<sup>19</sup> First Report and Order, Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges, 12 FCC Rcd 15982, ¶ 44 (1997) ("Although the Commission has considerable expertise in regulating telecommunications providers and services efficiently for the maximum benefit of consumers, we believe that emerging competition will provide a more accurate means of . . . moving access prices to economically sustainable levels").

<sup>20</sup> See, e.g., *USTA v. FCC*, 188 F.3d 521, 525-26 (D.C. Cir. 1999).

<sup>21</sup> See Ex Parte Letter of AT&T, FCC WC Docket No. 05-25 (filed March 3, 2008).

<sup>22</sup> *Id.* twt goes even further afield when it argues that special access rates are too high because they allegedly exceed rates for long-haul services. It is plainly fallacious to say that the per unit price of a 1 mile circuit running through city streets in downtown Chicago should resemble the per unit price of a 300 mile circuit between Chicago and St.

of AT&T's prices was wildly off-base; AT&T confirmed through its own billing records that some of the circuit prices twt reported for AT&T were inflated by hundreds or even thousands of dollars over the prices twt and other AT&T customers actually pay for those circuits.<sup>23</sup>

twt is similarly wrong when it asserts that incumbent carriers have tried to block competitive entry by increasing their list tariff prices and offering substantial discounts from those prices only if customers agree to make long-term purchase commitments. As an initial matter, AT&T has discount offerings that do not require long term commitments or minimum spending requirements.<sup>24</sup> Moreover, incumbent LECs are hardly alone in offering volume and term discounts. As is common in competitive industries, competitive LECs also offer discounts to customers that make purchase commitments. Indeed, such discounts are common throughout the telecommunications industry, and the FCC has repeatedly rejected arguments that incumbents should be barred from making such offerings available to customers.<sup>25</sup> No customer is ever "forced" to accept a particular type of limitation – rather, a customer agrees to those terms as part of a bargain for a particular type or level of discount, just like in other competitive markets. *BellSouth v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006) (access discount plans are "most naturally viewed as a bargain containing terms that both benefit and burden its subscribers"). Indeed, the recent evidence suggests that many special access customers have in fact been *reducing* volume and term commitments to ensure maximum flexibility to self-provide or obtain service from any of the many competing providers.<sup>26</sup>

twt's letter reaches the most absurd levels on twt's pet topic of advanced packet-based Ethernet services. twt's story here is that special access pricing is killing its ability to provide Ethernet services, and that AT&T has decided to "slow roll" its own deployment of Ethernet services to keep from "cannibalizing" sales of older technology services. twt's story to its investors, customers and even to the FCC, however, has been quite different. There, twt has admitted that the Ethernet market is highly competitive and that it expects this robust Ethernet competition to "continue[] to intensify over time,"<sup>27</sup> that it would continue to "offer ever lower retail Ethernet prices,"<sup>28</sup> and that twt is the "industry leader" with a "comprehensive portfolio of Ethernet Services."<sup>29</sup> The President of twt's western division recently explained it this way: "[o]ur growth significantly outpaces the market and our competitors" and "[u]nlike our competitors, we are achieving this growth without eroding other service revenues," which "gives

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Louis routed through unpopulated areas. AT&T 2007 Reply Comments, FCC WC Docket No. 05-25, at 33-35 (filed August 15, 2007).

<sup>23</sup> See Ex Parte Letter of AT&T, FCC WC Docket No. 05-25, at 2-3 (filed March 3, 2008).

<sup>24</sup> AT&T 2007 Reply Comments, FCC WC Docket No. 05-25, at 60-62 (filed August 15, 2007).

<sup>25</sup> See, e.g., *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd. 5880, ¶¶ 28, 33, 36 (1991).

<sup>26</sup> See AT&T 2007 Comments, Casto Supp. Decl. ¶¶ 51 ("substantial special access customers recently have chosen to forgo large term discounts for special access services to increase their flexibility to move substantial amounts of their demand to alternative suppliers").

<sup>27</sup> See Ex Parte Letter from Thomas Jones (twt) to Marlene H. Dortch (FCC), FCC WC Docket No. 06-74, at 18 (filed Aug. 8, 2006).

<sup>28</sup> *Id.*; see also *id.* at 17 ("TWTC [tw telecom] operates in a competitive retail market"); AT&T Comments, FCC WC Docket No. 05-25, Cast Declaration (filed August 8, 2007) (describing Ethernet offerings, both retail and wholesale, of numerous providers including cable companies).

<sup>29</sup> Time Warner Telecom, June 6, 2006 Press Release, at 1 ("*Overture Release*"), available at <http://www.twttelecom.com/Documents/Announcements/News/2006/Overture.pdf>.

us a significant advantage and allows us to pass along benefits to our commercial customers in the form of converged services, lower cost ownership, and increased functionality.”<sup>30</sup> twt has enjoyed all of this success without the need to purchase *any* tariffed Ethernet service from AT&T.<sup>31</sup> Nor is there any merit to twt’s claim that AT&T is “slow rolling” its own deployment of such services. AT&T’s robust Ethernet offerings reflect the competitive reality that service providers must satisfy the sophisticated consumers of these and other special access services or those customers will vote with their feet.

Finally, twt’s specific regulatory “solutions” to this non-problem would not only destroy vitally important incentives for new investment, they would be patently unlawful. twt’s proposal is for a massive government intervention in the marketplace, mandating billions of dollars in rate reductions and returning AT&T and other incumbent LECs to the type of heavy-handed regulation not seen since the monopoly era. Under the Communications Act, however, the FCC could not mandate these price reductions without first making an affirmative determination that AT&T’s current prices (which, incidentally, are often the product of individually negotiated contracts) are unjust and unreasonable.<sup>32</sup> Neither twt nor any other party has ever submitted any evidence, studies, or expert testimony confronting the issue of how the government, as of 2009, might estimate special access costs and an appropriate rate of return in a manner that would survive judicial review (and it is notable that twt, in all these years, has never filed a complaint attempting to make such a showing). In an attempt to evade these legal prerequisites, twt asks for the same arbitrary regulatory “short-cuts” that it has sought for the past few years. For example, it asks that the FCC mandate multi-billion-dollar rate reductions based on retroactive application of a price cap regulation “X-Factor” of 6.5% that was discarded years ago – without mentioning that the 6.5% figure was derived from data that is more than a decade stale and was struck down not once but twice by the courts (and has never been upheld). If the new FCC were to take twt’s proposals seriously, it would have no choice but to conduct full-blown, nationwide rate cases for hundreds of rates – an enormously complex and inherently arbitrary proceeding that would result in a regulatory quagmire of epic proportions, with the prospect of additional judicial reversals and crippling regulatory uncertainty that would further chill broadband investment and job creation.

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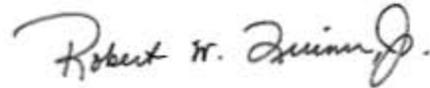
<sup>30</sup> Cisco Customer Case Study, Provider Pioneers Flexible, Cost-Effective Ethernet Service (2008), available at [www.cisco.com/en/US/solutions/collateral/ns341/ns524/ns562/ns577/case\\_study\\_c36-491995.pdf](http://www.cisco.com/en/US/solutions/collateral/ns341/ns524/ns562/ns577/case_study_c36-491995.pdf)

<sup>31</sup> See *Ex Parte* Letter from Thomas Jones (twt) to Marlene H. Dortch (FCC), WC Docket No. 06-74, at 6 (filed Nov. 20, 2006) (twt “has not purchased a single Ethernet circuit from AT&T under tariff”).

<sup>32</sup> *AT&T v. FCC*, 487 F.2d 865, 872-80 (2d Cir. 1973) (a “full opportunity for hearing” and express Commission findings that the carrier-initiated rate is unjust and unreasonable and the prescribed rate is just and reasonable “are essential to any exercise by the Commission of its authority” to prescribe rates); *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515, 1519 (D.C. Cir. 1995) (the “Commission is not free to circumvent or ignore th[e] balance [created by Congress in § 205]. Nor may the Commission rewrite this statutory scheme on the basis of its own conception of the equities of a particular situation”); *2005 Special Access Notice*, 20 FCC Rcd. 1994, ¶ 130 (2005) (“we find the record inadequate for prescribing new special access rates pursuant to section 205 of the Communications Act”); *In re AT&T Corp., et al.*, No. 03-1397, Brief of Respondent FCC at 23 (“in order to justify the interim prescription relief sought by petitioners, the record would have to support the conclusion that *every* special access rate in *every* MSA in which Phase II relief has been granted violates Section 201” (emphasis in original)).

In short, twt's self-serving proposals have nothing to commend them – not policy, not economics, and not the law. The new Administration's goal should be to encourage investment in new and upgraded broadband infrastructure, not wealth transfers among competitors that would stifle incentives for the investments that America needs and the jobs those investments would create.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Quinn, Jr." The signature is written in black ink and is positioned above the typed name.

Robert W. Quinn, Jr.  
Senior Vice President-Federal Regulatory  
AT&T Services, Inc.