specific sunk costs the lowest of the non-recurring charges for channel termination now charged in ILEC tariffs and limit any non-recurring charge to that benchmark value.[80]

68. Moreover, the use of benchmarking to foster conditions that encourage competition need not be limited to non-recurring charges. For example, the Commission should also establish benchmarks for charges for circuit migration, for limits on the number of requests to transfer service processed per day, and for other charges and provisioning practices based on the least restrictive practices of ILECs.[81]

69. Finally, we understand that some ILECs offer more favorable circuit-specific term plans, smaller termination penalties, or even circuit portability, but in only a portion of their territories. In such cases, the Commission should extend the use of regulatory benchmarking to require that, where an ILEC offers more favorable contract terms in one part of its territory, it must offer those terms throughout its entire territory. This would have the effect of allowing customers in one area to benefit from the existence of competition in another area.

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[80] For a general discussion of benchmarking, see "Benchmarking and the Effects of ILEC Mergers," Declaration of Joseph Farrell and Bridger M. Mitchell (dated Oct. 14, 1998) (attached as Attachment C to Sprint Communications Company L.P., Petition to Deny, CC Docket No. 98-141 (filed Oct. 15, 1998)).

[81] *See Level 3 February 22 Letter* at 13-14; **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**.

Attachment 1 to Stanley M. Besen and Bridger M. Mitchell, "Anticompetitive Provisions of ILEC Special Access Arrangements"

STANLEY M. BESEN

EDUCATION

City College of New York

B.B.A., Economics (1958)

Yale University

M.A., Economics (1960)

Ph.D., Economics (1964)

PROFESSIONAL EXPERIENCE

2008- Senior Consultant, Charles River Associates

1992-2008 - Vice President, Charles River Associates

1980-1992 - Senior Economist, The Rand Corporation

1990-1991 - Visiting Professor of Law and Economics, Georgetown University Law Center

1988-1989 - Visiting Henley Professor of Law and Business, Columbia University

1985-1988 - Coeditor, Rand Journal of Economics

1978-1980 - Co-Director, Network Inquiry Special Staff, Federal Communications Commission

1971-1972 - Brookings Economic Policy Fellow, Office of Telecommunications Policy, Executive Office of the President

1965-1980 - Assistant Professor, Associate Professor, Professor of Economics, Allyn R. and Gladys M. Cline Professor of Economics and Finance, Rice University

1963-1965 - Economist, Institute for Defense Analyses

1962-1963 - Acting Assistant Professor of Economics, University of California, Santa Barbara

CONSULTANCIES

The Rand Corporation, 1972-1978

Office of Telecommunications Policy, Executive Office of the President, 1972-1977

Department of Defense, 1967

PROFESSIONAL ACTIVITIES/HONORS

Member, National Research Council Board on Earth Sciences and Resources, Division on Earth and Life Studies, Committee on Licensing Geographic Data and Services, 2002-2004

Member, The National Academies, Computer Science and Telecommunications Board of the Division on Engineering and Physical Science, Committee on Internet Navigation and the Domain Name System, 2001-2004

Member, Editorial Board, Economics of Innovation and New Technology, 1989-present

Member, Editorial Board, Information Economics and Policy, 1992-2004

Member, U.S. National Committee on Data for Science and Technology (CODATA), National Academy of Sciences/National Research Council, 1993-1996

Member, Office of Technology Assessment Advisory Panel on Communications Systems for an Information Age, 1986-1988

Member, Regional Telecommunications Planning Advisory Committee, City of Cincinnati, 1985

Member, Office of Technology Assessment Advisory Panel on Intellectual Property Rights in an Age of Electronics and Information, 1984-1985

Expert, World Intellectual Property Organization/UNESCO Meeting on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter, 1984

Who's Who in America, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012

Who's Who in Science and Engineering, 2011-2012

Member, Editorial Board, Southern Economic Journal, 1979-1981

Member, Task Force on National Telecommunications Policy Making, Aspen Institute Program on Communications and Society, 1977

Brookings Economic Policy Fellow, 1971-1972

Member, Technical Advisory Committee on Business Development, Model City Program, City of Houston, 1969-1971

Wilson University Fellow, 1959-1961

Overbrook Fellow, 1958-1959

Beta Gamma Sigma, 1958

PUBLICATIONS

Books

Misregulating Television: Network Dominance and the FCC, University of Chicago Press, 1984 (with T.G. Krattenmaker, A.R. Metzger, and J.R. Woodbury). Paperback edition, 1986.

New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Final report, Network Inquiry Special Staff, Federal Communications Commission, 1980 (with T.G. Krattenmaker et al).

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Articles

"An Economic Analysis of the AT&T-T-Mobile USA Wireless Merger," **Journal of Competition Law & Economics**, forthcoming (with S.D. Kletter, S.X. Moresi, S.C. Salop, and J.R. Woodbury).

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"Economic Remedies for Anticompetitive Hold-up: The Rambus Cases," **The Antitrust Bulletin,** Fall 2011 (with R.J. Levinson).

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"Lessons from FTC v. Rambus," **Icarus**, Communications & Digital Technology Industries Committee, American Bar Association Section of Antitrust Law, Summer 2010 (with R.J. Levinson).

"Standards, Intellectual Property Disclosure, and Patent Royalties after *Rambus*," **North Carolina Journal of Law & Technology**, Spring 2009 (with R.J. Levinson).

"Regulating Intellectual (Property) Monopolies," **Competition & Consumer Law Journal**, December 2008.

"Evaluating the Competitive Effects of Mergers of Internet Backbone Providers," **ACM Transactions on Internet Technology**," August 2002 (with J.S. Spigel and P. Srinagesh).

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"International Coordination of Intellectual Property Protection," in **Global Trademark & Copyright 2000, Protecting Intellectual Property Rights in the International Marketplace,** Practising Law Institute, 2000.

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"Choosing How to Compete: Strategies and Tactics in Standardization," **Journal of Economic Perspectives**, Spring 1994 (with J. Farrell).

"AM versus FM: The Battle of the Bands," **Industrial and Corporate Change**, 1992.

"An Economic Analysis of Copyright Collectives," **Virginia Law Review**, February 1992 (with S.N. Kirby and S.C. Salop). Reprinted in R.P. Merges (editor), **Economics of Intellectual Property Law**, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing, 2007; Reprinted in Stephen E. Margolis and Craig M. Newmark (editors), **Intellectual Property and Business,** Edgar Elgar Publishing, 2010.

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G. W. Wilson, et al., **The Impact of Highway Investment on Development, Journal of Business**, 1967.

R. A. Gordon and L. Klein (eds.), **American Economic Association Readings in Business Cycles," Southwestern Social Science Quarterly**, 1966.

Selected Presentations

"Regulating Intellectual (Property) Monopolies," Australian Competition and Consumer Commission Conference on Revisiting the Rationale for Regulation, July 2008.

Panelist, P2P File-Sharing and Its Impact on Copyright Holders, Federal Trade Commission Public Workshop on Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues, December 16, 2004.

American Bar Association, International Roundtable: Competition & Intellectual Property Policy Implications of International Standard-Setting, June 2002.

Panelist, DOJ/FTC Hearings on Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy, Session on Licensing Terms in Standards Activities, April 18, 2002.

Panelist, Federal Communications Commission Roundtable on Media Ownership Policies, Session on Ownership Policies and Competition, October 29, 2001.

Panelist, Federal Trade Commission Hearings on Global and Innovation-Based Competition, November 30, 1995.

"The Role of Users in Information Technology Standardization," Workshop on The Economic Dimension of Standards - Users and Governments in IT Standardisation, sponsored by MITI, MPT, and the OECD, Tokyo, November 1992.

Witness, Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, U.S. House of Representatives, 1991. Prepared statement and testimony appear in **Intellectual Property and International Issues**, 102nd Congress, 1st Session.

Witness, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, 1990. Prepared statement and testimony appear in **Cable Television Regulation (Part 2)**, 101st Congress, 2nd Session.

Witness, Subcommittee on Telecommunications, Consumer Protection, and Finance, Committee on Energy and Commerce, U.S. House of Representatives, 1983. Prepared statement and testimony appear in **Options for Cable Legislation**, 98th Congress, 1st Session.

Witness, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, 1982. Prepared statement and testimony appear in **Cable Television Regulation**, 97th Congress, 2nd Session.

Witness, Subcommittee on Telecommunications, Consumer Protection, and Finance, Committee on Energy and Commerce, U.S. House of Representatives, 1981. Prepared statement and testimony appear in **Status of Competition and Deregulation in the Telecommunications Industry**, 97th Congress, 1st Session.

Witness, Subcommittee on General Oversight and Minority Enterprise, Committee on Small Business, U.S. House of Representatives, 1980. Prepared statement and testimony appear in **Media Concentration (Part 1)**, 96th Congress, 2nd Session.

Panelist, Session on "The Role of Competition in the Electronic Media," Federal Trade Commission Symposium on Media Concentration, 1978. Comments reprinted in Federal Trade Commission, Bureau of Competition, **Proceedings of the Symposium on Media Concentration**, Volume I.

Witness, Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, 1977. Prepared statement and testimony appear in **Cable Television**, 95th Congress, 1st Session.

Witness, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 1976. Prepared statement and testimony appear in **Cable Television Regulation Oversight - Part 1**, 94th Congress, 2nd Session.

Attachment 2 to Stanley M. Besen and Bridger M. Mitchell, "Anticompetitive Provisions of ILEC Special Access Arrangements"

BRIDGER M. MITCHELL

EDUCATION

A.B. Economics (1962)

Stanford University

Ph.D. Economics (1971)

Massachusetts Institute of Technology

PROFESSIONAL EXPERIENCE

2008-Present	*Senior Consultant*, CRA International, Oakland, CA
1994–2008	*Vice President*, CRA International, Palo Alto, CA
1972–1994	*Senior Economist*, Social Policy Department, RAND Corporation, Santa Monica, CA
1977–1979	*Research Fellow*, International Institute of Management, Science Center, Berlin
1976	*Acting Associate Professor of Economics*, Stanford University
1973–1975	*Lecturer in Economics*, UCLA
1972	*Director*, National Health Insurance Analysis Staff, Department of Health, Education, and Welfare, Washington, D.C.
1971–1972	*Brookings Economic Policy Fellow*, Office of the Secretary, Department of Health, Education, and Welfare, Washington, D.C.
1971–1972	*Economic Policy Fellow*, The Brookings Institution, Washington, D.C.
1966–1971	*Assistant Professor of Economics*, Stanford University

PROFESSIONAL ORGANIZATIONS

American Economics Association.

International Telecommunications Society

Member, Editorial Board, Information Economics and Policy, 1985–2004

Member, Organizing Committee, Telecommunications Policy Research Conference, 1990

Chair, Organizing Committee, Telecommunications Policy Research Conference, 1991–1993

Chair, Board of Directors, Telecommunications Policy Research Conference, 1993–1994

CONSULTANCIES

World Bank, 1991–1994

California Public Utilities Commission, 1992

Social Security Administration, 1977–1978

Office of Telecommunications Policy, 1976–1978

Department of Health, Education, and Welfare, 1972–1978

PUBLICATIONS

Books

Telecommunications Competition: The Last Ten Miles. With I. Vogelsang. Cambridge, MA: MIT Press and AEI Press, 1997. (Also published in Korean, Korean Information Society Development Institute, 1998.)

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- Joint Declarations (with Joseph Farrell), on behalf of Sprint Communications Company submitted to the Federal Communications Commission, "Benchmarking and the Effects of ILEC Mergers."

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APPENDIX B

tw telecom Estimate of Non-Incumbent LEC Deployment in Phoenix MSA

As a purchaser of special access services from other carriers, tw telecom ("TWTC") has access to lists of commercial buildings to which such carriers own last-mile facilities. By aggregating these lists, TWTC can calculate an estimate of the number of buildings with demand for special access services to which carriers other than the incumbent LEC own last-mile facilities in a given market. Because this is a very labor-intensive process, and because TWTC understands that the Commission will be conducting a similar process with information it collects in the forthcoming data request, TWTC has not completed this process for every market. However, to serve as an example for the purposes of these comments, TWTC has done so for the Phoenix MSA.

As set forth in Table 1, TWTC estimates that non-incumbent LECs have constructed last-mile facilities to less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of commercial buildings in the Phoenix MSA. Therefore, TWTC estimates that the incumbent LEC controls the only last-mile facility to more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of these buildings.

[BEGIN HIGHLY CONFIDENTIAL]

Table 1: Non-Incumbent LEC Building Penetration			
MSA	Total Buildings w/demand of 2 DS1s or more	Buildings to which Non-ILECs has Constructed Loops	Building Penetration
Phoenix, AZ	[redacted]	[redacted]	[redacted]

[END HIGHLY CONFIDENTIAL]

APPENDIX C

tw telecom Build/Buy Analysis

tw telecom ("TWTC") builds its own loop and transport facilities whenever it is efficient and cost-effective to do so. Unfortunately, for a number of reasons, there are many locations where TWTC cannot economically construct its own loop facilities. TWTC generally builds its local network in the parts of metropolitan areas containing the largest enterprise customers using fiber ring transport facilities. TWTC constructs rings to very large commercial buildings as part of the original construction of its local transport network in a metropolitan area. In the majority of cases, however, TWTC must build a stand-alone fiber lateral (*i.e.,* loop) facility to a building containing a business customer it seeks to serve on its own network after the customer has agreed to purchase service from TWTC.

In assessing whether it is cost-effective to deploy its own loop facilities, TWTC determines whether the revenue opportunity associated with a given building or a given customer is large enough to justify construction. To justify construction, the potential revenue must be sufficient to cover the total cost of construction and recurring expenses and simultaneously achieve a reasonable rate of return on investment. Costs vary based on the distance between TWTC's transport network and the customer location (the longer the lateral facility, the greater the deployment cost), costs associated with obtaining access to poles, ducts, conduits, rights-of-way and commercial buildings, the type of services provided (electronics for higher capacity services generally cost more than electronics for lower capacity services) and the customer's willingness to enter into a longer-term contract.

After considering these factors, a small minority of customer locations meets tw telecom's revenue requirements. As of March 2012, TWTC has been able to deploy its own loop facilities to only an average of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END**

HIGHLY CONFIDENTIAL] of its customer locations in five sample MSAs. Those MSAs are the Atlanta, Los Angeles, Phoenix, Seattle, and Washington DC MSAs shown in Table 1.

[BEGIN HIGHLY CONFIDENTIAL]

Table 1: TWTC Building Penetration			
MSA	**Total Buildings w/demand of 2 DS1s or more**	**Buildings to which TWTC has Constructed Loops**	**Building Penetration**
Atlanta, GA	[redacted]	[redacted]	[redacted]
Los Angeles, CA	[redacted]	[redacted]	[redacted]
Phoenix, AZ	[redacted]	[redacted]	[redacted]
Seattle, WA	[redacted]	[redacted]	[redacted]
Washington, DC	[redacted]	[redacted]	[redacted]

[END HIGHLY CONFIDENTIAL]

TWTC recently conducted a build-buy analysis, taking into account the aforementioned factors, for these five MSAs in order to identify the buildings in those areas to which TWTC could potentially deploy loop facilities in the future. In conducting the build-buy analysis, we made two basic assumptions. First, we assumed that TWTC must earn an approximate monthly recurring revenue ("MRR") per building over a 36 month period, as shown in Table 2, to justify construction of loop facilities under the best of conditions. This amount is the approximate MRR required to reach the target on-net building internal rate of return ("IRR") of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** that TWTC uses in the marketplace. This assumption includes the estimated average cost, including electronics, to deploy a loop facility in each MSA. Over 400 actual cost records were examined across the five MSA's to calculate the average cost per each MSA.

[BEGIN HIGHLY CONFIDENTIAL]

Table 2: TWTC Loop Construction Costs and MRR		
MSA	Average Construction Costs	Average MRR
Atlanta, GA	[redacted]	[redacted]
Los Angeles, CA	[redacted]	[redacted]
Phoenix, AZ	[redacted]	[redacted]
Seattle, WA	[redacted]	[redacted]
Washington, DC	[redacted]	[redacted]

[END HIGHLY CONFIDENTIAL]

These costs reflect an average cost to build lateral facilities within one mile of TWTC's fiber network. TWTC rarely constructs these facilities beyond a mile, as it is generally cost-prohibitive to do so, except where there are extraordinary revenue opportunities. Accordingly, the build/buy analysis was limited to buildings within a mile of TWTC's network. Hypothetically, the MRR threshold can be met in any number of ways using a combination of customer sizes and services. Practically speaking, however, TWTC requires a firm commitment from one or several customers to justify the build and will not undertake a build until that commitment is secured. Thus, in the majority of build scenarios there must be at least one larger business customer who has committed to a level of service that can meet TWTC's minimum MRR threshold to justify a build.

Second, TWTC assumed that it can win **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the revenue opportunity in a commercial building. Using these assumptions, TWTC estimated that it might be able to construct loop facilities to buildings with the amounts per month in estimated telecommunications spending shown in Table 3. TWTC then relied on GeoResults data estimating the revenue spend in the commercial buildings with two DS1s of demand or more in the five MSA's to determine the percentage of such buildings to which TWTC has not constructed its own loops ("non-TWTC buildings") but to which it *might* be able to do so in the future. Based on this analysis, TWTC determined that it might be able to build to only an average of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the non-TWTC buildings in each MSA as shown in Table 4. The total number of such buildings to which TWTC has built or (assuming that barriers to entry are overcome) could theoretically build loops in each MSA are summarized in Table 5. **[BEGIN HIGHLY CONFIDENTIAL]**

Table 3: Minimum Amount of Telecom Spend Required per Building		
MSA	**MRR Required**	**Telecom Spend Required per Building**
Atlanta, GA	[redacted]	[redacted]
Los Angeles, CA	[redacted]	[redacted]
Phoenix, AZ	[redacted]	[redacted]
Seattle, WA	[redacted]	[redacted]
Washington, DC	[redacted]	[redacted]

Table 4: Buildings Viable for TWTC Build Consideration			
MSA	**Total Non-TWTC Buildings (w/demand of 2 DS1s or more)**	**Buildings Viable for Build Consideration**	**Percentage of Buildings Viable for Build Consideration**
Atlanta, GA	[redacted]	[redacted]	[redacted]
Los Angeles, CA	[redacted]	[redacted]	[redacted]
Phoenix, AZ	[redacted]	[redacted]	[redacted]
Seattle, WA	[redacted]	[redacted]	[redacted]
Washington, DC	[redacted]	[redacted]	[redacted]

Table 5: Percentage of Buildings To Which TWTC Has Or Could Build Loops			
MSA	**Market Penetration Percentage**	**Percentage of Buildings Viable for Build Consideration**	**Total**
Atlanta, GA	[redacted]	[redacted]	[redacted]
Los Angeles, CA	[redacted]	[redacted]	[redacted]
Phoenix, AZ	[redacted]	[redacted]	[redacted]
Seattle, WA	[redacted]	[redacted]	[redacted]
Washington, DC	[redacted]	[redacted]	[redacted]

[END HIGHLY CONFIDENTIAL]

It should be noted that this build-buy analysis does not account for the fact, as explained, that TWTC generally cannot begin building its own loops unless and until potential customers in a given building in fact commit to purchasing the high revenue services that justify loop construction. This is why, even where TWTC has built its own transport facilities, there remain numerous buildings to which TWTC could theoretically, but cannot practically, afford to build loop facilities.

APPENDIX D

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

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Internet Special Access Services	)	RM-10593

DECLARATION OF KEVIN F. BRAND
ON BEHALF OF EARTHLINK, INC.

1. I am Executive Vice President, Customer Delivery and Care, for EarthLink, Inc. ("EarthLink"). In this position, I am responsible for delivery and post-installation customer support for the services that EarthLink provides to businesses and consumers. I joined EarthLink in 2001 and have held the positions of Vice President of Network Operations, Vice President of Products, and most recently, Chief of Consumer Products and Support. I have more than 30 years of experience in the telecommunications industry. Prior to joining EarthLink, I was Executive Vice President of Operations at CAIS Internet. Prior to that, I held a variety of management positions at AT&T, AT&T Paradyne, and AT&T Bell Laboratories in operations, customer support, product management, marketing, and technical areas.

2. EarthLink is a leading IT services, network, and communications provider to more than 150,000 businesses of all sizes and over one million consumers nationwide. EarthLink empowers customers with data and voice IP services, as well as managed IT services including cloud computing, data centers, virtualization, security, applications, premises-based

solutions, managed solutions, and support services. Among the data and Internet services that EarthLink offers to business customers are T1, DS3, Ethernet, and DSL services.

3. The purpose of this declaration is to describe (1) the demands of businesses that currently purchase dedicated T1, DS3, and Ethernet services (hereinafter, "special access services"); and (2) the differences in terms of service quality and price between special access services and "best efforts" Internet access services (such as DSL and cable modem services) marketed to businesses.

4. Most businesses that currently subscribe to special access services demand (and receive) dedicated bandwidth at the locations where those services are being used. At those locations, businesses (such as multi-location retail businesses) require guaranteed, consistent speed to run applications that are "mission critical" to their business (*e.g.*, applications that enable them to access customer data, process credit card payments, and communicate with customers, vendors, and suppliers). They cannot tolerate the slower and inconsistent speeds that users of shared services, such as "best efforts" cable modem services, can experience during peak usage times.

5. Most businesses that currently purchase special access services demand (and receive) symmetrical bandwidth at the locations where those services are being used (*e.g.*, bank branches, hospitals, and doctors' offices) so that employees can download as well as upload large files. By contrast, the vast majority of "best efforts" Internet access services that are offered today do not provide symmetrical speeds.

6. Most businesses that currently purchase special access services demand (and receive) greater reliability at the locations where those services are being used than can be provided with "best efforts" Internet access services. At those locations, for example, customers

expect their special access services to be repaired within a few hours of an outage. For this reason, EarthLink's Internet access Service Level Agreements ("SLAs") for dedicated special access services provide that EarthLink's "Mean Time to Repair" ("MTTR") will be between 4 to 6 hours depending on the type of service. By contrast, EarthLink's SLA provides that the MTTR for ADSL service will be 24 hours.

7. Most businesses that currently purchase special access services demand (and receive) greater security at the locations where those services are being used than can be provided with some "best efforts" Internet access services. For example, using dedicated connections provided by T1, DS3, and Ethernet special access services is inherently more secure for the transmission of customers' financial data or patients' medical records than using the shared connections provided by "best efforts" cable modem services.

8. There are also significant price differences between dedicated special access services and "best efforts" Internet access services. For example, EarthLink currently offers T1 service starting at $289 per month. By contrast, EarthLink currently offers DSL service (up to 6 Mbps/768 Kbps) starting at $67 per month and standalone ADSL service (up to 7 Mbps/768 Kbps) starting at $97 per month.

9. In light of the demands of business customers that purchase special access services (*e.g.*, their need for dedicated bandwidth) and the differences between special access services and "best efforts" Internet access services, I do not believe that the vast majority of businesses currently purchasing special access services view "best efforts" Internet access services as a viable substitute.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

K. F. Brand

Kevin F. Brand

Dated: 2/8/2013

CERTIFICATE OF SERVICE

I, Matthew Jones, hereby certify that on this day, February 11, 2013, I caused to be served a true and correct copy of the foregoing Comments of BT Americas, Cbeyond, EarthLink, Integra, Level 3, and tw telecom via FedEx to:

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