tw telecom inc.
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Via Email (rule-comments@sec.gov)

December 17, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-33-10, Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934

Dear Secretary Murphy:

tw telecom inc. appreciates the opportunity to respond to the Securities and Exchange Commission's Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934 (the "Proposed Whistleblower Rules"). **tw telecom inc. (tw telecom)** is a leading national provider of managed network services, specializing in Ethernet and data networking, Internet access, local and long distance voice, virtual private network, voice over Internet protocol and network security services to enterprise organizations and communications services companies throughout the U.S. and, for IP-VPN services, to their global locations. We are a publicly traded company listed on the Nasdaq Global Select Stock Market under the symbol TWTC.

tw telecom implores the Commission to reconsider the Proposed Whistleblower Rules. The Proposed Whistleblower Rules are objectionable for many reasons including that they are at odds with maintaining established corporate compliance and reporting programs. Even before, but particularly in the wake of Sarbanes-Oxley (SOX), public companies spent a great deal of effort and resources to develop meaningful corporate compliance and reporting policies and programs. Many of these compliance programs, including ours, <u>require</u> employees to report improper activity to the company. In addition, many companies have instituted certification procedures whereby employees are also <u>required</u> to certify to their company that they have, in fact, reported any and all activity which the employee thinks may involve misconduct. These programs are the foundation of a corporate culture that values integrity and right-minded decision-making that is positive for employees, executives, boards of directors and shareholders. And these programs are consistent with existing public policy embodied in SOX, the U.S. Sentencing Guidelines and the U.S. Department of Justice's Principles of Federal Prosecution of Business Organizations. Under this rubric, internal reporting mechanisms are a preferred way of handling such situations in the belief that responsible companies will act appropriately even in the absence of the additional threat of enforcement action by government regulators.

The Proposed Whistleblower Rules conflict with these values and these carefully structured corporate compliance programs. On the one hand, through SOX, Congress wants corporations to establish elaborate and effective internal reporting mechanisms to capture possible instances of misconduct. On the other hand, through Dodd-Frank, Congress has incentivized employees (through a bounty) to bypass internal systems and to make reports directly to the SEC. While the SEC cannot change the legislation, it has the opportunity through rule-making to implement the whistleblower provisions in a manner that does not undermine internal reporting mechanisms.

Proposed Rule §240.21F-4(b)(7) tries to fix this problem by allowing a whistleblower's report to the SEC to be "backdated" to the date the whistleblower made a report through the established corporate compliance program, as long as the whistleblower reports to the SEC within 90 days of the initial report to the company. This proposed fix has two significant faults. First, it has the effect of imposing a 90-day clock on any internal investigation, which itself is an unreasonably short period of time for a corporation to launch and conduct a thorough investigation, make recommendations (often requiring the input of executive management and sometimes even the board of directors) and take appropriate action. Simply stated, 90 days is an insufficient period of time for this process.

Second, the 90-day look-back is intended to preserve the possible bounty but it only <u>encourages</u> and does not require internal reporting. Without changes to the Proposed Whistleblower Rules, we believe the most likely scenario is that an employee will make an internal disclosure through the established compliance process and then either immediately—or at best, only a short time later—report to the SEC. There is no logical reason for an employee motivated by the prospect of a bounty to wait until the 89th day to report to the SEC. Employees have no mechanism for knowing whether other employees are making the same disclosures, and waiting 90 days only reduces employees' odds of receiving a bounty. Consequently, we do not believe that any sort of look-back provision, no matter the length, would eliminate the natural tendency of an employee to report to the SEC immediately after reporting through internal corporate channels. Thus, the conflict between reporting internally or reporting to the SEC still exists, with the SEC reporting "winning" the battle since it is the mechanism through which a bounty is available. We fully support encouraging employees to report suspected wrongdoing, but believe that employees should be incented to report through internal compliance structures.

For corporate compliance programs to be employees' "first choice" reporting mechanism there must be some incrementally beneficial reason for an employee to choose that route over the route created under the Proposed Whistleblower Rules. One possible approach would be to <u>require</u> an employee to follow the established internal compliance structure first, and then have a <u>mandatory</u> waiting period before the employee could report to the SEC, coupled with a look-back provision. As noted earlier, 90 days is too short a period in most situations for a corporation to conduct and conclude a thorough investigation. We believe 150-180 days is more reasonable. Then, after the required time period expires, the employee would be able to report to the SEC and be eligible for the bounty if they meet other eligibility requirements. Using this approach, employees are motivated to quickly report possible misconduct internally and be the first one whose 180-day clock begins to tick. Coupled with a modified look-back concept (just extending the time period to a mandatory waiting period of 150-180 days before reporting to the SEC), the whistleblower's report to the SEC would relate back to the date of the whistleblower's internal report through corporate legal, audit, or comparable compliance functions—thus preserving the "original information" requirement imposed by Dodd-Frank and the Proposed Whistleblower Rules. The approach recommended here also carries the added advantage of permitting a company to complete its investigation, take appropriate action, and if warranted be in a position to share its conclusions with the SEC.

In summary, we believe that the Proposed Whistleblower Regulations will obstruct the effective operation of internal corporate compliance and reporting systems. This unintended tension can be resolved by requiring whistleblowers to report concerns to the company via existing internal reporting mechanisms and giving the company a reasonable period of at least 150-days to investigate such concerns before a whistleblower could report those concerns to the SEC.

Thank you for your consideration.

Sincerely,

/s/ Paul B. Jones
Paul B. Jones
Executive Vice President,
General Counsel & Regulatory Policy

/s/ Tina Davis
Tina Davis
Senior Vice President and Deputy General Counsel