

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Petition of USTelecom for Forbearance Pursuant)	WC Docket No. 14-192
to 47 U.S.C. § 160(c) from Enforcement of Obsolete)	
Incumbent LEC Legacy Regulations that Inhibit)	
Deployment of Next-Generation Networks)	
_____)	

COMMENTS OF GARLAND CONNECT, LLC

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Garland Connect, LLC (“Garland Connect”) submits these Comments to contrast the position that Petitioner US Telecom’s largest member, AT&T, takes inside the Beltway with the position that it takes in the real world, outside the Beltway. Garland is the operator of the telecommunications facilities in a data center building in downtown Los Angeles located at 1200 West 7th Street (the “Garland Building”) with very heavy telecommunications and data transmission usage. While Petitioner and presumably AT&T assert to the Commission that “ILECs enjoy no advantages over other providers in deploying fiber to a wireless provider’s cell sites or to any type of customer location,”¹ this is simply untrue in the real world outside the Beltway. The Petition makes this statement in support of its contention that “the high-capacity service marketplace is highly competitive.”² In the Garland Building, AT&T does provide large volumes of high capacity service in competition with several CLECs, but nevertheless insists that because it is the ILEC in Los Angeles, it is entitled to free access to space, power, conduits, and penetrations for its fiber and high capacity circuits that its CLEC competitors (including AT&T’s affiliate, Teleport Communications Group) pay for.

Further, AT&T has repeatedly informed Garland Building ownership and management over the past several years that this is an AT&T policy that is not specific to any particular building and that AT&T regularly obtains the same type of building access, space and power (for which CLECs must pay) without making any payments to building ownership or management. As a result, AT&T has a tremendous competitive advantage over its CLEC competitors. This warrants the Commission rejecting Petitioner’s arguments that forbearance should be granted because AT&T and other ILECs compete on a level playing field with CLECs.

¹ Petition for Forbearance of the United States Telecom Association (“Petition”) at 103.

² *Id.* at 102.

I. Background

The Garland Building is one of the largest multi-tenant data centers in the Western U.S. In 2011, Garland Connect entered into an agreement with the Building to manage its telecommunications facilities and provide its occupants and their customers with a carrier-neutral and efficient facility to connect with the carrier of their choice. In this capacity, Garland Connect operates and manages (1) the Garland Building's Meet-Me Room ("MMR"), where carriers and building tenants can place their equipment and have access to power backed up by emergency power systems, (2) the Designated Interconnect Area ("DIA"), where the carriers and tenants interconnect with one another, (3) building penetrations and conduit leading from outside the Garland Building to the MMR, and (4) the Garland Building's conduit and riser space, including a "telecommunications highway," consisting of a diverse set of conduits and risers that lead to each suite in the Garland Building for fast and efficient installation of cabling. Garland Connect's services consist primarily of installing, managing, maintaining, and removing interconnects, cabling, conduits, and other telecommunications facilities and equipment which provide telecommunications services to local exchange carriers, service providers, tenants and their customers. Garland Connect's charges for use of the Garland Building facilities and Garland Connect's services are nondiscriminatory, established and fixed for all service providers, carriers, and tenants (with the exception of certain Building tenants that had pre-existing rights to telecom services under lease documents that predated their contracts with Garland Connect).

AT&T and the CLECs in the Garland Building provide the customers in the Garland Building with a broad array of telecommunications circuits. The circuit types range from telegraph and low grade analog voice circuits from the distant past to advanced high speed redundant data transport circuits with the capacity to hold hundreds of thousands of calls over a pair of fiber optic cables. The vast majority of the services are, however, data services. Because the Garland Building includes data center tenants and their colocation customers, the volume of circuits being purchased is enormous.

There are four different categories of customers that use telecommunications services in the Garland Building. The first group is comprised of the tenants in the Garland Building, which include 4 retail colocation tenants occupying 105,080 square feet (and collectively housing over 3,000 retail colocation customers), 2 large call center/mail centers occupying 85,708 square feet, and 5 office/banking tenants occupying 389,173 square feet. Tenants need voice telephone service for themselves and their employees, as well as data circuits, which usually transit to the Internet, but may also provide point to point transport to other offices, data centers, network operations center or customers.

The second group consists of customers of the tenants in the Garland Building, primarily colocation customers of the data center tenants. Each of these more than 3,000 colocation customers is ordering one or more data circuits which, again, may transit to the Internet or provide point to point transport to other offices, data centers, network operations centers or customers. In rare cases, these customers also order voice circuits, but they use a modem to connect for backup access purposes only. The third group consists of operators that are licensed by the Garland Building ownership/management to provide services or amenities to the Garland Building, usually consisting of phone service for emergency E911 and general use and/or data services. The final group consists of telecommunications service providers, which order any number of circuit types from one another, including special access services or data transport or transit services.

In 2009, the Garland Building began a systematic effort to reconfigure and modernize its telecommunications facilities. Previously, connections between the carriers and data center tenants in the building had been largely unsupervised and as a result were undocumented, chaotic and disorganized. Further, the Garland Building's risers were clogged with enormous amounts of conduit and cabling, creating fire danger and other concerns.

To address these concerns, the Garland Building entered into an agreement with Garland Connect, under which Garland Connect oversaw construction of a state-of-the-art MMR at the Garland Building.

The MMR was designed to provide a single place for all carriers to interconnect quickly and efficiently with customers in the Garland Building. Since June 24, 2011, Garland Connect has had the right and obligation to operate, manage, license and collect fees for use of the MMR, as well as all building penetrations, risers, conduit, and telecommunication closets in the Building.

Shortly after entering into the MMR Agreement, Garland Connect entered into standard agreements on consistent and non-discriminatory terms with every party using the MMR, including 14 carriers, but excluding AT&T. The agreement between the Garland Building and Garland Connect requires Garland Connect to enter into agreements with all users of the MMR on market standard and non-discriminatory terms. Despite diligent and consistent efforts over a number of years, Garland Connect has never been able to reach even a simple business level agreement with AT&T. AT&T has consistently stonewalled Garland Connect, failing to pay, and yet continuing to use extensive facilities and services at the Building without justification and failing to remove its cabling and equipment, as demanded by Garland Connect.

After exhausting all other alternatives, Garland Connect filed suit against AT&T in June 2013.

II. AT&T's Arguments Before the Commission for the Post IP-Transition World

By 2002, AT&T (then known as SBC Communications) began its campaign for relief from unbundling obligations in a fiber, IP world. In Reply Comments filed in 2002 in the FCC's *Triennial Review Order* proceeding, SBC argued that:

[T]here can be no serious argument that the protected monopoly theory applies to new investment. . . . SBC no longer enjoys an exclusive franchise or any other state protection. Indeed, the Act prohibits it. To say simply that the ILECs, at one time in the past, enjoyed protection under exclusive franchises says nothing about the rules under which they operate today.

Going forward, SBC and other ILECs have the same advantages and disadvantages as the CLECs. As the High Tech Broadband Coalition points out, "with respect to broadband, ILECs have no unfair competitive advantage based on their legacy networks" because broadband services are provided "using largely different electronics equipment and facilities than circuit switched voice services." "[I]nvestment in new, last-mile broadband facilities does not constitute a legacy advantage because any

competitor could make a similar investment.” Corning makes the same point, noting that in the case of fiber-to-the-home deployment, “*CLECs and ILECs operate on a level playing field, and ILECs possess none of the oft-cited advantages which lead to unbundling requirements.*” Alcatel adds that ILECs and CLECs are also in “equal positions to compete for and construct” new networks in green field developments.³

Two years later, in the FCC’s *TRRO* proceeding, SBC made an even more vigorous argument for relief from unbundling, based on the claim that in constructing a new fiber network, ILECs “face the same hurdles as CLECs”⁴:

It is no answer to contend that, simply because ILECs purportedly have ubiquitous fiber networks that already extend to most locations, CLECs are impaired without access to those networks. . . . Given the explosive growth of the special access market in recent years, ILECs have had to build out their networks, like everyone else, to meet rapidly expanding demand in old and new locations. They are continuing to do so today, and, in so doing, *they obviously face the same hurdles as CLECs.* In this context, requiring ILECs to unbundle fiber would serve only to discourage further investment by ILECs and CLECs alike.

SBC’s campaign to convince the Commission that ILECs had no advantages over CLECs in constructing fiber networks was successful. The Commission found in its *Triennial Review Order* that while cost of building access was one of the considerations in determining whether CLECs were impaired without certain ILEC facilities:

With respect to new FTTH deployments (*i.e.*, so-called “greenfield” construction projects), we note that the entry barriers appear to be largely the same for both incumbent and competitive LECs – that is, both incumbent and competitive carriers must negotiate rights-of-way, respond to bid requests for new housing developments, obtain fiber optic cabling and other materials, develop deployment plans, and implement construction programs.

. . . as with greenfield deployments, competitive and incumbent LECs largely face the same obstacles in deploying overbuild FTTH loops, although incumbent LECs still enjoy an established customer base. Both competitive LECs and incumbent LECs must obtain materials, hire the necessary labor force, and construct the fiber transmission facilities.⁵

³ SBC Reply Comments, CC Docket No. 01-338 at p. 56 (filed July 17, 2002) (emphasis added).

⁴ SBC *TRRO* Reply Comments (Redacted), CC Docket No. 01-338 *et al*, p. 26 (filed Oct. 19, 2004).

⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on

In its *Triennial Review Remand Order*, the Commission reiterated that costs of building access were a consideration in determining impairment because costs “of building access do not generally vary with demand,” but clearly operated on the assumption that while ILECs had the advantage of economies of scale, ILECs did not have the additional benefit of free access to buildings.⁶ The result was--and still is--that ILECs were not required to unbundle certain fiber loops at TELRIC rates.⁷

It is understandable that the Commission may have believed that ILECs were paying the same rates for building access as CLECs. Apart from SBC’s representations that ILECs had no advantages over CLECs, the Commission had previously stated that “we expect that ... building owners” will exercise control over inside wiring “in a nondiscriminatory way.”⁸ Similarly, states have insisted that building owners treat ILECs and CLECs in a nondiscriminatory manner. For example, the California PUC (CPUC) held that an agreement between a building owner and a carrier “which favors access of the ILEC to the detriment of the [CLEC] by charging disparate rates for access may be in violation of our rules.”⁹ It prohibited “all carriers from entering into any kind of arrangement or sign[ing] any contract with building

Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17143, ¶ 275, 17144, ¶ 276, 17179, ¶ 335 (2003) (“*TRO*”), corrected by Errata, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, aff’d in part, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir 2004) *cert. denied*, 543 U.S. 925 (2004).

⁶ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2617 ¶ 153 (2005) (“*TRRO*”), *aff’d, Covad Commc’ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁷ *Id.* at 2633 ¶ 182; 47 C.F.R § 319(a)(3)(ii)-(iii).

⁸ *Promotion of Competitive Networks in Local Telecommunications Markets, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 22983, at ¶ 57 (2000).

⁹ *Re: Competition for Local Exchange Service*, 82 CPUC 2d 510, 572 Proceeding No. 95-04-044, Decision No. 98-10-058, at 100 (CPUC Oct. 22, 1998)

owners that result[s] in ... discriminatory access”¹⁰ and permitted “any carrier to file a formal complaint against another carrier...benefiting from...discriminatory access to private property.”¹¹

The CPUC further established that all carriers’ “access to private buildings shall therefore be subject to the negotiation of terms of access with the building owner or manager.”¹² In light of these CPUC rulings, it would not have been unreasonable for the Commission to assume that AT&T was in fact negotiating the terms of access to private buildings in California with the building owner or manager. But that is not the case. Despite the CPUC’s direction that all carriers’ “access to private buildings shall . . . be subject to the negotiation of terms of access with the building owner or manager,” AT&T has refused to negotiate the terms of access with the Garland Building. AT&T has consistently made clear that the only terms acceptable to AT&T are that it pays nothing for the services it receives.

III. Competitive Impact of AT&T’s Conduct

Garland Connect’s dealings with AT&T provide clear evidence that AT&T’s position in the real world is diametrically opposed to the one that it portrays to the Commission in this docket. For the last four years, AT&T has flatly refused to pay the same rates for the rack and cabinet space, power, and use of ducts, conduits, risers, penetrations, and other facilities that CLECs are paying, and that are usual and customary in similar buildings. AT&T’s consistent response has been and continues to be that because it is an ILEC, it is not required to pay for the use of space, power, and facilities in the Building that would have cost any other carrier hundreds of thousands of dollars a month.¹³

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ AT&T has also offered other justifications for its refusal to pay, such as its claim that its tariffs require the building to provide free space and power; however, AT&T’s tariffs require the “Customer,” not the building owner, to provide free space and power. Moreover, CLEC tariffs say essentially the same thing (Compare Pacific Bell Telephone Company, Tariff F.C.C. No. 1, Original Page 2-22, at 1, Original Page 2-22, at § 2.3.3, (effective May 12, 2000) with Teleport Communications Group Operating Companies, Tariff FCC No. 2, 1st Revised Page 22, at § 2.3.1 (effective April 27, 1998)), and AT&T’s

For example, in July, 2011, AT&T ILEC employee Mike Shortle, who was responsible for negotiating contracts for building access, wrote to Garland Connect that the draft agreement sent by Garland Connect, which called for AT&T to make payment for use of building space, power and facilities,

appears as though it refers to AT&T as a CLEC (Competitive Local Exchange Carrier) and not as the ILEC (Incumbent Local Exchange Carrier). As you may or not know, AT&T operates as an ILEC and not as a CLEC. AT&T is governed by CPUC (California Public Utility Commission) tariffs and is not allowed to enter into any agreement that requires AT&T to pay any fees for space or power per our tariffs.¹⁴

A week later, AT&T representative Kim Wood explained that AT&T's CLEC affiliate, TCG, "must pay license fees to serve customers at 1200 W. 7th Street" because it "is not the LEC" and therefore, unlike affiliate AT&T/SBC, we "don't maintain that we have a right to free rights at the Garland Center."¹⁵ A few months later, Mr. Shortle added that "AT&T has a strict policy not to pay for power and accessing buildings."¹⁶

The result is that AT&T has a tremendous competitive advantage over CLECs in seeking to serve data centers and other customers in the Building. CLECs such as Level 3, tw telecom, XO, and CLEC affiliates of AT&T, Verizon and CenturyLink are all competing with AT&T for this business. They each

own CLEC affiliate has conceded its obligation to pay the building for all the services for which AT&T refuses to pay. In addition, the largest part of the invoices is for use of the building's conduits to connect AT&T equipment in the Meet-Me-Room with AT&T's equipment in tenant suites, and AT&T's tariffs say nothing about getting conduit usage for its high-capacity circuits free of charge. To Garland Connect's knowledge, AT&T has made no effort to require its Customers to provide the free space and power it has appropriated from Garland Connect. Instead, it just occupies Garland Connect's space and conduits, uses Garland Connect's power and penetrations, and thumbs its nose at Garland Connect's demands for payment on the same terms to which all the CLECs have agreed.

AT&T may seek to deflect attention from its immutable policy of not paying for building access by reference to fact-specific issues peculiar to its dispute with Garland Connect. There are always fact specific issues associated with any building. The important point is that AT&T has consistently taken the position that this is a matter of principle. As the ILEC, AT&T states that it will not pay for building access, regardless of the facts specific to the building.

¹⁴ See Exhibit A (Shortle email of July 6, 2011).

¹⁵ See *id.* (Wood email of July 13, 2011).

¹⁶ See Exhibit B.

pay Garland Connect for Building access, space, power, facilities and penetrations at the rates set forth in the same non-discriminatory rate sheet that was also offered to AT&T. If AT&T paid in accordance with that rate sheet, its costs would be several hundred thousand dollars per month. Multiply this by the hundreds of other buildings at which AT&T uses space, power and facilities, and it is obvious that AT&T has an enormous competitive advantage over its CLEC competitors.¹⁷ In conducting this proceeding, the Commission should determine whether this advantage exists and rule accordingly.

IV. Recommendations for this proceeding

Before the Commission determines that ILECs and CLECs are competing on a level playing field when it comes to building fiber networks, as the Petition suggests, the Commission should look carefully at the Petition's contention that "ILECs enjoy no advantages over other providers in deploying fiber to a wireless provider's cell sites or to any type of customer location." In terms of cost of obtaining building access, it appears that this statement in the Petition are false, and that AT&T has major cost advantages today over its CLEC competitors.

Before the FCC accepts this statement as true, it should:

1. Require AT&T to produce copies of all of its ILEC and CLEC building access agreements so that the Commission can see for itself what, if anything, AT&T is in fact paying for building access as an ILEC and as a CLEC.
2. Require AT&T to state definitively for the record whether it takes the position that it is entitled to free space, power and/or use of facilities in buildings because it is the ILEC.
3. Require AT&T to state for the record whether it contends that its tariffs entitle it to receive space, power, and use of building conduits, penetrations and other facilities from building owners and operators to serve third party customers without making any payment to the building owner or operator.

¹⁷ In addition to the benefits of a level playing field, requiring ILECs to pay for building services that they use would have the benefit of conserving resources. The invoices that Garland Connect has sent to AT&T are much larger than the invoices Garland Connect has sent to CLECs, even though the unit rates are the same. As Garland Connect has repeatedly informed AT&T, if AT&T groomed its usage as the CLECs located at the Building have done, and as any carrier that is required to pay would do, its bills would be reduced significantly. AT&T has not done so, apparently believing that since it is entitled to a free lunch, it might as well eat several helpings of everything on the menu.

4. If AT&T contends that its tariffs entitle it to free space, power, and facilities from building owners and operators, require AT&T to differentiate between the language in its tariff and the similarly worded provisions in CLEC tariffs, since the CLECs, including AT&T's CLEC affiliate TCG, do not take the same position.

Moreover, if the Commission believes that building access should be nondiscriminatory, it should state in the clearest language possible that ILECs violate the Communications Act if they refuse to pay the same nondiscriminatory rates that CLECs pay for space, power and use of facilities in buildings.

Respectfully submitted,

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