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Morgan Lewis
C O U N S E L O R S A T L A W

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February 5, 2015

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from
Enforcement of Obsolete Incumbent LEC Legacy Regulations that Inhibit
Deployment of Next-Generation Networks, WC Docket No. 14-192**

Dear Ms. Dortch:

On December 5, 2014, the undersigned filed comments highlighting the contrasting positions that Petitioner US Telecom Association's ("USTA") largest member, AT&T, takes inside the Beltway with the position that it takes in the real world, outside the Beltway. Garland Connect is the operator of the telecommunications facilities in a data center building in downtown Los Angeles (the "Garland Building"). 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 Petitioner 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.

Garland Connect submits this filing to inform the Commission that USTA's largest member, AT&T, has recently taken that position of entitlement in litigation with Garland Connect, seeking to persuade a California Jury that ILECs are entitled to substantial advantages over CLECs in competing for the fiber-based business of data centers and other customers in the Garland Building. On January 14, 2015, AT&T attorney Andrew Z. Edelstein signed and filed a declaration asserting that an AT&T witness will testify to the "[b]ackground and evolution of the

¹ Petition for Forbearance of the United States Telecom Association at 103.

² *Id.* at 102.

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telecommunications industry in general and relevant to the industry custom and practice of not charging [ILECs] . . . for the cost of space and power associated with their facilities used to provide services within a building.”³ As reflected by Mr. Edelstein’s Declaration, AT&T’s position in the litigation is that while CLECs, including AT&T’s CLEC affiliate TCG, pay significant sums for access to the data centers in the Garland Building, because AT&T is the ILEC in Los Angeles, it is legally entitled to the same access at no cost. This would of course provide ILECs with a tremendous competitive advantage over CLECs in serving data center customers with fiber. If what AT&T is telling the California Court and Jury is true, then the Commission must make every effort in this docket to ensure that CLECs continue to have the right to access ILEC fiber networks on the same terms that they currently access ILEC copper networks.

Respectfully submitted,

/s/ Eric J. Branfman

Eric J. Branfman

Counsel for Garland Connect, LLC

Enclosure

³ Defendant AT&T California’s Designation of Expert Witnesses; Declaration of Andrew Z. Edelstein at ¶ 4(a), *Garland Connect, LLC v. Pacific Bell Telephone Company, d/b/a AT&T California*, Case No. BC 513029 (Cal. Super. Ct., County of Los Angeles), filed January 14, 2015.

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11 Attorneys for Defendant PACIFIC BELL TELEPHONE
COMPANY, d/b/a AT&T CALIFORNIA
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 GARLAND CONNECT, LLC

16 Plaintiff,

17 v.

18 PACIFIC BELL TELEPHONE COMPANY,
d/b/a AT&T CALIFORNIA,

19 Defendant.
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CASE NO. BC 513029

**DEFENDANT AT&T CALIFORNIA'S
DESIGNATION OF EXPERT
WITNESSES; DECLARATION OF
ANDREW Z. EDELSTEIN**

Complaint Filed: June 24, 2013

Judge: Hon. Rita Miller

Date:

Time:

Dept.:

1 NOTICE IS HEREBY GIVEN that pursuant to Section 2034.260(b) of the California Code
2 of Civil Procedure, Defendant Pacific Bell Telephone Company, d/b/a SBC Pacific Bell Telephone
3 Company, d/b/a AT&T California ("AT&T California") expects to offer the opinions of the
4 following experts at trial:

5 William E. Minkle
6 P.O. Box 5004
7 Incline Village, NV 89450

8 &

9 Scott C. Chandler
10 Franklin Court Partners, Inc.
11 7903 S. Franklin Court
12 Centennial, CO 80122

13 AT&T California reserves the right to call any expert identified by any other party to this
14 action pursuant to CCP § 2034.410 and California Evidence Code § 776, and reserves the right to
15 supplement this list by designating additional experts pursuant to CCP § 2034.280. AT&T
16 California further reserves the right, at its option, to withdraw the individuals designated herein
17 as experts and/or to substitute in their place any new experts, and the right to designate
18 additional and/or different expert witnesses to testify on the merits of the action at trial and at
19 other hearings or proceedings.

20 AT&T California further reserves and asserts its objection to plaintiff's demand to
21 exchange "reports and writings" on the basis of attorney client privilege and attorney work
22 product protection. AT&T California will address this topic with plaintiff in a scheduled
23 conference call.

24 DATED: January 14, 2015

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MAYER BROWN LLP
JOHN NADOLENCO
ANDREW Z. EDELSTEIN

By: 
Andrew Z. Edelstein
Attorneys for Defendant
PACIFIC BELL TELEPHONE COMPANY,
d/b/a AT&T CALIFORNIA

1 and have conferred and currently confer a benefit to Garland Connect, the Building owner, and
2 the Building lessees; and

3 (d) The charges Garland Connect is imposing on AT&T California are not
4 proper, not reasonable, not industry standard, and not consistent with charges by other carrier
5 hotels in the local market; nor are they supported by analysis of charges to other carriers in the
6 Building, the value to AT&T California, Garland Connect's investment in the Building, or
7 Garland Connect's business plan.

8 5. Mr. Chandler's rate for testimony is \$450.00 per hour.

9 6. Mr. Chandler will be sufficiently familiar with the pending action to submit to a
10 meaningful oral deposition concerning any opinion and its basis, and has agreed to testify at trial.

11 7. A true and correct copy of the résumé of William Minkle is attached hereto as
12 Exhibit B and establishes his qualifications.

13 8. Mr. Minkle will testify regarding the following topic: Garland Connect LLC
14 ("Garland Connect") is a "tier 3" or "tier 4" carrier hotel, and that, as such (a) it is inconsistent
15 with industry practice in general as well as practice in the local market for it to charge AT&T for
16 space and power and (b) Garland Connect should reflect that reality in its pricing and charges.

17 9. Mr. Minkle's rate for testimony is \$450.00 per hour.

18 10. Mr. Minkle will be sufficiently familiar with the pending action to submit to a
19 meaningful oral deposition concerning any opinion and its basis, and has agreed to testify at trial.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct of my own personal knowledge, except as to those matters stated
22 to be based upon information and belief, and to such matters that I am informed and believe
23 that they are true and correct.

24 Executed by me on this 14th day of January, 2015, at Los Angeles, California.

25
26 By: 

Andrew Z. Edelstein

EXHIBIT A

Scott C Chandler

Scott Chandler has over 25 years of senior and executive level management experience. Scott is one of the few individuals in the telecom industry to have held senior management roles across the telecom universe (incumbent carrier, cable TV, broadband equipment, CLEC/DLEC). Mr. Chandler is currently managing partner for Franklin Court Partners, LLC. (FCP). FCP's focus is assisting companies in the following: developing business plans to raise initial funding, secure additional round(s) of financing, and restructuring of existing business to work within current financing and economic environment.

Prior to founding FCP, Chandler was Chief Financial Officer and Senior Vice President for RHYTHMS NetConnections, a leading provider of broadband services utilizing digital subscriber line (DSL) technology. At RHYTHMS, Scott was responsible for raising over \$2 Billion for the company and led the financial restructuring of RHYTHMS which resulted in the sale of its assets to Worldcom (now MCI). Scott also led and managed the expansion of RHYTHMS internationally identifying, negotiating and managing joint ventures in Canada and Japan.

Before RHYTHMS, Mr. Chandler served as President and CEO of C-COR, a pioneer in the cable television industry and a leading supplier of broadband telecommunications equipment. Under Mr. Chandler's leadership, C-COR's revenues increased 77 percent to \$152 million, and the company was named by FORTUNE magazine as one of the 100 fastest-growing public companies. Mr. Chandler also launched three new product lines and forged strategic relationships with Bay Networks (now Nortel), Barco and Lucent Technologies.

Prior to C-COR, Mr. Chandler held a number of key positions at U S WEST. He was a founder and early leader of the INTERPRISE Networking Services unit, broadly known as the most successful data initiative by any phone company in the country. Mr. Chandler also founded INTERPRISE America, a national expansion of U S WEST's data initiative, and forged joint venture relationships with competitive local exchange carriers (CLECs) to offer frame relay, asynchronous transfer mode (ATM) and other data services.

Mr. Chandler's business career began with Arthur Andersen & Co as a Senior Consultant/Accountant. At Arthur Andersen, Scott performed a wide range of assignments, including forming the microcomputer consulting group for the Western United States (now Andersen's Business Systems Client/Server Consulting Group) in 1987. Mr. Chandler also worked for the Los Angeles Olympic Organizing Committee in 1984.

Mr. Chandler earned an M.B.A. from the Wharton School of the University of Pennsylvania, and a B.A from Whitworth College. He has also serves on the Board of Directors for various companies.

SCOTT C CHANDLER

7903 S Franklin Ct • Littleton, CO 80122

COMPETENCIES

- Telecom and high tech industries
- Business Development
- Operations and General Management
- Economic modeling / forecasting

PROFESSIONAL EXPERIENCE

2001-current **FRANKLIN COURT PARTNERS, LLC** Denver, CO

Principal and Founder

Consulting practice that focuses on communication centric companies. Projects to date have involved financings (initial and follow on rounds), valuation analysis, introductions to executives for new sales and strategic partnerships, business case development, advice / strategy regarding restructuring options and litigation support. (www.franklincourtpartners.com)

Selected list of clients include:

- Threshold Fiber Solutions (leading provider of micro trench method of fiber construction)
- Terabeam (leading free space optic equipment provider)
- Linux Networx (Linux based equipment / software)
- Transfinity (web acceleration software – sold assets to EV1.net)
- Expanets (leading communications provider to small-medium businesses, recently sold to Avaya)
- BroadSoft
- Due diligence support for numerous private equity and venture capital firms (Grotech Ventures, Meritage, TDFund, Hercules Technology Growth)
- LigthEdge Solutons (leading IP services provider of Midwest)
- WorldWide Packets (carrier class Ethernet equipment) – sold to Ciena
- WiMax International
- ICG Communications
- NGT (recently sold to Comcast)
- Yipes Enterprises (sold to Reliance)
- BroadSoft (leading VoIP software provider)
- IP5280 (leading VoIP provider to small medium businesses –sold to MegaPath)
- WBS Connect (recently sold to Global Telecom & Technology)
- Phoenix NAP
- Expert witness and litigation support for a number multi-million dollar lawsuits in telecom industry

1998 to 2001 **RHYTHMS NETCONNECTIONS, INC** Denver, CO

Founder, Chief Financial Officer, Senior Vice President Global Business

Development

Founder and member of senior team of leading national provider of DSL network and services. Responsible for raising over \$2 Billion dollars for company in following transactions:

3 high yield debt issues (1998,1999,2000)	\$950 million
Initial public offering and follow on (1999)	\$250 million
Private equity (Hicks, Muse) (2000)	\$250 million
Public convertible preferred (2000)	\$300 million
Equipment lease financing (1998,1999,2000)	\$200 million

Negotiated and closed strategic investments with following companies in 1999 raising \$75 million in cash and \$150 million in equipment financing:

MCI Worldcom, Microsoft, Qwest and Cisco Systems

Founded Rhythms expansion into Canada and Japan. Canadian venture was by far the leading competitive DSL company in terms of network, lines in service and revenue. Negotiated and closed strategic investments with FireTap (Homestore.com telecom sub), Megapath Networks, and Mitsui.

Reported directly to Board of Directors (4-01 to 9-01) and led following aspects of financial restructuring:

- Negotiations with strategic and private equity investors
- Worked with investment bank on recapitalization of high yield
- Debt and preferred stock concurrent with new equity

End result was sale of majority of assets to MCI Worldcom - now called MCI (transaction closed 11-01)

1996 - 1998

C-COR

State College, PA

President and CEO

\$ 250 million manufacturer of broadband networking equipment used primarily by cable and telephone operators worldwide to deploy high capacity 2-way networks to offer video, high speed data and telephony. C-COR was ranked by Fortune magazine as 68th fastest growing public company (10-96) (ticker symbol CCBL). C-COR has been in business for over 50 years and has been a public company for the last 20 years.

Refined the strategy of the company to become a worldwide leader in next generation broadband networking equipment. Completed the following initiatives related to implementing this strategy:

- Divested out of unprofitable digital fiber optic business segment located in California
 - Opened manufacturing facility in Mexico to improve gross profit margins
 - Consolidated worldwide sales forces to reduce headcount by 50% while increasing sales bookings
 - Developed strategic relationships with Bay Networks, @Home, Barco and Tollgrade Communications to provide complete networking solutions
 - Implemented repurchase of 5% of company's stock (500,000 shares in first half of 1997 at average price of \$11.25
 - Increased research and development funds for new products approximately 100% from prior year

Vice President, Cable and Multimedia Group

Led team that launched video services in Omaha, Nebraska. Garnered over 25% market share in first 4 months of the launch competing against industry leaders such as Cox Communications and TCI. Network passes over 40,000 homes making it the largest RBOC network in nation.

- Developed cable modem service for the Omaha network. Moved from concept to market launch in less than 1 year. Network now has one of highest penetrations of cable modem service in country.
- Managed transition of the Omaha network from FCC video dial tone trial to obtaining Title 6 cable franchise. Consolidated operations to become cash flow positive in second full year of operation.
- Developed strategy to allow U S WEST to rapidly enter video services market upon passing of Telecommunications Bill. Strategy included multiple technologies (MMDS, DBS, XDSL, HFC, SDV). Strategy and recommendation shared with U S WEST Board of Directors.

Vice President and General Manger, !NTERPRISE National Expansion

Responsible for leading !NTERPRISE Networking Services expansion outside of 14-state U S WEST region.

- Developed business case to support expansion opportunity
- Led development of market research to assess markets to enter, also fine-tune market entry strategy
- Developed strategy to align with local network provider and economic structure between !NTERPRISE and target network provider (CAP)
- Negotiated joint venture partnerships with CAPs affiliated with Continental Cablevision, Adelphia, Media One and other cable television operators

Director Vendor Relations – Channel Strategy, !NTERPRISE Networking Services

Developed and managed joint marketing relationships with leading LAN internetworking vendors that comprised !NTERPRISE network integration offerings.

- Implemented joint marketing strategy of vendor relationships to U S WEST (these were new types of relationships and terms/conditions when introduced)
- Performed all required internal legal review to launch initial !NTERPRISE CPE offering
- Set up initial framework for establishing "strategic" relationships with leading internetworking vendors (Cisco Systems, Bay Networks, Motorola, etc.)
- Initial product set produced over \$75 M of sales in first 30 months

Director Market Strategy Development – U S WEST Strategic Marketing

Performed "internal management consulting" to assist U S WEST Inc. and other U S WEST entities.

- Directed market research to understand long term demand for wireless services (cellular & PCS). Largest primary research performed at U S WEST
- Performed shareholder valuation analysis to prioritize U S WEST investment opportunities in Asia
- Led project to look at underlying cost structure of US WEST Communications (USWC) vs. other competitive alternatives
- Developed long term strategy for New Vector Cellular, this led to repurchase of U S WEST cellular stock and initial thinking of Air Touch venture

1985 - 1988 **ARTHUR ANDERSEN & CO** Seattle, WA

Directed consulting and audit engagements for clients representing a wide range of industries.

- Developed microcomputer based system to test long distance billing systems. This was used to sell new systems to U S WEST (IABS), Sprint and SBC
- Performed M & A analysis for \$500 acquisition of pulp & paper facility in Canada
- Created microcomputer consulting division of Andersen for West Coast (this group now is Andersen's client-server group)
- Prepared proxy and required SEC registration documents for foreign acquisition of US money management firm (\$5 billion funds under management) and \$250 million IPO of cellular company (New Vector)

EDUCATION

1988 - 1990 **Wharton School of Business, University of Pennsylvania**

Masters of Business Administration, Finance and Marketing

- Taught undergraduate cost accounting class (3 semesters)
- Catherine Sharpe scholarship recipient
- Wharton Speakers Bureau
- Paid consultant to Aresty Executive Education program

1980 - 1985 **Whitworth College (now University)**

Bachelor of Science

- Graduated with honors (magna cum laude)
- Awarded multiple academic scholarships (Cheney, Comstock, etc)
- Varsity football and baseball (small college All-American - football)
- President off campus student life organization

BOARD AFFILIATIONS / ORGANIZATIONS

- Board of Directors - MegaPath Networks *
- Board of Directors - Cimatrix, Inc. *
- Board of Directors - Purcell Systems, Inc. - sold to Enersys (2013) *
- Board of Directors - Tollgrade Communications (TLGD) - sold to Golden Gate Capital (2011)
- Board of Directors - Paradyne (PDYN) - sold to Zhone (2005)
- Board of Directors - MobilePulse
- Board of Directors - JAB Broadband
- Board of Directors - ATV- X, Inc.
- Board of Trustees, ArcThrift of Colorado
- Board of Trustees, Whitworth University

*Chair Audit Committee (recognized as financial expert under Sarbanes-Oxley)

COMMUNITY ACTIVITIES / OTHER

- Elder - First Presbyterian Church of Littleton, Littleton, CO
- Assistant football coach - Arapahoe High School, Centennial CO
- Married with 3 children

EXHIBIT B

PROFESSIONAL EXPERIENCE
OF
WILLIAM E. MINKLE / TELAXIS ADVISORS, LLC

EXPERIENCE

Over 28 years experience and proven expertise in negotiating, managing and facilitating quality results with over \$1.3 billion in commercial real estate transactions. Successfully developed greenfield and brownfield sites for data center, telecom and technical facilities. Skilled in developing creative solutions for complex lease, purchase and workout transactions. An energetic leader with strong integrity, who effectively builds consensus among diverse groups. In addition to several hundred data center and telecom real estate transactions, Bill also has a successful track record in the reduction of operating expenses and divestiture of non-core assets.

PROFESSIONAL HISTORY

CEO - TELAXIS, TELAXIS ADVISORS & GOLD DATA CENTERS
VICE PRESIDENT, REAL ESTATE STRATEGY - LEVEL 3 COMMUNICATIONS
VICE PRESIDENT, GLOBAL REAL ESTATE - EQUINIX, INC.
WESTERN US REGIONAL DIRECTOR, REAL ESTATE - MCI WORLDCOM / MFS UUNET
REAL ESTATE / WIRELESS SITE DEVELOPMENT MGR - VERIZON WIRELESS
VICE PRESIDENT - SPERRY VAN NESS INVESTMENT REAL ESTATE
VICE PRESIDENT - SOUTH BAY COMMERCIAL REAL ESTATE
SR. MANAGER - TRANSAMERICA INFORMATION SERVICES
FACILITIES MANAGER, DATA CENTERS - CANDLE CORPORATION
LICENSED REAL ESTATE BROKER IN SEVERAL STATES

SUMMARY

YEARS OF EXPERIENCE IN COMMERCIAL REAL ESTATE :	28
YEARS OF EXPERIENCE WORKING WITH DATA CENTERS, COLOCATION & TELECOM:	31
LARGEST SALE TRANSACTION:	\$58 M
LARGEST DATA CENTER LEASE TRANSACTION:	292,000 SF
LARGEST DATA CENTER SALE TRANSACTION:	314,000 SF
LARGEST COLOCATION TRANSACTION:	58,000 SF
LARGEST OTHER REAL ESTATE TRANSACTION:	560,000 SF
NUMBER OF CAREER REAL ESTATE TRANSACTIONS:	1,200 +

RECENT CONSULTING HISTORY (This list only includes Recent Paid Consultations @ \$500. p/h)

Agean Capital	Apex Worldwide
Apollo Group	Bain & Company
Balysany Capital Management	Bam Funds (2)
Calvary Asset Management (2)	Clovis Capital
Coatue Capital Management (2)	Davidson Kempner Partners
Eminence Capital	Glensview Capital Management (2)
Green Arrow	Highbridge Capital Partners (2)
Maverick Partners	M/C Venture Partners (4)
Millenium – Posner	Millenium - Waterfront Capital Partners
Millenium – Greenpoint Advisors	Partner Fund Management
Sequoia Capital	Soundpost Partners
Tesuji Partners	Tremblant Capital Management
Trilantic Partners	Vector Capital Management

For more information or to schedule a consultation, please contact;
Bill Minkle 775-831-6500 / bminkle@telaxis.com www.telaxis.com

1 **PROOF OF SERVICE**

2 I, Cristina A. Villa, declare:

3 I am employed in Los Angeles County, California. I am over the age of eighteen years
4 and not a party to the within-entitled action. My business address is Mayer Brown LLP, 350
South Grand Avenue, 25th Floor, Los Angeles, California 90071-1503.

5 On January 14, 2015, I served a copy of the within document(s): **DEFENDANT AT&T**
6 **CALIFORNIA'S DESIGNATION OF EXPERT WITNESSES; DECLARATION OF**
ANDREW Z. EDELSTEIN



8 by placing the document(s) listed above in a sealed
9 envelope with postage thereon fully prepaid, in the
10 United States mail at Los Angeles, California addressed
11 as set forth below; I am readily familiar with the firm's
12 practice of collection and processing correspondence
13 for mailing. Under that practice it would be deposited
14 with the U. S. Postal Service on that same day with
15 postage thereon fully prepaid in the ordinary course of
16 business. I am aware that on motion of the party
17 served, service is presumed invalid if postal
18 cancellation date or postage meter date is more than
19 one day after date of deposit for mailing in affidavit

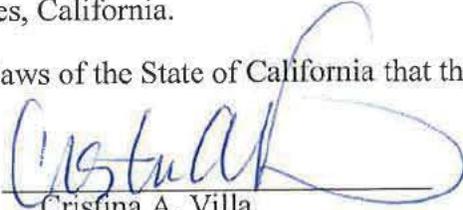
20 *Attorneys for Plaintiff: Garland, LLC*

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28 Deanne L. Miller
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300 S. Grand Ave., Twenty-Second Fl.
Los Angeles, CA 90071-3132
Tel. (213) 612-2500
Fax (213) 612-2501

Executed on January 14, 2015, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.


Cristina A. Villa