

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Promotion of Competitive Networks in Local Telecommunications Markets)	WT Docket No. 99-217
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	

COMMENTS OF XO COMMUNICATIONS, LLC

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SUMMARY

In these comments, XO addresses a very particular and severe building access problem – one where it, as a commercial tenant, is unable to work with its preferred providers of certain telecommunications facilities and services. For the past year, XO has been seeking to access microwave facilities in buildings owned by AT&T where XO and others are tenants; yet, AT&T has thwarted XO at every turn, such that, over one year since it began seeking to access these facilities, none have been deployed. While this is not the traditional building access problem discussed in the *Competitive Networks Proceeding*, it has the very same genesis: a recalcitrant building owner blocking a tenant from accessing its choice of telecommunications facilities and services and thereby inhibiting the development of facilities-based competition. These actions fundamentally harm the development of facilities-based competition, and the Commission should intervene to halt these anti-competitive practices by adopting a nondiscrimination requirement – one that does not permit a local exchange carrier to access any telecommunications facilities entering or exiting any building, including its own central office, unless tenants, including as collocated providers, are allowed similar access. The Commission also should employ its authority under Section 224 to further ensure XO can access the roof of AT&T’s central office and the necessary conduit space.

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COMMENTS OF XO COMMUNICATIONS, LLC

XO Communications, LLC. (“XO”),¹ through its undersigned counsel, hereby respectfully submits its comments to the Federal Communications Commission (“Commission”) in response to the Public Notice issued by the Commission asking interested parties to refresh the record in the above-captioned proceeding.²

XO provides facilities-based competitive telecommunications services in 75 metropolitan markets in the United States. Its local facilities consist primarily of fiber rings and laterals (over 1 million fiber miles), which are augmented by wireless links obtained from and operated by an

¹ For purposes of these comments, XO includes XO Communications, LLC and all of its operating subsidiaries, including XO Communications Services, Inc.

² *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets* (WT Docket No. 99-217) and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, (CC Docket No. 96-98), Further Notice of Proposed Rulemaking, DA 07-1485 (rel. March 28, 2007) (“*Competitive Networks FNPRM*”).

affiliated entity, Nextlink Wireless, Inc. (“Nextlink”). XO also operates an extensive long haul network, including an OC-192 IP backbone. Throughout its network, XO provides state-of-the-art circuit and IP-based telecommunications services for small businesses and larger enterprises and carriers. Nextlink has fixed wireless licenses covering 95% of the major business markets in the country.

I. INTRODUCTION

In 2002, then-Commissioner (and now Chairman) Kevin Martin in speaking before the Texas Chapter of the Federal Communications Bar Association called Allegiance Telecom, Inc. – a company whose assets were since acquired by XO – a “shining example” of “the competitive and entrepreneurial spirit that is the hallmark of Texas and the communications industry.”³ Mr. Martin then added:

[P]laying fair also means that building owners should not discriminate against telecommunications carriers that seek to offer services to tenants in their buildings. As you know, Texas has set “play fair rules” that ensure building access to competing telecommunications carriers and guarantee that consumers have choice of services. I applaud Texas for establishing these pro-competitive building access rules which bring more innovation and quality of service options to consumers.⁴

XO supports the Chairman’s statements regarding what constitutes fair and procompetitive building access, which are based on the 1996 Telecommunications Act’s sound principle that the government should encourage the development of facilities-based telecommunications competition. The Commission sought to implement this principle in

³ Remarks of Kevin J. Martin, Commissioner, Federal Communications Commission to the Telecommunications Law Conference and the Texas Chapter of the Federal Communications Bar Association, Richardson, TX, March 7, 2002. <http://www.fcc.gov/Speeches/Martin/2002/spkjm203.html>

⁴ *Id.*

its *Competitive Networks Proceeding and Order*⁵. Although the *Order* fell far short of adopting rules as extensive as Texas's pro-competitive rules, the Commission did require that carriers enjoying building access may not enter into arrangements with building owners that exclude access of competitive carriers to multi-tenant environments ("MTEs"). Since then, XO and other facilities-based providers have provided the Commission with real-world examples of the barriers competitive providers still face in entering MTEs⁶ and proposed that the Commission adopt voluntary guidelines to help lower these barriers.⁷ While XO is disappointed that the Commission has not yet acted to adopt such guidelines, XO applauds the Commission for once again seeking comments

⁵ *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673 (1999). ("*Competitive Networks Proceeding*")

In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, *Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Service, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, rel. October 25, 2000. ("*Competitive Networks Order*" or "*Order*")

⁶ See e.g. Comments of the Smart Buildings Policy Project filed *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, March 8, 2002, which contained both examples of barriers and a survey of competitive providers and the barriers they confront ("*SBPP March 8, 2002 Comments*"), and the *Ex Parte* Submission of the Smart Buildings Policy Project in WC Docket No. 04-313, CC Docket Nos. 01-338, 96-98, and 98-147, November 19, 2004, which contained signed declarations about problems serving customers in MTEs from AT&T Corp., MCI, Inc., and XO Communications, Inc., the predecessor in interest to XO Communications, LLC.

⁷ *Ex Parte* Submission of the Smart Buildings Policy Project (Letter from Jonathan Askin, General Counsel, Association for Local Telecommunications Services to Thomas Sugrue, Chief, Wireless Telecommunications Bureau) *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, August 9, 2002.

about problems faced by tenants in MTEs gaining access to their chosen competitive providers. XO is working with its trade association, Comptel, to provide additional comments.

In these comments, XO addresses a very particular and severe building access problem – one where it, as a commercial tenant, is unable to work with its preferred providers of certain telecommunications facilities and services.⁸ For the past year, XO has been seeking to access microwave entrance facilities⁹ in buildings owned by AT&T where XO and others are tenants; yet, AT&T has thwarted XO at every turn.¹⁰ AT&T

⁸ XO is collocated within AT&T central offices. As such, pursuant to Section 251(c)(6), it has rights to place wire and wireless entrance facilities to connect to telecommunications equipment.

⁹ In these comments, XO will refer to "entrance facilities" rather exclusively because it is with regard to such facilities that its primary difficulties with AT&T described herein have arisen. Nonetheless, XO does not wish to suggest that the rules it urges the Commission to clarify or adopt in this proceeding should be limited to a right of a commercial carrier tenant to obtain access to the provider of entrance facilities of its choice. Rather, if a commercial carrier that is a tenant in an incumbent local exchange carrier ("ILEC") premises and requires another type of wholesale transport service or facilities, an ILEC should not be able to deny the tenant access to its desired provider of such services and facilities if the ILEC or other providers are serving tenants (including the ILEC serving itself) on the premises.

¹⁰ To date, XO has addressed its complaints against AT&T described herein under the rubric of the ILECs' collocation obligations established by Congress in Section 251(c)(6) of the Act, the proscription against unjust, unreasonable, and discriminatory behavior and practices by the ILECs as exercised against collocators as set forth in Sections 201(b), 202(a), and 251(c)(6), and the interconnection agreements XO has with AT&T. XO continues to maintain the impropriety of AT&T's refusals for microwave entrance facilities on these grounds and reserves its rights to do so in appropriate fora. However, as discussed herein, the impropriety of AT&T's behavior may also be understood independently, and equally correctly, in terms of denying access to the wholesale service provider of its tenant's (i.e., XO's) choice, a concern within the scope of this rulemaking proceeding. In these comments, therefore, XO will focus on its rights as a tenant, and not on its rights as a collocator, although the acts that illuminate XO's concerns are nearly identical in each context. Thus, although XO will be describing its efforts to enforce its rights under the collocation rubric to illustrate why the Commission should make clear, *in this proceeding*, the generic rights of commercial tenants to receive service from the provider of their choice, whether wholesale or retail, XO wishes to underscore that Section 251(c)(6) provides an independent and existing basis for XO to obtain the relief in the specific circumstances detailed herein and XO is *not* seeking to have its collocation rights enforced in this docket.

has continuously thrown barrier after barrier in the way of this installation, such that, so far, no facilities have been deployed. While this is not the traditional building access problem discussed in the *Competitive Networks Proceeding*, it has the very same genesis: a recalcitrant building owner blocking a tenant from accessing its choice of telecommunications facilities and services and thereby inhibiting the development of facilities-based competition. From these comments, the Commission will see that AT&T's behavior is so egregious that immediate clarification or, alternatively, expansion of the building access rules is required.

II. THE COMPETITIVE NETWORKS PROCEEDING COVERS ALL SITUATIONS WHERE BUILDING OWNERS PREVENT TENANTS FROM ACCESSING THEIR TELECOMMUNICATIONS PROVIDERS OF CHOICE

The Commission's definition of MTEs and conception of tenants in the *Competitive Networks Order* is expansive. Under that *Order*, XO¹¹ is a tenant in numerous central office buildings of incumbent local exchange carriers and, as such, engages third party vendors to supply it with entrance facilities – both fiber and wireless – which XO incorporates into its telecommunications services. As such, XO's concerns about access to telecommunications services fit squarely within the scope of the Commission's focus in the *Competitive Networks Proceeding*. Further, the Commission should be greatly concerned about anti-competitive implications of barriers imposed by at least some incumbent local exchange carriers ("LECs") by denying building access to telecommunications carriers.¹²

¹¹ The XO entity that is the named tenant in the vast majority of states in which XO provides service is XO Communications Services, Inc.

¹² XO submits that it also is entitled to access to the AT&T buildings pursuant to Section 251(c)(6) collocation. However, because AT&T has blocked XO's efforts at microwave rooftop collocation, XO urges the Commission in this docket to confirm the application of its building access rules to the instant situation.

In its *Competitive Networks Order*, the Commission reaffirmed its commitment “to removing obstacles to competitive entry into local telecommunications markets by any of the avenues contemplated in the 1996 Act” and its belief “that the greatest long-term benefits to consumers will arise out of competition by entities using their own facilities.”¹³ The Commission added that it believed “that competitive providers will continue to play a vital role in the growth and ubiquitous availability of advanced services.”¹⁴ The Commission then found that there were “special challenges to facilities-based entry” to MTEs:

In order to offer service in an MTE, a facilities-based competitor must either gain access to existing on-premises wiring or obtain access to conduit and other suitable areas in order to install its own equipment. In addition, providers using wireless technology must obtain access to rooftops or other suitable locations to place their antennas. Access to these facilities and areas is typically controlled by the building owner, the incumbent LEC, or both...a competitive facilities-based carrier cannot supply service simply by dealing with the end-user.¹⁵

As a consequence, the Commission took a series of actions to “reduce the likelihood that incumbent LECs can obstruct their competitors’ access to MTEs.”¹⁶ Two of the principal actions were:

- Prohibiting Exclusionary Contracts which Establish Exclusive Arrangements in Commercial Buildings -- Pursuant to its authority in Section 201 and the proscription authority in Section 201(b) against unjust and unreasonable practices by common carriers, the Commission “forbid telecommunications carriers from entering into contracts to serve commercial properties that restrict or effectively restrict the property owner’s ability to permit entry by other carriers.”
- Requiring Access to Utility Conduits and Rights-of-Way -- Pursuant to its authority in Section 224, the Commission determined that, utilities, including LECs, must afford telecommunications carriers...reasonable and

¹³ *Competitive Networks Order* at ¶4.

¹⁴ *Id.* at ¶5.

¹⁵ *Id.* at ¶11.

¹⁶ *Id.* at ¶7.

nondiscriminatory access to conduits and rights-of-way located in customer buildings.”¹⁷

The Commission also indicated “that, based on the record, unreasonable discrimination among competing telecommunications service providers by some premises owners remains an obstacle to competition and choice.”

While the MTEs most often discussed in the order were office buildings and apartment buildings, the Commission’s definition of MTEs is very broad, covering all leased buildings with more than a single tenant.¹⁸ This definition extends to carrier hotels or incumbent LEC central offices where competitive providers are tenants occupying “distinct” (collocation) space.¹⁹ Moreover, the predicate underpinning the Commission’s concern – a building owner standing between a tenant and its telecommunications provider of choice – also is expansive and applicable to concerns about the owner of a carrier hotel or incumbent LEC central office unreasonably discriminating against its tenants selecting a telecommunications provider. Finally, the Commission expressed concern throughout the *Order* that “incumbent LECs are using their control over on-premises wiring to frustrate competitive access to multitenant buildings.”²⁰ The Commission noted that “competitive LECs report that incumbents may fail to timely provide non-proprietary information in their possession, require the presence of their own technicians to supervise competitive LEC wiring, and take unreasonable amounts of time in scheduling such

¹⁷ *Id.* at ¶6.

¹⁸ *Id.* at ¶15. “any contiguous premises under common ownership or control that contains two or more distinct units occupied by different tenants.”

¹⁹ XO’s interconnection agreement with AT&T provides, in exchange for the payment of fees by XO to AT&T, for XO to collocate and occupy its own space (collocation cage) in AT&T central offices in which XO can place telecommunications equipment enabling it to access unbundled network elements or achieve interconnection. Other competitive LECs have similar agreements and collocations arrangements with AT&T in these central offices.

²⁰ *Competitive Networks Order* at ¶19.

visits,” as well as require disadvantageous “network configurations.”²¹ The rubric and results of the *Competitive Networks Order* thus surely encompasses situations where the incumbent LECs act as a building owner and two or more LECs are tenants. The Commission should use this FNPRM to examine whether conduct by the incumbent LEC frustrating its competitive LEC (“CLEC”) tenants’ desire to be served by the facilities and services of other telecommunications carriers is anticompetitive, thwarts the objectives of the Act, and violates the specific statutory requirements of the Act, including Sections 201 and 202.

III. IN CONTRAST TO OTHER BUILDING OWNERS, AT&T HAS ERECTED UNREASONABLE AND DISCRIMINATORY BARRIERS TO XO ACCESSING TELECOMMUNICATIONS PROVIDERS OF ITS CHOICE

XO is a tenant in more than 950 incumbent LEC central office buildings in the United States. In its leased space in those buildings, XO has deployed telecommunications equipment for the purpose of accessing unbundled network elements and obtaining interconnection, including associated routing of traffic. XO requires transmission facilities (either fiber optic cables or wireless transmission facilities) to connect this equipment with XO facilities and equipment pursuant to the terms of its interconnection agreements for the purpose of accessing unbundled network elements or obtaining interconnection. In some instances, XO owns and operates the transmission facilities that enter and exit the central office building. In other instances, it leases facilities or services from third parties, including the incumbent LEC. In either instance, XO is able to access conduit in the building to bring these transmission facilities into its leased space and cross-connect them to its equipment.

XO also is a tenant in other commercial buildings. It has telecommunications routing equipment connected directly to transmission facilities in more than 1100 buildings

²¹ *Id.*

where numerous other telecommunications providers lease space. As with incumbent LEC buildings, these entrance facilities are either fiber or wireless and may be owned and operated by XO or supplied to XO by other vendors. Finally, XO has directly connected its own transmission facilities to its terminating equipment in over 3000 commercial buildings. Thus, XO has extensive experience as a tenant dealing with building owners in efforts to access telecommunications facilities and as a telecommunications provider dealing with building owners in seeking to serve tenants. All of this experience has provided XO with solid foundation upon which to determine that, when it comes to obtaining microwave facilities, AT&T's building access practices are far worse than other building owners and, because AT&T is a competitor to XO and other providers that XO desires to use for entrance facilities, are blatantly anti-competitive.

A. AT&T's Dilatory Responses for Building Access Stymie XO's Access to Microwave Facilities in Missouri

XO, as a CLEC collocator, is entitled under Section 251(c)(6) to collocate facilities, whether owned or obtained from a third-party, whether fiber or wireless, to access unbundled network elements or achieve interconnection. XO first informed the Commission of building access problems with AT&T last fall in a group of ex parte filings in the AT&T/BellSouth merger proceeding.²² In that proceeding, XO chose to treat this as a straightforward collocation matter:

Over the past two months, XO has attempted to obtain microwave collocation arrangements from AT&T at two AT&T wire centers in Missouri [for the purpose of replacing fiber entrance facilities]. AT&T, without justification, has interposed inexplicable procedural obstacles to XO's objectives given the parties'

²² *Ex Parte* Presentations of XO Communications, AT&T and BellSouth Merger Application, WC Docket No. 06-74, filed on Sept. 18, 2006, Oct. 4, 2006, and October 24, 2006.

interconnection agreement in Missouri, AT&T's tariff in Missouri, and AT&T's standard collocation ordering forms, as described above. On or about July 21, 2006, XO submitted to AT&T requests for these two microwave collocation arrangements using AT&T's standard web-based forms, completing the forms completely and specifying in Section 3.2 that XO requested microwave entrance facilities and providing all information requested in that regard in Section 11.4. AT&T promptly rejected the requests. In rejecting XO's requests, AT&T claimed inaccurately, as detailed herein, that microwave collocation is not an existing offering for which it has methods and procedures and insisted that XO pursue microwave collocation through AT&T's Bona Fide Request process. Anxious to remove any obstacles AT&T was erecting, and aware that, in AT&T's 13-State (including Missouri) template interconnection agreement, AT&T offered a Microwave Collocation Appendix, XO sought to add that Appendix as an amendment to its Agreement.²³

AT&T, however, continued to insist that XO's attempts to place microwave facilities was not a collocation activity and demanded that XO file a Bona Fide Request, which would impose significant additional costs and delays on XO's deployment of microwave facilities. AT&T, in fact, responded to XO's letter of October 3, 2006, by stating it would not treat XO's application as a Section 251(c)(6) request for collocation and that XO is seeking an arrangement not available in the parties' interconnection agreements.²⁴ AT&T's demand for a Bona Fide Request was contrary to the interconnection agreement between the carriers since microwave collocation is clearly contemplated by that agreement through reference to AT&T's tariff and is a procedure for which AT&T has developed processes. Moreover, since XO made its collocation request, AT&T never clearly stated its objection. Rather, it continuously threw procedural roadblocks in XO's path. Because of AT&T's tactics, XO decided that it no longer made economic sense to deploy network facilities, and it abandoned its efforts to deploy the

²³ *Ex Parte* Presentation of XO Communications, AT&T and BellSouth Merger Application, WC Docket No. 06-74, Sept. 18, 2006 at 2-3.

²⁴ *See* Letter from Ed Ewing, AT&T, to Bob Beurrosse, XO Communications, dated October 13, 2006 and appended as Attachment 1 to *Ex Parte* Presentation of XO Communications, AT&T and BellSouth Merger Application, WC Docket No. 06-74 at Oct. 24, 2006.

microwave entrance facilities in Missouri to support its leasing of unbundled network elements from AT&T.

While the *ex parte* submissions in the AT&T/BellSouth merger proceeding emphasized the collocation aspect of the dispute and XO's status as a collocating competitive telecommunications carrier, what XO has faced also is a classic situation of an owner or landlord of an MTE allowing some, but not all, carriers access to tenants – in effect, AT&T engaged in an exclusionary practice (*de facto* exclusive access) akin to that prohibited by the Commission in the *Competitive Networks Order*. XO leases collocation space from AT&T in its central office and sought to access microwave telecommunications facilities of another provider on a reasonable and non-discriminatory basis as an alternative to ordering AT&T service. As a building owner, AT&T exerted undue pressure on XO to limit its alternatives and increase the odds that XO would use the facilities or services of other carriers already serving the building, foremost among them AT&T. In those circumstances, to obtain access to its provider of choice, XO's only choice would be to leave AT&T's buildings. But, XO cannot move to another location or have microwave entrance facilities moved to another location without incurring substantial material costs. As a competitor, leveraging its landlord status – AT&T could never do this in carrier hotels -- AT&T's behavior was anti-competitive. The Commission should not countenance such behavior from either perspective of Section 251(c)(6) collocation or, more pertinent to this proceeding, Section 201's and Section 202's proscription against unjust and unreasonable and discriminatory behavior.

B. AT&T Slow Rolls XO's Building Access Requests in California Thwarting Deployment

XO's building access disputes in California have an even more tortured history. XO first approached AT&T about obtaining access to microwave entrance facilities at AT&T

central offices over a year ago, as in Missouri, on the basis of Section 251(c)(6). As of today, it has yet to deploy any of these facilities. AT&T's behavior is contrary to the terms of its interconnection agreement with XO, and, as demonstrated in the next Sections, it differs greatly from XO's experiences obtaining access to microwave entrance facilities in Qwest and Verizon central offices.

It is instructive to review XO's lack of success so far in obtaining access to microwave entrance facilities at AT&T's Hollywood central office. The attached Declaration of Gegi Leeger, XO's Director – Regulatory Contracts ("*Leeger Declaration*"), provides elaborate details on this very troublesome and still unfolding episode fueled by AT&T's egregious behavior. In summary form:

- Delays were rampant, and deadlines were repeatedly missed by AT&T. Even when deadlines were met, AT&T supplied insufficient information, raised new issues, or demanded actions outside the AT&T/XO interconnection agreement.
- AT&T repeatedly contended that collocation and provisioning of microwave entrance facilities was not covered by the interconnection agreement between AT&T and XO.
- AT&T rejected XO's applications multiple times for failure to provide complete information even though XO provided information adequate to obtain access to facilities using fiber technologies.
- AT&T required XO to divulge to AT&T confidential and proprietary information unnecessary for the processing of XO's request.
- AT&T required XO to construct unnecessary and costly facilities to support the microwave facility far in excess of what other incumbent local exchange carriers or private building owners require.

Over 180 days after approaching AT&T concerning the request, XO was still trying to get AT&T to offer a quote for the construction work in the Hollywood central office. It then found that the work required by AT&T was so costly as to make the project economically

unfeasible. So, more than one year after XO first raised the project with AT&T, the project is at a standstill with no microwave facilities being deployed.

The problems XO faced in seeking to obtain access at AT&T's Hollywood central office were not unique. As indicated in the *Leeger Declaration*, they have been repeated over the past year in other AT&T central offices in the Los Angeles area – price quotes are not itemized, unnecessary construction is required, and responses are delayed. To date, XO has not obtained access to any microwave facilities at AT&T central offices in the Los Angeles area.

All of AT&T's misbehavior, in its role as a building owner, slows its tenant's access to much needed facilities and services offered by other providers. AT&T's actions are clearly contrary to the Commission's objectives of ensuring reasonable and non-discriminatory building access as a way to encourage facilities-based competition.

C. AT&T's Actions Are Not Technology Neutral, Discriminating Against Microwave Facilities

The Commission can gain an even sharper view of AT&T's indefensible practices regarding tenant access to microwave entrance facilities and services by contrasting them to AT&T's own practices regarding access to fiber entrance facilities. The chart below compares AT&T's practices for each:

**TIMELINE AND MILESTONES FOR XO AS TENANT IN AT&T'S CO TO ACCESS
MICROWAVE AND FIBER ENTRANCE FACILITIES**

	AT&T CA Microwave	AT&T CA Fiber
Site Visit (including for Line of Sight Determination)	XO requires site visit to determine line of sight for microwave entrance. AT&T's Condition for Visit: XO required to provide A and Z locations of the facility. Timing: Within 10 days of XO request.	Not Applicable. AT&T provides information on where XO is to drop fiber. No inquiry into Z location of fiber.
Site Survey	Required. Timing: Within 10 days of receiving microwave application. XO has opted to conduct the survey before submitting the application.	Not Applicable
Construction (Structural) Analysis	Required. Timing: Uncertain.	Not Applicable
Initial Application and Application Acceptance	XO files application for review by AT&T. (Application process has many unknown factors, and the timing of acceptance is uncertain.)	XO files application for review by AT&T. (Application process is straightforward with rejections only if no fiber entrance is available at a specific CO.) Viewed as a Collocation Augment.
Quote for Construction	Within 30 business days of accepting XO's application, AT&T provides quotes for construction by AT&T selected vendor ("A") or AT&T certified vendor selected by XO ("B") (although process takes longer if quotes are insufficient.). AT&T requires a CLEC to use AT&T and its vendor for the roof penetration work.	AT&T provides quote within 10 business days of accepting XO's application. AT&T provides all information on where to drop fiber, and quote is for AT&T work to take fiber from vault to XO collocation.
Job Deadline	Once XO accepts quote, the construction interval in the interconnection agreement is scheduled for 80 days. AT&T will complete cable work inside within 90 days, based on ICB.	Once XO accepts quote, job is required to be completed in at most 80 days.
Construction	XO has 2 choices for roof work: Track A - AT&T or its vendor does work, or Track B - XO uses AT&T-approved vendor monitored by AT&T.	XO brings the fiber to the vault. AT&T pulls fiber to XO's collocation space. (Vaults normally exist, and XO has no experience with vault construction.)
Process & Construction Standards	In ICA and AT&T-CA Handbook, internal Real Estate standards and non-negotiated documents.	Industry standard processes found in CLEC Handbook.

Overall Timeframe	Timeframe uncertain. Lengthy interval to accept application; then 30 days for quote (although it takes much longer if the quote is in dispute), and an unknown period to complete job.	Standard 90 day timeframe. 10 days for application quote process and 80 days for work to be completed.
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Unlike access to providers of microwave entrance facilities, AT&T and XO have developed a standardized and stable process to allow XO to access and provision fiber entrance facilities. AT&T does not demand that XO provide irrelevant information or construct unnecessary facilities. Quotes are provided within 10 days after the application is accepted. From the time an application is made, it takes at most 90 days to complete the work. In contrast, the process for accessing microwave facilities is anything but standardized and stable. It remains overtly *ad hoc* and has produced (and is producing) significant delays and unprecedented uncertainty for XO with respect to entrance facilities. As such, AT&T's behavior toward XO and its chosen provider is discriminatory, contrary to requirements of Section 202. By severely disadvantaging a carrier seeking to gain competitive access, it also is not technology-neutral, a fact which is contrary to the Commission's policies seeking to accelerate the spread of broadband services through any technological means.

D. AT&T's Practices Are Starkly Unreasonable In Contrast To The Practices of Qwest and Verizon

The Commission also can conclude that AT&T's practices with respect to microwave entrance facilities are contrary to the public interest and violate the Act by comparing the practices of other incumbent local exchange providers acting as building owners. The chart below describes XO's experiences with Verizon and Qwest:

**TIMELINE AND MILESTONES FOR XO AS TENANT IN CO TO ACCESS
MICROWAVE ENTRANCE FACILITIES**

	AT&T CA Microwave	Qwest Microwave	Verizon Microwave
Site Visit (including for Line of Sight Determination)	XO requires site visit to determine line of sight for microwave entrance. AT&T's Condition for Visit: XO required to provide A and Z locations of the facility. Timing: Within 10 days of XO request.	XO requires site visit to determine line of sight for microwave entrance. Qwest requires visit only if it is performing construction. No conditions for visit. Timing: Within 15 days of XO request.	XO requires site visit to determine line of sight for microwave entrance. No conditions for visit. Timing: Within 15 days of XO request.
Site Survey	Required. Timing: Within 10 days of receiving microwave application. XO has opted to conduct the survey before submitting the application.	Structural analysis and site survey are combined. XO can do itself or pay Qwest to perform. If Qwest, 30 day deadline to perform.	Required -- XO selects vendor from Verizon approved list and works directly with (and pays) vendor who provides report to Verizon.
Construction (Structural) Analysis	Required. Timing: Uncertain.	Not Applicable	Required -- XO selects vendor from Verizon approved list and works directly with (and pays) vendor who provides report to Verizon. VZ real estate confirms structural analysis as part of the application process.
Initial Application and Application Acceptance	XO files application for review by AT&T. (Application process has many unknown factors, and the timing of acceptance is uncertain.)	Viewed as a collocation augment application. Application process is straightforward with no rejections.	Viewed as a collocation augment application. Application process is straightforward with no rejections.
Quote for Construction	Within 30 business days of accepting XO's application, AT&T provides quotes for construction by AT&T selected vendor ("A") or AT&T certified vendor selected by XO ("B") (although process takes longer if quotes are insufficient). AT&T requires that a CLEC use AT&T and its vendor for the roof penetration work.	Qwest provides quote within 30 business days of accepting XO's application.	Verizon provides quotes for roof access and for in-building access within 30 days of accepting XO's application (unless the parties mutually agree on extensions).
Job Deadline	Once XO accepts quote, the construction interval in the interconnection agreement is scheduled for 80 days. AT&T will complete cable work inside within 90 days, based on ICB.	Once XO accepts quote, it takes between 90-150 days to complete construction.	Verizon has no quoted timeframes for construction, but to date XO has not incurred any construction delays.
Construction	XO has 2 choices for roof work: Track A - AT&T or its vendor does work or Track B - XO uses AT&T-approved vendor monitored by AT&T.	XO must use a Qwest-approved vendor.	XO must use a Verizon-approved vendor for roof work. All in-building work is performed by Verizon.

Process & Construction Standards	In ICA/AT&T-CA Handbook, internal Real Estate standards and non-negotiated documents.	In ICA and various Qwest product catalogs (available electronically).	In tariffs and on-line CLEC handbook.
Overall Timeframe	Timeframe uncertain. Lengthy interval to accept application; 30 days for quote (although it takes much longer if the quote is in dispute), and an unknown period to complete job.	Between 165-220 days.	According to published Verizon process timeframes, the overall timeframe for an augment is between 90-120 days.

Unlike AT&T, which views a request to access microwave entrance facilities as a new collocation, Qwest and Verizon both view XO's request to access microwave entrance facilities as a "collocation augment" covered by their interconnection agreements with XO. Site surveys and analysis are performed promptly and expectedly, and applications are processed no differently than for fiber entrance facilities. Quotes for construction are sent to XO within 30 business days, and XO is able to select from a list of approved vendors. As noted above, AT&T does not permit XO to use its selected vendor to perform roof work as provided for in their interconnection agreement. Rather, AT&T, without supporting documentation, insists that only one vendor selected by AT&T perform this work. This has resulted in prohibitively increased costs for access in AT&T's central offices, which has stymied XO's plans to access microwave entrance facilities. For Qwest and Verizon, by enabling XO to select its vendors, costs are significantly and consistently less for XO, and the entire process takes anywhere from approximately 180-270 days. XO is currently working with Verizon in two central offices to access microwave entrance facilities and with Qwest in one, and it has not incurred any problem. Clearly, AT&T's practices are far out of the mainstream.

IV. **THE COMMISSION HAS THE AUTHORITY TO ADOPT BUILDING ACCESS RULES PROVIDING COMPETITIVE LOCAL EXCHANGE CARRIERS WITH REASONABLE AND NON-DISCRIMINATORY BUILDING ACCESS IN INCUMBENT CARRIER CENTRAL OFFICES**

Although problems XO is experiencing in accessing microwave entrance facilities are subject to the collocation requirements of the Communications Act (47 U.S.C. §251(c)(6)), they equally fall within other obligations of AT&T and other incumbent LECs. The Commission, for example, has authority in Title III to ensure that the spectrum it licenses is employed to serve the public interest, which includes the development of facilities-based competition and the deployment of broadband services. For purposes of these comments, XO notes that in the *Competitive Networks Order* the Commission provides two other sources of authority based in Titles I and II of the Communications Act.

The Commission's statutory authority to address problems faced by tenants seeking to access telecommunications facilities and services is set forth in paragraphs 131 *et seq.* of the *Competitive Networks Order*.²⁵ The Commission determined "that there is a strong case that the Commission has the statutory authority to prohibit LECs from providing service to MTEs whose owners maintain a policy that unreasonably prevents competing carriers from gaining access to potential customers located within the MTE."²⁶ Thus, the Commission, while unsure of its ability to affect the behavior of building owners directly, believed it could do so by ensuring that carriers subject to its authority are not complicit in any discrimination by building owners. The Commission found that it "has broad authority to regulate the practices of LECs in connection with their provision of interstate communications services" and that Title I provides

²⁵ See *SBPP March 8, 2002 Comments* at 21-27 for a fuller explanation of the Commission's authority to prohibit carriers from engaging in unreasonable and discriminatory practices in serving customers in MTEs.

²⁶ *Competitive Networks Order* at ¶132.

“general authority” and Title II provides “a specific, substantive framework for the Commission’s regulation of such practices.”²⁷

More specifically, Section 201(b) requires that a carrier’s “charges, practices, classifications, and regulations...shall be just and reasonable” and permits the Commission to “prescribe such rules and regulation as may be necessary in the public interest.”²⁸ Section 202(a) makes it unlawful for “any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or indirectly, by any means or device.”²⁹ Section 205(a) gives the Commission authority to determine whether a “charge, classification, regulation or practice of any carrier...is or will be in violation of any of the provisions of this Act” and prescribe a remedy.³⁰ Based on this authority, the Commission found, “when a LEC provides service to any MTE on terms that place its competitors at an unfair competitive disadvantage, this practice – which services to insulate the LEC from competitive pressures in a sizable portion of its market – may not qualify as either just or reasonable [and thus is in violation of the Act].”³¹ To support this conclusion, the Commission cited both its *International Settlement Rates Order*³² and the U.S. Supreme Court’s *Ambassador* decision,³³ where the court upheld the Commission’s determination “that the hotel owners were serving as agents for the telephone companies and that

²⁷ *Id.* at ¶134.

²⁸ 47 U.S.C. §201(b).

²⁹ 47 U.S.C. §202(a).

³⁰ 47 U.S.C. §205(a).

³¹ *Competitive Networks Order* at ¶135.

³² *International Settlement Rates, Report and Order*, IB Docket No. 96-261, 12 FCC Rcd 19806 (1997).

³³ *Ambassador, Inc. v. U.S.*, 325 U.S. 317 (1945).

these surcharges must therefore be reflected in tariffs filed by the telephone companies [which must comply with the nondiscrimination requirements of the Communications Act].”³⁴

The problems XO faces with AT&T closely mirror the Commission’s concern in *Ambassador* and the prior use of its Title II authority. XO is seeking to access telecommunications facilities and services within the Commission’s jurisdiction and is being blocked by a building owner, which also happens to be a competitor for the entrance facilities that XO wishes to access. AT&T, which provides telecommunications facilities and services in that building, is not permitted by the Communications Act to facilitate or otherwise be complicit in such discrimination. The fact that AT&T also is the owner of the building – a site dedicated to the entry, exit, and connection of telecommunications facilities integral to the provision of telecommunications services – only serves to confirm the Commission’s authority and heightens the need for it to act. The Commission thus has a sound basis upon which to proceed to remedy the building access problem described herein.³⁵

The *Competitive Networks Order* contains additional authority in Section 224 (Regulation of Pole Attachments) for the Commission to act to remedy the problem described herein.³⁶ In the *Order*, the Commission states, “Section 224 addresses the ability of utilities [which includes a local exchange carrier] to act anticompetitively with respect to

³⁴ *Competitive Networks Order* at ¶141.

³⁵ In the *Competitive Networks Order*, pursuant to its authority in Section 201(b), the Commission prohibited telecommunications carriers from entering into exclusive contracts with commercial building owners or their agents for the provision of telecommunications service. This prohibition would extend to instances where AT&T, in its central offices, was the sole telecommunications provider permitted to enter using microwave facilities.

³⁶ See *SBPP March 8, 2002 Comments* at 28-35 for additional discussion on the Commission’s Section 224 authority.

telecommunications competitors.”³⁷ As a result, Section 224 provides that a utility shall provide “any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or any right-of-way owned or controlled by it.”³⁸ The Commission has interpreted the scope of areas covered broadly when dealing with areas controlled by incumbent local exchange carriers because these carriers “have an incentive in the absence of regulation to deny access to their competitors.”³⁹ The Commission thus concluded that: (1) the “legislative history does not circumscribe our authority to apply Section 224 to in-building ducts, conduits, or rights-of-way;”⁴⁰ (2) “Section 224 encompasses a utility’s obligation to provide... telecommunications service providers with access to property that it owns which it uses as part of its distribution network;”⁴¹ and, (3) “We agree with AT&T that the test for determining when a utility is using its own property in a manner equivalent to a right-of-way should ‘be broad enough to encompass the wide range of activities that constitute use of property in a manner equivalent to a right-of-way.’”⁴² This clearly applies to use (or potential use) of the utility’s roof for microwave transmissions and the use of conduits from a roof into equipment located in-building⁴³ – and thus the rights and remedies in Section 224 are available to XO in the circumstances described in these comments. The Commission should so clarify its rules and decisions adopted in the *Competitive Networks Order*.

³⁷ *Competitive Networks Order* at ¶88.

³⁸ 47 U.S.C. §224(f)(1).

³⁹ *Competitive Networks Order* at ¶78.

⁴⁰ *Id.* at ¶81.

⁴¹ *Id.* at ¶83.

⁴² *Id.* at ¶83.

⁴³ This interpretation is buttressed by U.S. Supreme Court’s 2002 ruling that the access provided for in Section 224 extends to attachments by wireless providers (*National Cable Telecommunications Association v. Gulf Power*, 534 U.S. 327 (2002)).

V. **CONCLUSION**

In the *Competitive Networks Order*, the Commission stated that “based on competitive developments in the market for the provision of telecommunications services in MTEs...we may consider adopting a nondiscriminatory access requirement in the future.”⁴⁴ In these comments, XO has provided evidence that AT&T, in its combined role as a building owner and incumbent LEC, has stymied (and continues to stymie) the efforts of XO, its tenant, to obtain access to its chosen provider, specifically a provider of microwave entrance facilities and associated transmission capabilities. These actions fundamentally harm the development of facilities-based competition, and the time has come for the Commission to intervene and halt these anti-competitive practices by adopting a nondiscrimination requirement – one that does not permit a local exchange carrier to access any telecommunications facilities entering or exiting any building, including its own central office, unless tenants, including as collocated providers, are allowed similar access. The Commission also should employ its authority under Section 224 to further ensure XO can access the roof of AT&T’s central office and the necessary conduit space.

Respectfully submitted,



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July 30, 2007

⁴⁴ *Competitive Networks Order* at ¶131.

**ATTACHMENT
DECLARATION OF GEGI LEEGER
XO COMMUNICATIONS, LLC**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Promotion of Competitive Networks in Local Telecommunications Markets)	WT Docket No. 99-217
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	

DECLARATION OF GEGI LEEGER

I, Gegi Leeger, do hereby declare, under penalty of perjury, that the following is true and correct:

1. My name is Gegi Leeger. I am Director – Regulatory Contracts at XO Communications, LLC. My business address is 11111 Sunset Hills Road, Reston, Virginia 20190.

2. In my position, among other tasks, I work with network construction and operations divisions to negotiate and implement agreements to obtain collocation space in the central offices of incumbent local exchange carriers and to connect the equipment in XO's collocation space to entrance facilities – either fiber or microwave.

3. Since September, 2004, I have assisted in the negotiation and implementation of agreements to use XO's collocation spaces in the regions where AT&T, Verizon, and Qwest are the incumbent carriers to deploy microwave entrance facilities in pursuit of XO's business plan.

4. The following chart describes XO's experiences in seeking to obtain microwave entrance facilities at AT&T central offices in the Los Angeles, California area.

TIMELINE OF XO PROJECT TO OBTAIN MICROWAVE ENTRANCE FACILITIES AT AT&T'S CENTRAL OFFICES IN THE LOS ANGELES, CALIFORNIA AREA	
Date	Activity
06/30/06	XO speaks with AT&T about its XO's request to obtain a microwave entrance facility at the AT&T Hollywood Central Office (CO) where XO is collocated.
09/28/06	AT&T sends email to XO expressing concerns that project may not fall within their interconnection agreement (ICA) and that it does not appear that XO is connecting network facilities to AT&T network.
09/29/06	XO responds to AT&T that its request for microwave entrance facility is the same as a fiber entrance facility and asks AT&T to proceed with scheduling of site visits.
10/05/06	AT&T proposes Oct. 23 as first date that all parties can attend a site visit.
10/23/06	Initial site meeting at AT&T's Hollywood CO. AT&T has approximately 15 people participate in person and via phone. XO provides another overview of its microwave entrance facilities project, including a detailed diagram. 8 people from AT&T attend rooftop survey immediately following the meeting.
11/06/06	XO fills out application to access microwave entrance facilities at the Hollywood CO and sends to AT&T via email for review prior to submission.
11/07/06	AT&T emails XO to request Z location of microwave facility and description of any equipment to be placed in XO's collocation cage.
11/07/06	XO emails AT&T that there will not be any additional "cage" equipment and that the Z location is not an AT&T CO.
11/07/06	AT&T replies that it requires the Z location.
11/07/06	XO requests information on why AT&T needs the Z location.

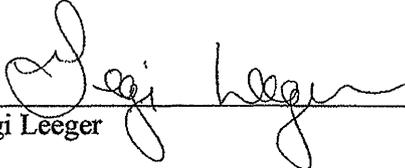
11/07/06	AT&T emails XO that the initial understanding was that the Hollywood CO would go to another AT&T Central Office and that a line of sight (LOS) transmission was feasible. AT&T now wants to determine if a LOS transmission to a new location is feasible.
11/09/06	XO responds that it already confirmed LOS feasibility to multiple sites during the 10/23/07 site visit and needs to know why AT&T needs this information.
11/09/06	AT&T responds again that the Z location is required without providing any explanation. AT&T also states that it requires the type of service, how it is to be provided, and the identification of the equipment to access the UNEs.
11/09/06	XO re-requests reason for Z location, reminds AT&T that such information is not required for fiber entrance facilities, and points to previous diagram provided on 10/23/07 regarding how service is to be provided and previous information regarding equipment.
11/10/06	AT&T tells XO that it cannot proceed without Z location.
11/14/06	AT&T sends another email to XO requesting information that XO is not required or has already provided. Specifically, AT&T requests (1) the Z location; (2) an explanation of whether and how XO would use the microwave facility at the A location to provide telecommunications service; (3) the identity of the collocated equipment XO proposes to use for interconnection of XO's network to AT&T's network or for XO's access to AT&T's UNEs for the provision of telecommunications service. The reason given for requiring the Z location is to determine if an unobstructed LOS is available.
11/21/06	XO submits letter addressing rejection of application on 11/14/06. Letter says Z location is confidential, set of services to be provided is the same as today as current XO activities in XO's collocations and will connect the UNEs already in place to its network, and informs AT&T that XO will not be installing equipment in cage until later date.
11/21/06	XO submits application for microwave facility access at the Hollywood CO.
11/28/06	AT&T invoices application fee for next 6 surveys
11/30/06	AT&T rejects application due to failure to provide information requested.
12/14/06	XO resubmits application with Z location; XO submits applications for three other CO's -- LSANCA09, EMHRILET, LGRCILLG.
12/18/06	AT&T rejects all applications due to failure to provide information requested.

12/20/06	AT&T sends XO an email stating, "Please submit the new microwave applications with Section 8 populated with the radio equipment you intend to install. The application process will not be put on hold while you await NEBS compliance. However, you must understand that AT&T's acceptance of these applications does not constitute equipment approval. Equipment installed in collocation arrangements must be necessary for access to UNEs or Interconnection as well as meet safety requirements and be NEBS compliant."
01/04/07	XO resubmits application for Hollywood CO with CLEC Equipment Review Request Form. Other applications cannot be submitted immediately because of problems with AT&T's online application system but are submitted later.
01/30/07	AT&T requests more information regarding equipment and NEBS compliance in direct contradiction with AT&T's 12/20/06 email.
02/15/07	AT&T sends Track A (AT&T to construct) and B (XO vendor approved by AT&T to construct and monitored by AT&T) price quotes for construction work for microwave facility access. Quotes are not fully itemized as required by the interconnection agreement. Price quotes for the Hollywood CO are: Track A -- \$95,882.14; Track B -- \$17,027.65.
03/07/07	AT&T sends quotes for a second office, LSANCA09: Track A -- \$78,314.15; Track B -- 17,039.75.
03/08/07	XO sends letter to AT&T stating that all quotes received do not comply with interconnection agreement and asks for a fully itemized quote by 3/13/07.
03/08/07	AT&T responds that while AT&T will provide the itemized quote, if they were following the interconnection agreement, they would have rejected the application since they have not received the proper planning fee. XO responds that the fee was sent to AT&T as two checks but they were returned because AT&T demanded one check.
03/13/07	AT&T sends XO a letter with itemized quotes for the Hollywood CO and LSANCA09 stating that AT&T has not handled microwave collocation before, there are no specific requirements, and AT&T's Real Estate group did the quotes and they only have "limited" information. Quote includes construction of a greatly oversized platform on the roof for the equipment (20' x 20' for a 2' antenna with a 4' mast) and unnecessary coring and conduits.
03/15/07	XO emails AT&T that the quotes are not fully itemized and not responsive to its requirements.
03/20/07	AT&T emails XO new quotes for Hollywood CO and LSANCA09. XO and AT&T meet, and XO tells AT&T that the price quotes are excessive. XO asks for additional quotes for other COs in an attempt to keep its business plans in California moving.
03/23/07	AT&T sends XO revisions to quotes for the Hollywood CO: Track A -- \$113,102.88; Track B -- \$8,832.70. XO receives revised and itemized price quote for LSANCA09 from AT&T. AT&T states that in pulling together the itemization, other costs are uncovered. LSANCA09 Track A increased to \$117,664.15 while Track B decreased to \$8,832.70.

05/04/07	AT&T calls to say that costs could be reduced on some of the charges quoted previously.
05/07/07	AT&T sends new quotes for several CO's, including LSANCA09, where the Track A price is reduced to \$77,406.45, while the Track B remains at \$8,832.70
05/08/07	AT&T sends new quotes for several CO's, including LSANCA09, reducing Track A price to \$77,406.45. Track B remains the same.
05/08/07	XO tells AT&T that the interconnection agreement requires itemized quotes to be delivered on a timely basis. AT&T continues to send high level quotes. Itemization follow up is completed by AT&T only after XO makes additional requests, but these are sent by AT&T after the due date.
05/21/07	XO submits site survey request for Track B (CLEC hires vendor to do the work, monitored by AT&T) for LSANCA09 & LSANCA14. This involves bringing an AT&T-approved Tier 1 vendor to the site which XO hires and arranges to bring to site visit.
06/22/07	In preparation for Track B site visits for LSANCA09 & LSANCA14, AT&T sends its corporate Real Estate guidelines and notes that "there is important information in the document that pertains to standards and quality of roof penetration. Rex Eliseo of CRE [AT&T] will be at one of the site visits. It would be a very good chance for your vendor to ask any questions of CRE." AT&T is aware that XO will bring an AT&T approved Tier 1 vendor.
06/25/07	Track B Surveys for LSANCA09 & LSANCA14 are conducted. XO's selected Tier 1 vendor, Pinnacle Communications ("Pinnacle"), who is approved by AT&T, attends with XO in order to prepare Track B quotes. At the survey, AT&T advises XO that Pinnacle is not authorized to work on the roof and that only HC Olsen (AT&T's contractor) may be used for conduit/roof penetrations. XO states that this is not in the interconnection agreement or any other collocation documentation nor was it communicated in advance of the survey even though AT&T was aware that XO had hired an AT&T approved Tier 1 vendor to do the survey.
06/27/07	After the site survey, Pinnacle confirms that they are an experienced AT&T-approved Tier 1 contractor that has worked in the LA market many times.
06/27/07	XO requests roof top documentation from AT&T which is missing from the guidelines sent on 6/22/07.

06/29/07	AT&T responds to XO request: "The roofing Section (Section 7) is being left out because of the many types of roofing membranes and construction methodology that we deal with. Also, each AT&T areas have different conditions (such as weather, loadings, positions/locations of AT&T equipment in the roof, etc) and local CRE Planning and Design Construction Group develop their own specs that is tailored to the condition of the roof in question. The specs that was taken out of the CRE Website is very generic and subject to change for many other reasons aside from what I have mentioned above. Even details of construction are being developed and continually changed due to Code Requirements (which is also being revised almost annually). We deal with the detailed specs during the design phase of an approved project. The main thrust of the specs that will be developed will be geared towards the protection of our building in order to achieve Network Operational Reliability. Things that will have an impact to our Network Operation will be discussed during the pre-installation conference. Therefore the documentations that XO is looking for will be developed based on the field conditions and be completed after the design phase."
07/13/07	XO inquiries further of AT&T regarding the pricing responses for LSANCA09 & LSANCA14 after being told it still must use HC Olsen, AT&T's chosen roof top vendor. Because XO is not dealing directly with HC Olsen, it cannot independently verify costs and requirements. AT&T states that it would follow up on XO's request.
07/23/07	AT&T sends revised Track A quote for LSANCA09: \$48,726.26. It is unclear whether this is a total re-quote of Track A or only a quote for the portion of a Track B quote that must be done by the AT&T's chosen roof top vendor HC Olsen, plus AT&T's fee to monitor all Track B work.
07/25/07	AT&T tells XO that the quote sent on 7/23/07 is a revised Track A quote for LSANCA09 and is comparable to the Track A quote for LSANCA09 of \$77,406.45 sent on 5/7/07. The 5/7/07 Track A quote specified a wall mount, but the 6/23/07 quote specifies a 5x5 foot roof mount. The 7/23/07 Track A quote appears to change the specifications for a roof mount from those in the 3/26/07 quote of \$117,664.15. No further explanation for the change in costs or specifications was provided, even after XO questioned the quote.

This concludes my declaration.



 Gegi Leeger

Dated: 7/30/07