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June 11, 2014

## VIA ECFS

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re: AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353; Technology Transitions Policy Task Force, GN Docket No. 13-5**

Dear Ms. Dortch:

### Introduction and Summary

We write on behalf of our client, Garland Connect, LLC (“Garland Connect”), to comment on the assertions made by AT&T in these proceedings, which are inconsistent with its actual business operations. Specifically, AT&T has taken the position in these proceedings that it and other ILECs have no advantages over their CLEC competitors in constructing IP-based fiber networks, and therefore the regulatory requirements of Section 251 and 252 of the Communications Act (“Act”) should not apply to such networks. AT&T has, however, taken precisely the opposite position in its dealings with Garland Connect, the operator of the telecommunications facilities in a data center building in downtown Los Angeles located at 1200 West 7th Street (the “Building”) with very heavy telecommunications and data transmission usage.

All CLECs, including AT&T’s CLEC affiliate, Teleport Communications Group (“TCG”), and CLEC affiliates of the other RBOCs, make substantial payments to access multi-tenant buildings, including the Building, for their fiber IP networks. AT&T, however, has consistently taken the position, completely unfounded in law or fact, that because it is the ILEC at the location of the Building, it is entitled to obtain the same space, power, and use of facilities free of charge, despite

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the fact that all the CLECs pay for such space power, and services. Further, AT&T has repeatedly informed Building ownership and management over the past several years that it is an AT&T policy that is not specific to any particular building and 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, which warrants the Commission requiring AT&T to unbundle its IP fiber network to the same extent and on the same terms as AT&T is currently required to unbundle its TDM-based network.

## **I. Facts**

### **A. Garland Connect and its Business**

The 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 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 Building to the MMR, and (4) the 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 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 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 pre-dated their contracts with Garland Connect).

AT&T and the CLECs in the Building provide the customers in the 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 that are largely provided pursuant to contract, rather than tariff. Because the 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 Building. The first group is comprised of the tenants in the 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 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 Building ownership/management to provide services or amenities to the 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.

## **B. Garland Connect's Efforts to Obtain Payment from AT&T**

In 2009, the 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 Building's risers were clogged with enormous amounts of conduit and cabling, creating fire danger and other concerns.

To address these concerns, the Building entered into an agreement with Garland Connect, under which Garland Connect oversaw construction of a state-of-the-art “meet-me room” (MMR) at the Building. The MMR was designed to provide a single place for all carriers to interconnect quickly and efficiently with customers in the 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 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.<sup>1</sup>*

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”<sup>2</sup>:

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.

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<sup>1</sup> SBC Reply Comments, CC Docket No. 01-338 at p. 56 (filed July 17, 2002) (emphasis added).

<sup>2</sup> SBC *TRRO* Reply Comments (Redacted), CC Docket No. 01-338 *et al*, p. 26 (filed Oct. 19, 2004).

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.<sup>3</sup>

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

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<sup>3</sup> *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 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 F3d 554 (D.C. Cir 2004) *cert. denied*, 543 U.S. 925 (2004).

benefit of free access to buildings.<sup>4</sup> The result was--and still is--that ILECs were not required to unbundle certain fiber loops at TELRIC rates.<sup>5</sup>

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."<sup>6</sup> 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."<sup>7</sup> It prohibited "all carriers from entering into any kind of arrangement or sign[ing] any contract with building owners that result[s] in ... discriminatory access"<sup>8</sup> and permitted "any carrier to file a formal complaint against another carrier...benefiting from...discriminatory access to private property."<sup>9</sup>

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."<sup>10</sup> In light of these CPUC rulings, it would not have been unreasonable for the Commission to assume that

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<sup>4</sup> *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).

<sup>5</sup> *Id.* at 2633 ¶ 182; 47 C.F.R. § 319(a)(3)(ii)-(iii).

<sup>6</sup> *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).

<sup>7</sup> *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)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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 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.

In the current proceeding, AT&T is attempting to build on the Commission's 2004 conclusion that CLECs are not impaired without access to unbundled fiber loops, recognizing that in the all-fiber world of the future, this would mean the end of unbundling. Two months ago, AT&T submitted Reply Comments that strenuously argued that the FCC's 2004 finding that CLECs were not impaired without access to fiber loops and packet switching supported continued denial of access to these elements post-transition:

The FCC rightly concluded over ten years ago that the CLECs face no impairment without access to those facilities and equipment from the ILECs. The fact of the transition certainly does not provide a basis for the Commission to reverse course on that determination now by requiring ILECs to unbundle packet-switched transmission facilities and fiber. In any event, before it could reverse course and modify the rules to require ILECs to unbundle such facilities, the Commission would have to undertake a new rulemaking and find based on a complete record (as opposed to rhetoric) that requesting providers are impaired without access to those facilities.<sup>11</sup>

AT&T fails to acknowledge that the findings of non-impairment in the *TRO* and *TRRO* were based on the false premise that ILECs had no advantage over CLECs, which presumably includes the assumption that ILECs pay the same for building access as CLECs.

### **III. Competitive Impact of AT&T's Conduct**

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<sup>11</sup> Reply to Comments of AT&T Services, Inc. at 39, GN Docket Nos. 12-353, 13-5 (April 10, 2014).

It is clear from the foregoing that in this proceeding, AT&T is asking the Commission to rely on the same assumptions that underlie the *TRO* and *TRRO*, including the assumption that ILECs do not have an advantage over CLECs in constructing new fiber networks. Indeed, AT&T asserts that any reversal of this position would have to be based upon “a complete record (as opposed to rhetoric),” suggesting that it otherwise would be subject to reversal on appeal.

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.<sup>12</sup>

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<sup>12</sup> 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. In fact, Garland Connect believes that the vast majority of the services provided by AT&T in the Building are provided pursuant to contract, rather than pursuant to tariff. In any event, 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 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 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.

For example, in July, 2011, AT&T ILEC employee Mike Shortle wrote to Garland Connect that the draft agreement sent by Garland Connect “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.”<sup>13</sup> 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.”<sup>14</sup> At the same time, a few months later, Mr. Shortle added that “AT&T has a strict policy not to pay for power and accessing buildings.”<sup>15</sup>

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.<sup>16</sup> They each pay Garland Connect for Building access,

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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.

<sup>13</sup> See Exhibit A (Shortle email of July 6, 2011).

<sup>14</sup> See *id.* (Wood email of July 13, 2011).

<sup>15</sup> See Exhibit B.

<sup>16</sup> Ironically, in a recent filing in this docket, AT&T pointed to tw telecom, XO, and Level 3 as being among the nine largest providers of Ethernet service. Enclosure to *ex parte* letter from Frank Barber, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, GN Dockets 13-5, 12-353 *et al.*, May 30, 2014, at p. 10. These CLECs have apparently managed to achieve some level of sales despite the building access cost handicap they are suffering as compared with AT&T. That does not,

space, power, facilities and services 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.<sup>17</sup> In conducting this proceeding, the Commission should determine whether this advantage exists and issue its rules 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 suggested by AT&T, the Commission should look carefully at the veracity of SBC's 2002 representations that "Going forward, SBC and other ILECs have the same advantages and disadvantages as the CLECs" and that "CLECs and ILECs operate on a level playing field, and ILECs possess none of the oft-cited advantages which lead to unbundling requirements." It should also examine the accuracy of SBC's 2004 representation that in building fiber, ILECs "obviously face the same hurdles as CLECs." In terms of cost of obtaining building access, it appears that SBC's statements are false, and that AT&T has major cost advantages today over its CLEC competitors.

Before the FCC accepts these SBC statements as true, it should:

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however, establish that they are competing with AT&T on a level playing field. Based on Garland Connect's experience and AT&T's representations, they are not.

<sup>17</sup> In addition to the benefits of a level playing field, requiring ILECs to pay for building services that the 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.

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1. Ask 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. Ask 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. Ask 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.
4. If AT&T contends that its tariffs entitle it to free space, power, and facilities from building owners and operators, ask 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.

Knowledgeable Garland Connect personnel are prepared to discuss any of the above issues with the Commission Staff at its convenience.

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Respectfully submitted,

*/s/ Eric J. Branfman*

Eric J. Branfman

Counsel for Garland Connect, LLC

Attachments

**From:** WOOD, KIM (ATTCORP)  
**To:** Warner, Jason (US); SHORTLE, MIKE (ATTPB); EVANS, BRYAN J (ATTPB)  
**CC:** Ron Moses (Prilab); Blackmore, Susanne (US); CRAWFORD, CORY R (ATTPB); WHITESIDE, CHRISTINE C (ATTCORP); YATES, RONALD L (ATTCORP)  
**Sent:** 7/13/2011 8:53:19 PM  
**Subject:** RE: Garland Center 1200 W. 7th Street  
**Attachments:** Morlin Teleport -Extension License Agmt.pdf; RE 1200 W 7th Ave Los Angeles CA - ATT (SBC) Equipment Space.htm

Hi Jason, Mike, and Bryan,

I can assist with the background on this which might help. There are two AT&T's - 1) AT&T/SBC which I understood was the LEC and 2) AT&T/Teleport Communications Group (the company I represent) which is another local network telecommunications carrier but is not the LEC and must pay license fees to serve customers at 1200 W. 7th Street.

I recall that a couple years ago AT&T/SBC had come gone through some extensive negotiations with Jason Warner and I thought substantiated its position that as the LEC they did not pay monthly license fees but were grandfathered into this building. Cory Crawford worked this for AT&T/SBC. I'm attaching an email from 2009 where in Cory herself confirmed that she was the AT&T/SBC contact to negotiate on behalf of AT&T/SBC.

As such, even though we are both "AT&T", AT&T/Teleport Communications Group must pay fees for access in 1200 W 7th because of the type of service it provides to customers (non-LEC) - which is how we've been operating since Jan 1, 2011 (see 2nd attachment).

Back to the subject at hand, in October 2009, I referred Tasha Monroe/CBRE at your building to Cory Crawford, AT&T/SBC to discuss a renewal agreement Tasha wanted to get in place with AT&T/SBC. I think Cory may have changed jobs since 2009 - but I am copying her so she can provide some insight to the actual outcome of the negotiations and refer you to her successor as needed. The bottom line is what you are discussing below applies to AT&T/SBC and not AT&T/Teleport Communications Group. AT&T/Teleport Communications Group is in the process of reviewing The Garland Center -1200 West Seventh, Los Angeles Telecommunications and Cabling Services Agreement which once executed will permit AT&T Teleport Communications Group space at the building MMR and authorize Teleport Communications Group to continue making license fee payments.

Hope this helps.

Kim Wood  
 AT&T Site Acquisition Manager  
 Ph: 423-884-2864

-----Original Message-----

**From:** Warner, Jason (US) [mailto:Jason.Warner@am.jll.com]  
**Sent:** Wednesday, July 13, 2011 6:19 PM  
**To:** WOOD, KIM (ATTCORP); SHORTLE, MIKE (ATTPB); EVANS, BRYAN J (ATTPB)  
**Cc:** Ron Moses (Prilab); Blackmore, Susanne (US); Warner, Jason (US)  
**Subject:** FW: Garland Center 1200 W. 7th Street

Kim/Mike/Brian,

See below our counsel's comments on your e-mail about AT&T's ILEC status and non payment of fees (space and power). We would like to set up a call to discuss this important issue further so we can figure out how to move forward with your occupancy at The Garland Center. Please let me know when you have time in the next couple of days. Thanks much.

JW

Jason Warner  
 Managing Director/Regional Director  
 Jones Lang LaSalle Americas, Inc.  
 515 South Flower Street Suite 1300  
 Los Angeles California 90071  
 tel +1 213 239 6090 main +1 213 239 6000

mobile +1 213 304 9055 fax +1 213 239 6100  
jason.warner@am.jll.com  
California DPE #: 01214802  
www.us.joneslanglasalle.com

Please consider the environment before printing.

-----Original Message-----

From: Nancy Grauman [mailto:NGrauman@sheppardmullin.com]  
Sent: Wednesday, July 13, 2011 2:47 PM  
To: Warner, Jason (US); Ron Moses (Prilab)  
Cc: Blackmore, Susanne (US); Pamela Westhoff; Megan Troy  
Subject: FW: Garland Center 1200 W. 7th Street

Jason,

We asked Megan Troy at our firm, who specializes in telecommunication matters, to review and respond to AT&T's claims that they are not obligated to pay anything for access to space and power in the Building because AT&T/SBC is an ILEC. See her response below. If AT&T's attorneys have questions about her conclusions, I would suggest we arrange for them to speak directly with Megan.

Nancy

-----Original Message-----

From: Megan Troy  
Sent: Wednesday, July 13, 2011 1:41 PM  
To: Pamela Westhoff; Nancy Grauman  
Cc: Christopher Huther  
Subject: RE: Garland Center 1200 W. 7th Street

Pam/Nancy:

Per your request, I have investigated AT&T/SBC's claim below that, as an ILEC, they are not allowed to enter into an agreement with Garland Connect, LLC that requires them to pay for space or power under the CPUC tariffs. I have not found anything in our research to support that claim. The tariff information provided by AT&T (3rd Revised Sheet 110.1 and 6th Revised Sheet 113) states that the "applicant/customer" shall provide or arrange for certain items at no cost to AT&T. However, Garland Connect is neither an applicant nor a customer of AT&T, which means that the tariff sheets provided are inapposite to the situation at hand. I have confirmed this fact with the CPUC. Accordingly, there is nothing in the tariffs governing AT&T/SBC that would prohibit Garland Connect from charging AT&T/SBC for space or power at the Garland Center and AT&T is free to enter into an agreement that requires AT&T to pay those costs.

Please feel free to contact me with any questions. I am also happy to speak directly with counsel at AT&T/SBC as well.

Regards,  
Megan

-----Original Message-----

From: SHORTLE, MIKE (ATTPB) [mailto:ms2932@att.com]  
Sent: Wednesday, July 06, 2011 9:55 AM  
To: Blackmore, Susanne (US); ron@prilab.com; grantw@garlandconnect.com  
Cc: EVANS, BRYAN J (ATTPB)  
Subject: Garland Center 1200 W. 7th Street

Susanne / Ron,

In reviewing the Garland agreement it appears as though it refers to AT&T as a CLEC (Completive Local Exchange Carrier) and not as the ILEC (Incumbent Local Exchange Carrier). As you may or not know, AT&T

ATT005238

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. I am also enclosing the CPUC web link and a copy of the tariff for your review.  
<http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/Detariffing.htm>

I respectfully request that you and team review the information that I have provided before our upcoming call so we may get the proper acceptable language in this agreement for both parties involved. Once the language is accepted, Bryan Evans will provide all of the technical specification in the schedules for your final review. The sooner we can clear the confusion up, the sooner we can provide services to your tenants.

If you have any questions please contact me directly.

Sincerely

Mike Shortle

Mike Shortle, RCDD  
AT&T of California  
Sr. Network Process & Quality Mgr.  
Office: 714 666-5422  
E-mail: ms2932@att.com

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-----Original Message-----

From: SHORTLE, MIKE [mailto:ms2932@att.com]  
Sent: Tuesday, November 15, 2011 8:26 AM  
To: Nancy Grauman; Pamela Westhoff; Jason Warner (Jason.Warner@am.jll.com)  
Cc: DI BENE, JOHN (Legal)  
Subject: 1200 West Seventh/Garland Connect

This is just a follow up from the call we had yesterday.

\* I have gone across to the engineering department and requested to see what it would take to remove the old UPS power from AT&T's current equipment and place it on new commercial power by the end of the year. I have requested a quick response from engineering in order to help facilitate your end of year date. When I receive the information back I will provide it to you with the new power requirements and possible new space for the battery plant that may be required to be built for this conversion. Engineering will also determine if billing is applicable for this work.

\* I have also requested from engineering department how much space for future equipment and power AT&T will require for the service agreement that is currently being negotiated. Once the new system is built, any new service will be assigned to it and the older services will migrate to the new system over time. Eventually AT&T will be able to remove the older equipment and return that space back to the Garland center.

\* Regardless, AT&T has a strict policy not to pay for power and accessing buildings. We think we are not required to pay under the tariff citations we provided for anything that is currently in the building, but please understand that even we are convinced that is incorrect, it would not be consistent with AT&T's policy to pay to keep anything in place.

Regards,

Mike

Mike Shortle, RCDD  
AT&T of California  
Sr. Network Process & Quality Mgr.  
Office: 714 666-5422  
E-mail: ms2932@att.com<mailto:ms2932@att.com>

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