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May 26, 2006

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Docket No. 060172-EU - Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events

Docket No. 061073-EU - Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code

Dear Ms. Bayo:

Enclosed are BellSouth Telecommunications, Inc.'s Comments on Proposed Rules, which we ask that you file in the captioned dockets.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III /V.F.

James Meza III

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Docket Nos. 060172-EU/060173-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail this 26th day of May, 2006 to the Parties of Record and Interested Persons in these dockets.

James Meza III /V.F.

James Meza III

FLORIDA PUBLIC SERVICE COMMISSION

Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events	)	Docket No. 060172-EU
Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code	)	Docket No. 060173-EU
	)	Filed: May 26, 2006

BellSouth Telecommunications, Inc.'s Comments on Proposed Rules

BellSouth Telecommunications, Inc. ("BellSouth") submits the following comments on the Proposed Rules being discussed in the above-captioned dockets. As will be established below, the Florida Public Service Commission ("Commission") should not consider the Proposed Rules until such time as all interested parties can participate in evaluating the impact of the Proposed Rules. Further, in these additional discussions, the Commission should consider the fact that (1) it does not have authority under Florida law to impose the requirements it is considering to the extent the requirements regulate pole attachments; (2) the Proposed Rules could cause "cost-shifting" to the detriment of carriers like BellSouth; (3) the Proposed Rules could lead to significant facility damage; and (4) the Proposed Rules would lead to uncertainty because they are vague and ambiguous. For all of these reasons and those set forth in more detail below, BellSouth strongly suggests that the Commission postpone any consideration of the Proposed Rules until it can consider the positions of all affected or potentially affected parties.

All Interested Parties Should Have the Opportunity to Participate

BellSouth appreciates the Commission's interest in developing Proposed Rules applicable to electric utilities aimed at minimizing service outages in adverse weather situations. However, before adopting said rules, the Commission should consider the impact of the Proposed Rules on all affected parties, not just electric utilities. This is so because any decision of this Commission regarding placement of poles, facilities placed on those poles, and facilities placed underground, either initially or converted subsequently, has a clear and direct financial and operational impact on electric utilities, incumbent local exchange companies ("ILECs"), and on all entities that attach to poles.

Indeed, while the electric utilities own the majority of poles in the state of Florida, BellSouth is a significant pole-owner, owning approximately 459,000 poles in the state, with 307,459 of these bearing attachments (lines, transformers, etc.) by electric utilities. BellSouth itself is attached to approximately 756,000 electric utility poles, including those owned by investor-owned companies, municipal electrics, and rural electric cooperatives, throughout the state. Florida's ILECs all have joint use and license agreements with other electric utility, cable, and communications providers for installation and operation of equipment on utility poles. These joint use and pole attachments agreements may be affected, if not impaired, by the Commission's actions. Consequently, rules that address issues solely from the perspective of and on behalf of the electric utilities do not reflect the different interests or concerns of

minority pole owners or non-pole-owning attachors, all of which should be considered by the Commission.

Simply put, any decision of this Commission relating to construction standards for poles, overhead, and underground facilities should take into account the differing situations and relative positions of all industries that use poles, whether as owners or attachors, to obtain a business-neutral approach. The diversity and magnitude of interests and entities affected merits the Commission holding an additional workshop in which all parties participate and can be heard on the issues.

This Commission Lacks Jurisdiction Over Pole Attachments

As previously determined by the Florida Supreme Court, this Commission lacks jurisdiction over pole attachments. Accordingly, the Commission does not have the authority to adopt the Proposed Rules to the extent they regulate said attachments.

The issue of the Commission's authority over pole attachments was squarely before the Florida Supreme Court in 1980 when it decided Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980). In deciding this issue, the Supreme Court addressed 47 U.S.C.§ 224, which is the federal statute granting the Federal Communications Commission ("FCC") authority to regulate pole attachments. Under 47 U.S.C. § 224, the FCC has jurisdiction over pole attachments unless a state commission certifies the following to the FCC: (1) that it regulates rates, terms, and conditions for pole attachments; and (2) that in so regulating such rates, term, and conditions, the State has the authority to

consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services. 47 U.S.C. § 224 (c)(2).

In Hawkins, the Commission, pursuant to 47 U.S.C. § 224, notified the FCC that it had authority to regulate pole attachment agreements. This declaration of authority was challenged on the grounds that the Commission did not have the authority under Florida law to regulate the agreements or the interests of cable subscribers. In quashing the Commission's certification, the Supreme Court relied on the Commission's own prior finding in Southern Bell Tel. & Tel. Co., 65 PUR 3d 117, 119-20 (Fla.Pub.Serv.Comm'n 1966) that it lacked authority over pole attachments:

> In 1913, when the Florida legislature enacted a comprehensive plan for the regulation of telephone and telegraph companies in this state, and conferred upon the commission authority to administer the act and to prescribe rules and regulations appropriate to the exercise of the powers conferred therein, the science of television transmission and the business of operating community antenna television systems were not in existence. The 1913 Florida legislature, therefore, could not have envisioned much less have intended to regulate and control the television transmission facilities and services with which we are concerned....*We must conclude...that the Florida Public Service Commission has no jurisdiction or authority over the operations of community antenna television systems and the rates they charge, or the service they provide to their customers.*

Id. at 649-50 (emphasis added).

Using this analysis, the Court recognized that the legislature had not subsequently conferred any relevant jurisdiction upon the Commission between 1913 and 1980. Accordingly, the Court found that the Commission lacked

jurisdiction over pole attachments. Likewise, there has been no statutory grant of jurisdiction over pole attachments since 1980. As such, the Commission lacks jurisdiction over pole attachments, and the Commission should consider this lack of jurisdiction in evaluating whether it can adopt the Proposed Rules.

The Proposed Rules Erode Uniform Standards, Will Result in Cost-Shifting, and Will Adversely Affect BellSouth Competitively

The Proposed Rules demonstrate an overall disregard for the national uniform standards currently governing pole construction and attachments and, unacceptably, render the electric utilities the policy makers. The Proposed Rules will demonstrably affect BellSouth's pole attachment rental rates and operational burdens and potentially impact service and reliability. Additionally and critically, unlike the electric utility monopolies that can pass any increased costs in complying with the Proposed Rules to their customers via rate of return regulation, BellSouth is price-regulated and thus would be economically disadvantaged in complying with the Proposed Rules.

1. 25-6.034 (2)

This section allows each electric utility to establish and maintain its own construction standards for overhead and underground facilities, including Attachment Standards and Procedures.

In providing for company-by-company standards, the Commission eviscerates the National Electric Safety Code ("NESC") as the uniform national standard by which power and telephone companies operate. Further, the Proposed Rules localize decision-making over the national telecommunications

network. The fact that each electric utility may set differing standards will impact the design and construction processes of the attaching entities. This will likely translate into increased costs and may impact service reliability. The proposed rule also states that challenges to a utility's construction standards will be handled pursuant to Rule 25-22.032. This proposal conflicts with the remedies afforded attaching entities under the federal Pole Attachment Act.

2. 25-6.034 (4)(b)

This section expressly grandfathers electric facilities constructed prior to the 2002 version of the NESC, providing that such facilities are governed by the edition of the NESC in effect at the time of the initial construction. The specific reference to electric facilities implies that no such grandfathering protection is contemplated for the facilities of other pole users. As is standard in joint use agreements, the attachments of *all* pole users should be governed by the version of the NESC that was in effect when the attachment was placed.

At the same time, subsection (8) requires that the electric companies establish standards for attachors to their poles that "meet or exceed the NESC and other applicable standards imposed by law," and ensure that "third-party facilities...are constructed, installed, maintained and operated in accordance with generally accepted engineering practices" (which would include the provisions of the NESC).

This could be read to justify or even require random inspections of third-party attachments by the electric companies to ensure *maintenance* of attachments in compliance with the latest version of the Code, allowing the

electric companies to demand upgrading/rearranging/removal of attachments or changing out of poles, potentially at considerable ongoing (capital and expense) cost to other attachors.

3. 25-6.034 (5)

This section provides that each electric utility will establish guidelines and procedures governing the applicability and use of extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for three different enumerated classes of construction.

Attachment 3 provides estimated annual incremental costs to power companies due to Rule 25-6.034 changes, including the cost of pole replacements and upgrading plant to current NESC. To the extent that existing joint use or pole attachment agreements require attaching entities to contribute to such construction, there is a potential for electric utilities to attempt to use the Proposed Rules to shift all of the costs to others. Again, these issues warrant review by the Commission through a dialog with all interested parties to ensure a non-discriminatory and competitively neutral approach.

4. 25-6.034 (6)

This section requires electric utilities to establish guidelines and procedures to prevent damage to underground and overhead facilities from flooding and storm surges for "Surge Zones." To the extent these guidelines and procedures impact entities with underground and overhead facilities, those entities, not just electrics, should participate in this process.

5. 25-6.034 (8)

This section requires electric utilities to establish and maintain standards and procedures for attachments by others to transmission and distribution poles and to file such standards and procedures with the Commission. Critically, this provision mandates that the Attachment Standards and Procedures "meet or exceed the NESC and other applicable standards imposed by law" so that attachments do not, among other things, impair the safety or reliability of the electric system; exceed pole loading capacity; and are "constructed, installed, maintained, and operated in accordance with the generally accepted engineering practices for the utility's service territory." Further, the section prohibits attachments that do not comply with the electric utility's Attachment Standards and Procedures.

Like previous sections, this section disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities carte blanche over pole attachments. While problems have occurred with certain providers failing to comply with applicable safety requirements when installing pole attachments, these problems are fairly isolated and do not warrant drastic changes to the current procedures in place to ensure safety and reliability uniformly. Additionally, the chief stress on the distribution infrastructure results from the significant load placed by the power industry—not telephone or cable. Moreover, additional factors (such as vegetation) affect the reliability of electric infrastructure. Addressing only attachments paints a misleading, lopsided picture

For example, as previously discussed, the Proposed Rule could be read to justify, or even require, random inspections of third-party attachments by the electric utilities to ensure attachments comply with the latest version of the NESC. Electric utilities could demand upgrading/rearranging/removing of attachments, or changing out of poles, potentially at considerable cost (capital and expense) to the other attachors. Not only would such a requirement shift significant costs to the attaching entities, but it could affect existing joint use and pole attachment agreements that already govern this subject matter. Again, it is critical that the Commission hold a workshop with all impacted entities so that these practical implications can be discussed and analyzed.

The Proposed Rules Fail to Recognize the Potential for Facility Damage

Section 7(b) of Rule 25-6.034 requires the applicant for service to provide front easements when the utility initially installs, expands, rebuilds or relocates underground facilities, unless the utility determines that another location provides an operational, economic or reliability benefit. Subsection (c) provides that in instances where the electric utility is converting its overhead facilities, it may install its facilities in public rights-of-way.

These sections do not recognize the existing situation of buried or underground telecommunications facilities and, as such, fail to take into account the significant potential for cable cuts, facility damage, attendant outages and public safety issues. BellSouth already has buried a significant number of its facilities in front easements or in the public rights-of-way. Consequently, because the electric utilities would need to place their facilities below BellSouth's

already existing underground facilities, there is a considerable potential, during both placement and ongoing maintenance, for damage and resulting service interruptions.

At an absolute minimum, subsection (c) should be limited to situations where both power and telecommunications are converting aerial facilities underground to allow for coordination of safe placement and mutually cost-efficient work efforts.

The Proposed Rules Are Overbroad and Vague

1. 25-6.034 (5)(b)(c)

This section provides that each utility will establish guidelines and procedures governing the applicability and use of extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for three different enumerated classes of construction. Two of those classes include "major planned work" and "targeted critical infrastructure facilities."

Neither "major planned work," nor "critical infrastructure facilities" is a defined term. Planned work that is "major" could include distance in feet or miles, number of lanes, length of construction or some other factor. Similarly, "critical infrastructure facilities" could include electrical substations or gas stations. In both instances, again, this section disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities carte blanche over pole attachments.

2. 25-6.0345 (5), (6)

These sections impose safety standards for construction of new transmission and distribution facilities, and requirements for electric utilities to report accidents *in connection with any part* of their transmission or distribution facilities. Specifically, subsection (5)(b) requires electric utilities to report within one business day any accident that "is significant from a safety standpoint in the judgment of the utility" even though it does not involve death or hospitalization. Subsection (6)(a) and (b) require the electric utilities to report within 30 days any accident involving "damage to the property of *others* in an amount in excess of $5000"; or any accident that causes "significant damage" to the utility's facilities in its judgment.

These sections allow for company-by-company definitions of what is "significant" in terms of damage and safety. The fact that each utility may set differing standards may impact claims processes of the attaching entities, will likely translate into increased costs, and may well impact litigation against these entities. Also, because the electric utilities' distribution facilities are attached to BellSouth poles, BellSouth is one of the "others" affected by (6)(a). It is unclear how the electrics would determine that another's property was damaged in an amount beyond $5000.

Conclusion

For the foregoing reasons, BellSouth respectfully requests that the Commission hold an additional workshop where all affected or potentially affected parties can discuss these Proposed Rules. Until such time as the

above-described issues are fully vetted and addressed, adoption of the Proposed Rules would be premature and inappropriate.

Respectfully submitted this 26th day of May, 2006.

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