

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., SW
Washington, DC 20554

August 28, 2020

Copies sent by E-mail

BellSouth Telecommunications, LLC d/b/a)	
AT&T Florida,)	
)	
Complainant,)	
)	
v.)	Proceeding Number 20-276
)	Bureau ID Number EB-20-MD-003
Duke Energy Florida, LLC)	
)	
Defendant.)	

Christopher S. Huther
Claire J. Evans
Frank Scaduto
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
chuther@wiley.law
cevens@wiley.law
fscaduto@wiley.law

Counsel for Complainant

Eric B. Langley
Langley & Bromberg LLC
2700 U.S. Highway 280 S, Suite 240E
Birmingham, AL 35223
eric@langleybromberg.com

Counsel for Defendant

Dear Counsel:

On August 25, 2020, BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) filed with this Commission a complaint against Duke Energy Florida, LLC (Duke) under section 224 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 224.¹ Duke should have a copy of the

¹ Pole Attachment Complaint, Proceeding No. 20-276, Bureau ID No. EB-20-MD-003 (filed Aug. 25, 2020) (Complaint).

Complaint as served by hand by AT&T on August 25, 2020. *See* 47 CFR § 1.734(c). If that is not the case, Duke should immediately contact Commission counsel.²

In reviewing AT&T's Complaint, we have concluded that it does not comply with Rule 1.722(g). 47 CFR § 1.722(g). Specifically, that rule requires that "the complainant notif[y] each defendant in writing of the allegations that form the basis of the complaint and invite[] a response within a reasonable period of time." The purpose of this rule is to "improve[] the prospects for resolving complaints quickly."³ Here, we find that the letter AT&T sent to Duke over 15 months prior to the filing of the Complaint is insufficient to meet this requirement.⁴ The letter requests a meeting to discuss pole rental rates in Florida, North Carolina, and South Carolina, and states that, should the parties not arrive at a negotiated resolution, AT&T "reserves the right to seek full relief, including refunds for its past overpayments."⁵ However, the letter makes no mention of the specific allegations contained in the complaint that AT&T ultimately filed – more than a year later – concerning the parties' JUA in Florida. Nor does it request a response from Duke to those specific allegations.

Accordingly, we hold the Complaint in abeyance until September 11, 2020, so that Duke may make a reasonable response to AT&T, in letter form, based on the allegations in the complaint. At the conclusion of this two-week period, the parties shall advise Commission staff assigned to this proceeding, in a single joint email, if there is any change in the status of the matter.⁶ If there is not, we will promptly issue a transmittal letter with the schedule for this proceeding.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1.1415 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary H. McEnery

Rosemary H. McEnery
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission

² We will conduct this proceeding in accordance with the Commission's rules governing section 224 complaint proceedings, which are found at 47 CFR §§ 1.720-1.740 and 1.1401-1.1415. *See also Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*).

³ *Rule Consolidation Order*, 33 FCC Rcd at 7184, para. 16.

⁴ Complaint, Exhibit 6 (Letter from Dianne W. Miller, AT&T, to Scott Freeburn, Duke Energy Corp. (dated May 22, 2019)).

⁵ *Id.*

⁶ Michael Engel and I are Commission counsel for this proceeding. My e-mail address is rosemary.mcenery@fcc.gov, and Mr. Engel's e-mail address is michael.engel@fcc.gov.