

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by the Florida Inland
Navigation District against BellSouth
Telecommunications, LLC d/b/a AT&T
Florida d/b/a AT&T Southeast for failure to
relocate utility line.

DOCKET NO. 20180213-TL
ORDER NO. PSC-2020-0309-PAA-TL
ISSUED: September 14, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (Commission) that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Case Background

On November 14, 2018,¹ the Florida Inland Navigation District (FIND) filed a complaint against BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) for failure to relocate unpermitted subaqueous utility lines beneath the Intracoastal Waterway (IWW) in Broward County (2018 Complaint).² FIND is an independent special taxing district of the State of Florida that plans and implements IWW projects to promote safe navigation and the enjoyment of water-based activities along the east coast of Florida.³ FIND asserts that this failure by AT&T has delayed completion and increased the cost of the Broward Deepening Project, by which the IWW channel was to be deepened along a two mile section in the City of Fort Lauderdale. A major purpose of the project is to allow access of mega-yachts to the channel. The traffic of these vessels is believed to provide an economic benefit to the city. During the planning and design of the project, FIND located and identified submerged utility lines within the anticipated zone of the project.

¹ The Complaint was dated October 2, 2018.

² In its 2018 Complaint, FIND variously refers to AT&T's facilities as "line" and "lines."

³ Chapter 374, Florida Statutes (F.S.).

In September 2015, FIND notified AT&T that an active set of unpermitted utility lines belonging to AT&T would need to be replaced with deeper permitted utility lines. AT&T notified FIND in December 2015, that after completing an analysis of the required efforts it would be able to have the utility lines replaced by December 2016. However, after receiving all of the necessary permitting, AT&T's replacement project did not proceed according to the schedule provided to FIND. In February 2017, AT&T notified FIND of the need for a larger manhole that would encompass the new subaqueous ducts required for the project. This resulted in a shift of the project from a utility line replacement, to a relocation effort. AT&T acquired all necessary new or modified permits by August 2017, and scheduled a pre-construction meeting for January 2018.

After the pre-construction meeting AT&T was notified by the City of Fort Lauderdale that its construction could not be accommodated, as the manhole drilling would be conducted in the footprint of a parking garage that was currently being constructed. AT&T was again required to acquire new or modified permits. AT&T revised its construction schedule and notified FIND that all permits would be submitted by the end of 2018, with construction beginning in early 2019.

In its 2018 Complaint, FIND asserts that AT&T's delay has caused FIND and the Florida taxpayers unnecessary costs, and that until AT&T relocates its utility lines, the full benefits of the Broward Deepening Project cannot be realized.

In the time since the 2018 Complaint was filed with the Commission, our staff has been in contact with FIND, AT&T, the parking garage management, the United States Army Corps of Engineers, the Florida Department of Environmental Protection, and the Broward County Department of Environmental Protection and Growth Management. In June 2019, our staff determined that there were still issues with AT&T obtaining needed permits and FIND indicated it would like for staff to continue to monitor this matter.

In October 2019, our staff learned that AT&T had acquired all needed permits and that AT&T was taking bids for performing the work thereafter. Subsequently, staff learned of additional delays with the utility line relocation project because AT&T had not found a contractor to do the work. In late January 2020, staff learned that AT&T had named a contractor, and that FIND's engineers believed construction would begin in the first quarter of 2020. Nonetheless, FIND asked that our staff bring a recommendation to the Commission regarding FIND's 2018 Complaint. The relief requested by FIND in its 2018 Complaint is "that the Commission, in its supervisory role over Florida's regulated utilities, review and consider this situation, and encourage AT&T (and its permitting agents) to relocate its subaqueous utility lines in a timely and effective manner."

Review and Discussion

Neither Chapter 364, F.S., (governing Commission regulation of telecommunications companies) nor Chapter 350, F.S., (establishing the Commission's general authority) authorizes this Commission to require AT&T to relocate subaqueous utility lines currently located beneath the IWW. For a number of months, our staff has reviewed this matter, and encouraged AT&T to relocate its subaqueous utility lines as requested by FIND. However, absent Commission authority to compel action by both AT&T and the entities which must review and permit AT&T's line relocation, there does not appear to be anything this Commission can do to accelerate the project.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this Commission does not have jurisdictional authority to require BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast to relocate its subaqueous utility lines, beneath the Intracoastal Waterway in Broward County, in a timely and effective manner. If it further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of September, 2020.


ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 5, 2020.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.