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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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CLERK

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

**COMPLAINANTS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO GULF POWER COMPANY**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. ("Complainants"), submit this First Set of Requests for Production of Documents to Respondent Gulf Power Company ("Gulf Power" or "Plaintiff"). Respondent must respond in writing within 30 days of the date of service of these Requests.¹ The instructions and definitions that follow are integral to the Requests and should be reviewed carefully.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

¹ *In re Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.*, Order, EB Docket No. 04-381, FCC 05M-03 (issued Feb. 1, 2005).

DOCUMENT NUMBER-DATE

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DEFINITIONS

1. “Action” refers to the above-captioned matter.
2. “Alabama Power v. FCC standard” or “Alabama Power v. FCC test” means the determination by the United States Court of Appeals for the Eleventh Circuit in *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002), *cert. denied*, 124 S. Ct. 50 (2003), that:

... before a power company can seek compensation above marginal cost, it must show with regard to each pole that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is able to put the space to a higher-valued use with its own operations. Without such proof, any implementation of the Cable Rate (which provides for much more than marginal cost) necessarily provides just compensation.
3. “And” and “or” as used herein are inclusive, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request matters that might otherwise be construed to be outside its scope.
4. “Any” means one or more.
5. “Attaching entity” includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities (including Gulf Power Company), governmental entities and other entities with a physical attachment to pole(s).
6. “Attachment” or “Pole Attachment” means any attachment by an attaching entity, as defined above, to a pole, duct, conduit, or right-of-way owned or controlled by a utility.
7. “Cable operator” means a person who provides cable service or owns operates or controls, in whole or in part, one or more cable systems.

8. "Change-out" means the replacement or substitution of a pole, or the act of replacing or substituting a pole, whether as part of the make-ready process pursuant to an attacher's request, as required by any governmental entity, or as necessitated by Gulf Power for the provision of electricity services.

9. "Complainants" means The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. and their predecessors, successors, subsidiaries, parents, divisions or affiliates.

10. "Complaint" means the complaint filed by the Complainants in this action, and any amendments or supplements thereto that have been filed.

11. The terms "communicated" or "communication" include every manner or means of disclosure, transfer or exchange of information, and every disclosure, transfer or exchange, whether face-to-face, by telephone, in writing, whether in hard copy or electronically, by email, by mail, personal delivery or otherwise.

12. "Communications attacher" means a person providing all lawful communications services, including but not limited to, cable services, telecommunications services and/or information services, who attaches to poles owned or controlled by Gulf Power.

13. "Description of Evidence" means *Gulf Power's Description of Evidence Gulf Power Seeks to Present In Satisfaction of The Eleventh Circuit's Test*, filed January 8, 2004 with the Enforcement Bureau of the Federal Communications Commission.

14. "Document" means written, recorded or graphic materials of any kind, whether prepared by You or by any other person, and that is in Your possession, custody

or control. The term includes agreements, contracts, letters, emails, telegrams, inter-office communications, memoranda, reports, records, instructions, specifications, notes, notebooks, scrapbooks, diaries, diagrams, photographs, photocopies, charts, graphs, descriptions, drafts, minutes of meetings, conferences, telephone calls or other conversations or communications, recordings, published or unpublished speeches or articles, publications, transcripts of telephone conversations, ledgers, financial statements, microfilm, microfiche, tape, video, disk or diskette recordings and computer printouts. The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes the original document (or a copy thereof if the original is not available) and all copies that differ in any respect from the original, including but not limited to any notation, underlining, marking or information not on the original.

15. "FCC" or "Commission" means the Federal Communications Commission.

16. "FCC Formula" refers to the methodology prescribed by the Federal Communications Commission, which appears at 47 C.F.R. § 1.1409.

17. "Gulf Power" means and refers to Gulf Power Company, and each of its affiliated corporations, parents, subsidiaries, divisions and other organizations or operating units, its predecessors and successors-in-interest, and each of its present and former directors, officers, agents, employees, voting trustees, auditors, accountants, attorneys, servants or representatives, including but not limited to employees, consultants, attorneys or other agents having possession, custody or control of documents or

information called for by these requests, and all other persons acting or purporting to act on its behalf.

18. "Identify" or "identity" means to state or a statement of:
 - a. In the case of a person other than a natural person, its legal name, the address of its principal place of business, its telephone number, and the name of its chief executive officer;
 - b. In the case of a natural person, his or her name, business telephone number, home and business addresses, employer, and title or position;
 - c. In the case of a service, the identity of its producer or distributor and its trade name;
 - d. In the case of a document,
 - (i) the title of the document,
 - (ii) the author(s),
 - (iii) the title or position of the author(s),
 - (iv) the addressee(s),
 - (v) the title or position of the addressee(s),
 - (vi) the type of document,
 - (vii) the date it was prepared,
 - (viii) the number of pages it comprises,
 - (ix) the identity of all persons indicated as receiving copies of the documents,
 - (x) the identity of all persons who have received copies of, or been shown the document or any part thereof,
 - (xi) its subject matter,
 - (xii) its present location or custodian, and
 - (xiii) a reference to the document, if it has been produced;
 - e. In the case of geographic boundaries, location or coverage, a narrative description identifying the states and the areas of such states and all political subdivisions thereof included, in whole or in part, within the geographic boundaries, location or coverage.
 - f. In the case of a verbal communication, discussion or meeting,
 - (i) the type of communication, discussion or meeting,
 - (ii) its date or approximate date,
 - (iii) the identity of its participants or attendees,
 - (iv) its general subject matter, and

(v) a description of any documents or tangible objects used or referred to in the course of the discussion, summarizing, recounting, or referring to the verbal communication, discussion or meeting.

19. "Including" means including but not limited to.

20. "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications, and includes electronic publishing.

21. "Make-ready" means all work, costs and expenses associated with affixing Complainants' attachments to poles owned or controlled by Gulf Power, including but not limited to pole change-outs, placement, rearrangement or transfer of facilities or other changes necessary to accommodate Complainants' attachments or other attachers' facilities in a network of poles.

22. "Or" means and/or.

23. "Person" means any natural person, corporation, partnership, company, sole proprietorship, unincorporated association or society, incorporated association, institute, joint venture, firm, governmental body or other legal entity, whether privately or publicly owned or controlled, for profit or not-for-profit or partially or fully government owned or controlled.

24. "Pole" means any utility pole owned or controlled by Gulf Power to which attachments are or may be affixed.

25. "Relate to" and "relating to" mean, without limitation, to make a statement about, refer to, discuss, describe, reflect, contain, identify or in any way pertain to, in whole or in part, or being logically, legally or factually related.

26. "Respondents" refers to Gulf Power Company, as defined above, and its agents, representatives, officers, directors and employees.

27. "Safety Space" means the vertical clearance between communications lines and electric lines on poles as set forth in the National Electrical Safety Code (NESC Table 235-5).

28. "Telecommunications" means the transmission, between or among points specified by the users, of information of the user's choosing, without change in the form or content of the information as sent or received.

29. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or such classes of users as to be effectively available to the public, regardless of the facilities used, and includes without limitation dark fiber.

30. "You," "you," "Your" and "your" mean and refer to Gulf Power Company, as defined above.

31. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun, and vice versa.

32. Regardless of the tense employed, all verbs shall be read as applying to the past, present and future as is necessary to make any paragraph more, rather than less, inclusive.

INSTRUCTIONS

1. In accordance with Rule 1.325 of the Federal Communications Commission, answer each document request separately, unless it is objected to, in which

event, state reasons for objection in lieu of an answer, and answer each other portion of the document request to which no objection is asserted.

2. If you are unable to answer a document request fully, submit as much information as is available and explain why Your answer is incomplete. If precise information cannot be supplied, submit (a) Your best estimate or judgment, so identified, and set out the source or basis of the estimate or judgment, and (b) provide such information available to you as best approximates the information requested. Where incomplete answers, estimates or judgments are submitted, and you know of or have reason to believe there are other sources of more complete or accurate information, identify or describe those other sources of information.

3. In responding to document requests, preface each answer by restating the request to which the answer is addressed. Where a request for information includes subparagraphs (*e.g.*, (a), (b), (c)), or subdivisions (*e.g.*, (i), (ii), (iii)), answer each subparagraph or subdivision separately.

4. These document requests are continuing in nature and include all documents and information prepared or received by you between the date of receipt of this request and the date of final determination in the hearing designated in this Action. Unless otherwise expressly provided, each document request covers any document or information prepared, received, distributed, or in effect during the period from January 1, 1998 unless otherwise stated to the date of final determination in the hearing. Your responses to these document requests should be supplemented as soon as you receive and/or become aware of supplemental information but in any case not later than thirty (30) days prior to any hearing addressing the merits of any party's claim or defenses.

5. For any objection that is based on an asserted claim of privilege, state:
 - (a) a brief description of the subject matter of the asserted privileged information;
 - (b) the nature of the privileged claimed;
 - (c) the paragraph(s) of the interrogatory to which the information is otherwise responsive;
 - (d) the nature and basis of the privilege claimed;
 - (e) the source(s) of the information; and

the identities of all persons to whom such information has been communicated or with whom it has been shared, in whole or in part.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents referring to, relating to, or regarding any of the facts or allegations described in Gulf Power's or the Complainants' pleadings in File No. PA 00-004 and this Action.

2. Produce all documents referring to, relating to, or regarding occupation of Gulf Power-owned or -controlled poles by Complainants since January 1, 1998. Such documents should include, but not be limited to:

- a. Facilities maps, diagrams, and other schematic documents;
- b. Pole counts, surveys or audits;
- c. Pole Attachment Permit Applications;
- d. Pole Attachment Permits;

- e. Make-ready documents (including surveys, studies, photographs, etc. relating to any and all work performed on Gulf Power-owned or -controlled poles, including pole change-outs, transfers and relocations);
 - f. Make-ready payment records, bills, and any other information about Gulf Power attachment procedures);
 - g. Work orders, service orders or maintenance requests;
 - h. Accounting documents referring to, relating to, or regarding Complainants' pole attachments;
 1. Invoices;
 - j. All written correspondence to and from Gulf Power (including email communications) and other documentation concerning telephone or in-person communications relating to any of the above matters.
3. Produce all documents reviewed by, or produced or written by, any consultant, expert witness, or other entity that Gulf Power has used or is using to study or report upon Gulf Power poles containing attachments by Complainants.
4. Produce all documents referring to, relating to, or regarding any communication, whether oral, written or otherwise, concerning annual pole rental charges or the performance of make-ready work, from January 1, 1998 to the present, on poles owned or controlled by Gulf Power between Gulf Power and any other person, including but not limited to, Complainants, other cable operators, telecommunications carriers, or any other entity attached to poles owned or controlled by Gulf Power. Your response should include documents that identify all such make-ready work performed, including

installed equipment, subcontracts, service requests, work orders, time sheets, material costs and site diagrams or maps.

5. Produce all documents referring to, relating to, or regarding any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present, including Gulf Power requests for proposals.

6. Produce all documents referring to, relating to, or regarding formal or informal Gulf Power policies or field practices concerning utilization of cross-arms, extension arms, or boxing arrangements.

7. Produce all documents referring to, relating to, or regarding approvals or denials of requests to employ cross-arms, extension arms, or boxing arrangements by Gulf Power or any other entity attaching to Gulf Power-owned or -controlled poles.

8. Produce all documents referring to, relating to, or regarding pole change-outs performed for Complainant cable operators since 1998, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

9. Produce all documents referring to, relating to, or regarding pole change-outs necessitated by Gulf Power's core electricity service requirements, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

10. Produce all documents referring to, relating to, or regarding pole change-outs requested by third parties, including but not limited to communications attachers, including documents that identify all such work performed, including installed

equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

11. Produce all documents identifying all engineers, technicians, and/or workmen who performed any type of work, labor or service relating to change-outs of Gulf Power-owned or -controlled poles, and identifying the material costs, work, labor, or service that was performed and when it was performed.

12. Produce all documents referring to, relating to, or regarding refusals by Gulf Power to change-out a pole and identify all persons who participated in the decision, including but not limited to Gulf Power managers, engineers, technicians and/or workmen.

13. Produce all documents referring to, relating to, or regarding Gulf Power's procedures for changing-out a pole and identify all persons who participated in the development of such procedures.

14. Produce all documents referring to, relating to, or regarding Gulf Power's pole inventory records, including but not limited to documents relating to Gulf Power policies and procedures for maintaining its pole inventory.

15. Produce all documents referring to, relating to, or regarding Gulf Power's purchasing, sharing, pooling, or other arrangements for utilizing inventories of poles with affiliated corporations, parents, subsidiaries, and other organizations or operating units.

16. Produce all documents referring to, relating to, or regarding the Safety Space and Gulf Power specifications, regulations and/or policies implementing the Safety Space on poles owned or controlled by Gulf Power.

17. Produce any and all joint use pole agreements, including but not limited to all drafts thereof, between Gulf Power and other entities.

18. Produce any and all pole attachment agreements, including but not limited to all drafts thereof, between Gulf Power and any other entities, including Complainants, other attachers, and Gulf Power's affiliated corporations, parents, subsidiaries, divisions and other organizations or operating units, and their predecessors and successors-in-interest.

19. Produce any and all documents referring to, relating to, regarding or comprising a bona fide development plan or plans, including but not limited to all drafts thereof, that reasonably and specifically projects a need for pole space in the provision of Gulf Power's core utility service, including all documents that refer or relate to those documents that comprise the bona fide development plan or plans.

20. Produce all documents referring to, relating to, or regarding correspondence from Gulf Power to Complainants reserving pole space for future use for its core electricity operations.

21. Produce all documents that constitute Gulf Power's pole specifications book (whether it is called "standard distribution specifications," "overhead construction specifications," or another title), including but not limited to all drafts thereof, in effect between January 1, 1998 and the present. In the event Gulf Power revised the specifications book between January 1, 1998 and the present, produce all versions of the specifications book in effect during this period.

22. Produce all documents referring to, relating to, or regarding any pole loading data maintained by Gulf Power, including but not limited to weight and wind

loading, or pole loading program (including electronic computer programs) used by Gulf Power.

23. Produce all documents referring to, relating to, or regarding Gulf Power's upgrades, modernization, or replacement of its poles from 1998 through the present.

24. Produce all documents referring to, relating to, or regarding the facts, data, calculations and other information that support Gulf Power's claim for a pole attachment rental rate in excess of marginal cost.

25. Produce all documents referring to, relating to, or regarding any maps, diagrams, schematics, or depictions of the specific Gulf Power poles that You claim are at "full capacity," "crowded," or have "insufficient capacity" or a "lack of capacity."

26. Produce all documents referring to, relating to, or regarding any actual losses experienced by Gulf Power that it claims are associated with Complainants' pole attachments on Gulf Power poles, including any documents pertaining to any "higher valued use" or "another buyer of the space waiting in the wings" as described in *Alabama Power v. FCC*.

27. Produce all documents referring to, relating to, or regarding the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating pole attachment rental rates in excess of marginal cost.

28. Produce all documents referring to, relating to, or regarding negotiations between communications attachers and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

29. Produce all documents referring to, relating to, or regarding negotiations between joint users (*e.g.*, an incumbent local exchange carrier) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

30. Produce all documents referring to, relating to, or regarding negotiations between non-Section 224, non-joint user attachers (*e.g.*, R. L. Singletary, Inc. and Crest Corporation) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

31. Produce all documents referring to, relating to, or regarding cost methodologies, or concepts from or portions of cost methodologies, other than the Sales Comparison Approach, Current Replacement Cost Approach and the Federal Concessions Leasing Model, that Gulf Power may seek to use to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

32. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Sales Comparison Approach to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

33. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Current Replacement Cost Approach to determine a pole attachment

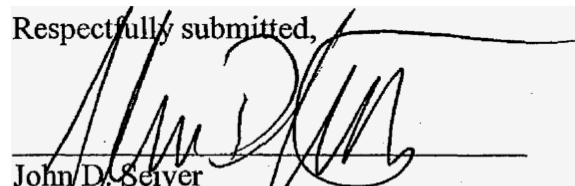
rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

34. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Federal Concessions Leasing Model to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

35. Produce all documents and other materials that relate to or were referenced in your answers to Complainants' First Set of Interrogatories.

Michael A. Gross
Vice President,
Regulatory Affairs and
Regulatory Counsel
**FLORIDA CABLE
TELECOMMUNICATIONS ASS'N, INC.**
246 East Sixth Ave., Suite 100
Tallahassee, FL 32303
(850) 681-1990

Respectfully submitted,



John D. Seiver
John Davidson Thomas
Geoffrey C. Cook
Brian M. Josef
COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 659-9750

Counsel for

**FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
COX COMMUNICATIONS GULF COAST,
L.L.C., COMCAST CABLEVISION OF
PANAMA CITY, INC., MEDIACOM
SOUTHEAST, L.L.C., and BRIGHT HOUSE
NETWORKS, L.L.C.**

February 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complainants' First Set Of Requests For Production Of Documents To Gulf Power Company* has been served upon the following by electronic mail, telecopier and U.S. Mail on this the 1st day of February, 2005:

J. Russell Campbell
Eric B. Langley
Jennifer M. Buettner
BALCH & BINGHAM LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203-2015
Via Fax: (205) 226-8798

Ralph A. Peterson
BEGGS & LANE, LLP
501 Commendancia Street
Pensacola, Florida 32591
Via Fax: (850) 469-3330

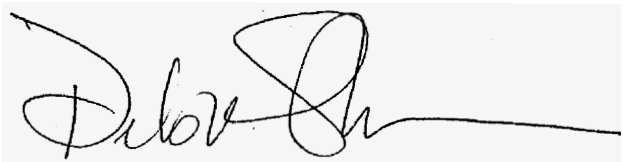
Rhonda Lien
Federal Communications Commission
445 12th Street, S.W. – Room 4-C266
Washington, D.C. 20554
Via Fax: (202) 418-0435

James Shook
Federal Communications Commission
445 12th Street, S.W. – Room 4-A460
Washington, D.C. 20554
Via Fax: (202) 418-0435

Lisa Griffin
Federal Communications Commission
445 12th Street, S.W. – Room 5-C828
Washington, D.C. 20554
Via Fax: (202) 418-0435

Shiela Parker
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Via Fax: (202) 418-0195

David H. Solomon
Federal Communications Commission
445 12th Street, S.W. – Room 7-C485
Washington, D.C. 20554



Debra Sloan