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COMMISSION CLERK

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

FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION,  
INC.,

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

**GULF POWER COMPANY'S RESPONSES TO COMPLAINANTS'  
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Gulf Power Company ("Gulf Power") responds to Complainants' Second Set Of Requests For Production Of Documents as follows:

**GENERAL RESPONSES AND OBJECTIONS**

- Gulf Power objects to each and every request for production to the extent it exceeds the Presiding Judge's August 4, 2005 Discovery Order, which provides: "[P]roduction of documents at this point should be limited to documents which are reasonably expected to be used in depositions or in cross-examination of key witnesses, and which have not already been produced." (Discovery Order, p. 20).
- Gulf Power objects to each and every request for production to the extent it seeks information protected by the attorney-client privilege or work-product doctrine.
- By responding to any particular request for production, Gulf Power does not waive its objections.
- Gulf Power reserves the right to supplement and/or amend these responses and objections.

**SPECIFIC RESPONSES AND OBJECTIONS**

- Produce, and specify by Bates number, all documents referring to any instance, from 1998 through the present, in which Gulf Power was unable to accommodate additional attachments, either by third parties or by Gulf Power itself, on poles already containing Complainants' attachments.

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**RESPONSE:** The documents which would reflect instances where Gulf Power could not accommodate an additional attacher on a pole already occupied by complainants would be Gulf Power's make-ready documents, made available for inspection and copying during the May 27-28, 2005 document review. None of these documents have been Bates labeled.

2. Produce, and specify by Bates number, all documents referring to the actual costs that Gulf Power has incurred annually because of Complainants' attachments (including per-pole costs and aggregate costs), as reflected in its accounting books or records of expenses, from 1998 through the present.

**RESPONSE:** Gulf Power objects to this request on the grounds that it is vague and ambiguous. Subject to and without waiving these objections, the documents which would reflect costs incurred as a result of complainants' attachments are the make-ready work orders produced during the May 27-28, 2005 document review.

3. Produce, and specify by Bates number, all documents referring to compensation that Gulf Power has received from each of the Complainants from 1998 through the present.

**RESPONSE:** Gulf Power objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving these objections, Gulf Power provides the following billing/payment summaries for 2000 through the present:

<u>Cable Company</u>	<u>Billing Description</u>	<u>Date Rec by cable company</u>	<u>Amount Billed</u>	<u>Payments Received</u>
COX	143-99504 253-331			
	July 2000 Semi Annual Bill	7/6/2000	1,176,092.06	191,586.20
00-466	3rd Quarter 2000 Interim Bill		3,167.19	1,135.96
00-651	4th Quarter 2000 Interim Bill	1/8/2001	436.23	136.19
01-668	January 2001 Semi Annual Bill	1/17/2001	1,180,716.35	192,339.50
01-270	1st Quarter 2001 Interim Bill	4/26/2001	3,990.26	824.59
01-427	2nd quarter Interim billing	7/7/2001	831.56	220.00
01-429	Backbilling per 2001 pole Audit	7/10/2001	214,109.81	80,280.18
01-451	July 2001 Semi Annual bill	7/14/2001	1,265,786.20	194,255.30
01-636	3rd Quarter 2001 Interim Bill	10/9/2001	1,436.02	288.38
02-003	4th Quarter 2001 Interim Bill	1/4/2002	2,653.02	546.82
02-029	January 2002 Semi Annual Bill	1/15/2002	1,321,672.10	201,831.70
02-209	1st Quarter 2002 Interim Bill	4/19/2002	2,784.68	380.64
02-383	2nd quarter Interim billing	7/10/2002	1,606.26	330.87
02-389	July 2002 Semi Annual bill	7/11/2002	1,327,518.50	202,724.50
02-630	3rd quarter interim billing 2002		1,833.08	387.55
03-039	4th Quarter Interim bill		1,020.48	271.22
03-046	January 2003 Semi Annual bill		1,332,857.40	203,539.80
03-212	1st quarter 2003 Interim billing	5/15/2003	1,198.56	246.61
03-334	2nd quarter Interim billing		427.73	113.63

03-341	July 2004 Semi Annual		1,335,537.00	204,507.76
03-605	4th quarter interim billing		5,551.38	1,166.38
04-004	Jan 2004 semi annual bill		1,343,230.70	205,123.90
04-218	2nd quarter Interim billing		6,045.20	1,218.87
04-247	July 2004 Semi Annual		1,350,315.40	206,205.80
04-514	4th quarter interim bill		4,252.58	
05-009	January 2005 semi annual bill	1/18/2005	1,354,558.10	206,853.70
05-210	1st quarter interim bill		6,052.55	
05-278	2nd quarter Interim billing	7/15/2005	609.28	
05-282	July 2005 semi annual bill	7/16/2005	1,364,890.80	
	Prior monthly interest		5,079,627.61	2,873.80

<u>Cable Company</u>	<u>Billing Description</u>	<u>Date Rec by cable company</u>	<u>Amount Billed</u>	<u>Payments Received</u>
<b>Comcast</b>				
<b>JOIN</b>	143-99502 253-302			
	July 2000 Semi Annual Bill	7/11/2000	22,062.50	22,062.50
01-672	January 2001 Semi Annual Bill	1/11/2001	134,351.80	22,062.50
01-431	Backbilling per 2001 pole Audit	7/11/2001	46,459.29	25,882.85
01-449	July 2001 Semi Annual bill	7/16/2001	134,351.80	22,062.50
02-027	January 2002 Semi Annual Bill	1/18/2002	155,883.70	23,996.88
02-387	July 2002 Semi Annual bill	7/13/2002	155,883.70	23,996.88
03-044	January 2003 Semi Annual bill		155,883.70	23,996.88
03-339	July 2003 Semi annual bill		155,883.70	21,693.18
04-002	Jan 2004 semi annual bill		155,883.70	23,996.88
04-245	July 2004 semi annual bill		155,883.70	23,996.00
05-005	Jan 2005 semi annual bill		155,883.70	23,996.87
				(257.00)
05-294	July 2005 semi annual bill	7/16/2005	155,883.70	
	Prior Interest Billings to Date		485,732.78	
	<b>TOTAL</b>		<b>2,070,027.77</b>	<b>257,486.92</b>

<u>Cable Company</u>	<u>Billing Description</u>	<u>Date Rec by cable company</u>	<u>Amount Billed</u>	<u>Payments Received</u>
<b>Comcast of</b>				
<b>PC</b>	143-99501 253-301			
	July 2000 Semi Annual Bill	7/6/00	255,458.72	37,832.40
00-438	3rd Quarter 2000 Interim Bill		14.66	3.04
00-650	4th Quarter 2000 Interim Bill	1/8/01	197.25	45.09
01-667	January 2001 Semi Annual Bill	1/17/01	256,334.10	38,052.75
01-425	2nd quarter Interim billing	7/9/01	477.11	135.92

01-430	Backbilling per 2001 pole Audit		99,281.98	42,037.36
01-448	July 2001 Semi Annual bill	7/16/01	274,902.60	38,256.15
02-026	January 2002 Semi Annual Bill	1/18/02	296,319.10	41,236.53
02-206	1st quarter Interim billing	4/23/02	492.84	492.84
02-381	2nd quarter Interim billing	7/14/02	153.04	35.07
02-386	July 2002 Semi Annual bill	7/13/02	297,293.50	41,372.13
03-043	January 2003 Semi Annual bill		297,293.50	41,372.13
03-214	1st quarter 2003 Interium billing	5/17/03	346.69	149.56
03-332	2nd quarter Interim billing		157.27	
03-338	July 2003 Semi annual bill		298,064.90	41,149.48
03-608	4th Quarter interim bill		836.87	172.13
04-001	Jan 2004 semi annual bill		298,978.40	45,884.38
04-244	July 2004 semi annual bill		300,825.70	41,863.00
	2nd quarter Interim billing		2,502.64	157.27
04-511	4th quarter interim bill		119.57	14.13
05-004	January 2005 semi annual bill		300,927.20	41,877.80
05-231	1st quarter Interim billing		17.57	17.57
05-293	July 2005 Interim billing	7/16/05	300,927.20	
	Prior Interest Billings to Date		1,133,330.15	
	<b>TOTAL</b>		<b>4,415,252.56</b>	<b>452,156.73</b>

### MediaCom

<u>Billing Description</u>	<u>Date Rec by cable company</u>	<u>Amount Billed</u>	<u>Payments Received</u>
143-99508 253-333			
July 2000 Semi Annual Bill	7/6/2000	223,298.02	35,084.66
4th Quarter 2000 Interim Bill		1,193.76	260.13
January 2001 Semi Annual Bill	1/11/2001	227,084.99	37,041.55
1st Quarter 2001 Interim bill	4/26/2001	3,162.47	696.67
2nd quarter Interim billing	7/9/2001	1,617.98	1,617.98
Backbilling per 2001 pole Audit	7/10/2001	147,711.48	68,451.08
July 2001 Semi Annual bill	7/14/2001	253,973.30	38,636.65
January 2002 Semi Annual Bill	1/15/2002	285,296.20	42,021.46
1st quarter Interim billing	4/19/2002	137.14	137.14
2nd quarter Interim billing	7/11/2002	397.28	104.65
July 2002 Semi Annual bill	7/11/2002	286,189.40	42,153.02
3rd quarter interim bill	10/2/2002	1,147.86	239.40
4th quarter interim billing		1,264.83	85.19
January 2003 Semi Annual Bill		289,599.80	43,205.50
1st quarter interim billing		742.45	15.72
2nd quarter Interim billing		5,995.39	193.42
July 2003 Semi annual bill		293,335.00	43,205.50
4th quarter 2003 interim bill		807.13	177.72
Jan 2004 semi annual bill		294,735.70	43,411.81
July 2004 semi annual bill		294,735.70	43,411.81
Bought Mallard's attachemnts Feb 2004		91,690.60	
4th quarter interim billing		1,033.05	
Jan 2005 semi annual bill	1/12/2005	346,297.70	
1st Quarter 2001 Interim bill		143.58	

2nd quarter Interim billing		165.45	
July 2005 semi annual bill	7/16/2005	347,881.10	
Prior Interest Billings to Date		1,154,431.31	17,576.53
<b>TOTAL</b>		<b>4,554,068.67</b>	<b>457,727.59</b>

<u>Cable Company</u>	<u>Billing Description</u>	<u>Date Rec by cable company</u>	<u>Amount Billed</u>	<u>Payments Received</u>
<b>Bright House</b>	143-99510 253-326			
Defuniak Springs				
	January 2001 Semi Annual Bill	1/12/01	98,499.28	16,304.40
01-267	1st Quarter 2001 Interim Bill	4/27/01	143.97	25.20
01-437	Backbilling per 2001 pole Audit	7/12/01	3,016.86	1,108.92
04-457	July 2001 Semi Annual bill	7/18/01	98,651.52	16,329.60
01-635	3rd Quarter 2001 Interim Bill		233.98	33.13
02-002	4th Quarter 2001 Interim Bill	1/10/02	1,570.26	221.69
02-035	January 2002 Semi Annual Bill	1/16/02	108,726.80	16,871.40
02-396	July 2002 Semi Annual bill	7/12/02	108,726.80	16,871.40
02-631	3rd Quarter 2002 Interim Bill		3,830.71	712.70
03-053	January 2003 Semi Annual bill		108,726.80	16,871.00
03-331	2nd quarter interim billing		90.75	14.07
03-348	July 2003 Semi annual bill		109,051.60	16,921.80
03-606	4th quarter 2003 interium annual bill		363.24	84.76
04-010	Jan 2004 semi annual bill		109,701.20	17,022.60
04-253	July 2004 semi annual bill		109,701.20	17,022.60
04-219	2nd quarter interim billing		430.66	94.72
05-015	January 2005 seni annual bill	1/18/05	109,701.20	17,022.60
05-209	1st Quarter 2001 Interim Bill		38.70	
05-288	July 2005 semi annual bill	7/19/05	109,782.40	
	Prior Interest Billings to Date		337,742.69	
<b>TOTAL</b>			<b>1,418,730.62</b>	<b>153,532.59</b>

<u>Cable Company</u>	<u>Billing Description</u>	<u>Date Rec by cable company</u>	<u>Amount Billed</u>	<u>Payments Received</u>
<b>Bright House</b>	143-99511 253-334			
Cantonment				
	July 2000 Semi Annual Bill			
01-675	January 2001 Semi Annual Bill	01/12/01	160,670.29	26,595.45
01-464	Backbilling per 2001 pole Audit	07/12/01	24,144.03	11,734.91
01-458	July 2001 Semi Annual bill	07/18/01	160,670.29	26,595.00
02-036	January 2002 Semi Annual Bill	01/16/02	178,782.10	27,742.05
02-397	July 2002 Semi Annual bill	07/12/02	178,782.10	27,742.05
03-040	4th quarter interim billing		5.56	
03-054	January 2003 Semi Annual bill		181,644.40	28,186.00
03-331	2nd quarter interim		28.13	4.36
03-349	July 2003 Semi annual bill		181,867.70	28,220.85

04-011	Jan 2004 semi annual bill		181,867.70	28,220.85
04-254	July Semi Annual bill		182,517.30	28,321.65
05-016	Jan 2005 semi annual bill		182,517.30	28,321.65
05-289	July 2005 semi annual bill	7/19/2005	182,517.30	
	Prior Interest Billings to Date		561,882.05	
	<b>TOTAL</b>		<b>2,357,896.25</b>	<b>261,684.82</b>

4. Produce, and specify by Bates number, all documents referring to Gulf Power poles that have been changed out from 1998 to the present at Complainants' request, including documents referring to compensation received by Gulf Power from Complainants for such change-outs.

**RESPONSE:** Gulf Power objects to this request on the grounds that compensation for change-outs and make-ready are irrelevant to the hearing issues. Subject to and without waiving this objection, all of the requested documents relating to change-outs and make-ready were made available for inspection and copying during the May 27-28, 2005 document review. With reasonable notice and coordination, Gulf Power will again make those documents available.

5. Produce, and specify by Bates number, all documents referring to Gulf Power poles containing Complainants' attachments that have been changed out from 1998 to the present at the request of cable television attachers other than Complainants, including documents referring to compensation received by Gulf Power from such entities for such change-outs.

**RESPONSE:** Gulf Power objects to this request on the grounds that compensation for change-outs and make-ready are irrelevant to the hearing issues. Subject to and without waiving this objection, all of the requested documents relating to change-outs and make-ready were made available for inspection and copying during the May 27-28, 2005 document review. With reasonable notice and coordination, Gulf Power will again make those documents available.

6. Produce, and specify by Bates number, all documents referring to make-ready work (other than change-outs) performed at Complainants' request on Gulf Power poles from 1998 to the present, including documents referring to compensation received by Gulf Power from Complainants for such make-ready work.

**RESPONSE:** Gulf Power objects to this request on the grounds that compensation for change-outs and make-ready are irrelevant to the hearing issues. Subject to and without waiving this objection, all of the requested documents relating to change-outs and make-ready were made available for inspection and copying during the May 27-28, 2005 document review. With reasonable notice and coordination, Gulf Power will again make those documents available.

7. Produce, and specify by Bates number, all documents referring to make-ready work (other than change-outs) performed at the request of cable television attachers other than Complainants on Gulf Power poles containing Complainants' attachments from 1998 to the present, including documents referring to compensation received by Gulf Power from such cable television attachers for such make-ready work.

**RESPONSE:** Gulf Power objects to this request on the grounds that compensation for change-outs and make-ready are irrelevant to the hearing issues. Subject to and without waiving this objection, all of the requested documents relating to change-outs and make-ready were made available for inspection and copying during the May 27-28, 2005 document review. With reasonable notice and coordination, Gulf Power will again make those documents available.

8. Produce, and specify by Bates number, all documents referring to Gulf Power's upgrades, modernization, strengthening, or replacements of poles containing Complainants' attachments from 1998 through the present, including documents referring to money Gulf Power obtained to pay for such upgrades, modernization, strengthening, or replacements.

**RESPONSE:** Gulf Power objects to this request for production on the grounds that it is overly broad, unduly burdensome, vague, and seeks information which is irrelevant to the hearing issues.

9. Produce, and specify by Bates number, all documents which Gulf Power relied or relies upon when it contended, in its Description of Evidence, that "Gulf Power intends to present evidence of the number of occasions in the past few years in which it was required to change-out a pole, for its own core business purposes, due to capacity, where it would not have needed to do so in the absence of CATV or Telecom attachments."

**RESPONSE:** Gulf Power was not relying upon any documents for this contention. This evidence will be in the form of testimony. See also response to interrogatory number 30.

10. Produce, and specify by Bates number, all documents which Gulf Power relied or relies upon when it contended, in its Description of Evidence, that it intends to submit "photographic and engineering evidence depicting attachment arrangements on distribution poles" and that it "seeks to introduce evidence of what actual distribution poles look like."

**RESPONSE:** See Bates labeled documents Gulf Power 02405 - 02420. Gulf Power also intends to submit photographs and engineering information collected during the Osmose audit.

11. Produce, and specify by Bates number, all documents which Gulf Power relied or relies upon when it contended, in its Description of Evidence, that it “seeks to introduce precise, yet simple, testimony (from fact and expert witnesses) regarding the crowding on its network of poles, and the rivalrous nature of its finite pole space.

**RESPONSE:** Gulf Power was not relying upon any documents other than the *Alabama Power v. FCC* opinion, which denied Alabama Power’s claim, in part, because “nowhere in the record did APCo allege that APCo’s network of poles is currently crowded.” 311 F.3d 1357, 1370 (11<sup>th</sup> Cir. 2002).

12. In light of the Presiding Judge’s ruling that “this hearing is limited to ‘reasonable compensation’ from rates charged for Complainants’ CATV attachments” and his order excluding as irrelevant evidence “relating to non-CATV attachments,” produce, and specify by Bates number, all documents which Gulf Power relied or relies upon in making its contention, in its Description of Evidence, that there is an “unregulated market for pole space,” to the extent that that contention applies to CATV attachments.

**RESPONSE:** Gulf Power does not interpret the Discovery Order to mean that evidence regarding what other attachers pay for the same space occupied by complainants will be excluded as irrelevant. This would be legally incorrect, and at odds with Gulf Power’s burden to demonstrate a more appropriate alternative rate.<sup>1</sup> Gulf Power relied, in part, upon the attachment agreements and billing information for attachers paying more than complainants. These documents are within Bates range Gulf Power 00826 - 2309, and other such documents were made available at the May 27-28, 2005 document review.

13. Produce, and specify by Bates number, all documents referring to the “other evidence bearing on the factors set forth in the Eleventh Circuit’s test, as Gulf Power claimed it had in its Description of Evidence.

**RESPONSE:** There was not a specific document or category of documents in mind when Gulf Power said in January 2004 that it intended to present “other evidence bearing on the factors set forth in the Eleventh Circuit’s test.” To the extent complainants, through this request, seek to avoid any “surprises” at trial, Gulf Power either has produced or will produce (in the case of the Osmose audit and experts) all documents it intends to offer at trial.

14. Produce, and specify by Bates number, all documents referring to sources (i.e., Gulf Power’s own inventory, the inventories of ILECs with whom Gulf Power has joint use agreements, or other, third-party suppliers) from which Gulf Power

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<sup>1</sup> Furthermore, in other parts of the Discovery Order, the Presiding Judge requires further disclosure of information relating to non-CATV attachers. (See, e.g., Discovery Order, pp. 5 & 8).



has obtained new poles, from 1998 through the present, in order to change-out poles containing Complainants' attachments.

**RESPONSE:** Gulf Power objects to this request on the grounds that it seeks information which is not relevant to the hearing issues.

15. Produce, and specify by Bates number, all documents, including maps, diagrams, or schematics, which existed prior to Gulf power's retention of its consultant Osmose in February 2005, that depict the specific Gulf Power poles containing Complainants' attachments that Gulf Power contends were or have been at "full capacity."

**RESPONSE:** Gulf Power made all such documents available during the May 27-28, 2005 document review. Certain of these documents were among those copied for complainants following the document review, at complainants' request.

16. Produce all Gulf Power documents, including cost records or other accounting data, that reflect payment to Gulf Power by a cable television attacher other than Complainants' of an annual pole rental rate higher than that paid by Complainants.

**RESPONSE:** Gulf Power already produced a number of CATV attachment agreements reflecting payment to Gulf Power in excess of the rents paid by complainants.

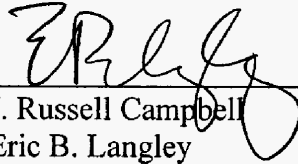
17. Produce, and specify by Bates number, all documents upon which Gulf Power relied in filing its Description of Evidence that it has not already produced to Complainants and that it has not already specified in response to previous requests in this Second Request for Production of Documents.

**RESPONSE:** Gulf Power has produced and/or identified in this response all such documents.

18. Produce, and specify by Bates number, all documents concerning pole space reserved for future use for "core electricity operation" that would be a further response to Interrogatory No. 34, including any Southern Company or affiliate distribution construction specifications, guidelines or standards contained in or part of any book, manual or other documentary compilation.

**RESPONSE:** Gulf Power objects to this request on the grounds that it is vague. Subject to and without waiving this objection, the two documents given to (or available to) attachers which address reserved space are the "spec plates" (Gulf Power 00815 - 00826) and the National Electric Safety Code.

Respectfully submitted,



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J. Russell Campbell

Eric B. Langley

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**Counsel for Respondent**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Responses To Complainants' Second Set Of Request For Production Of Documents has been served upon the following by Electronic Mail and by United States Mail on this the *26<sup>th</sup>* day of August, 2005:

Lisa Griffin Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 <b>Via E-mail</b>	Shiela Parker Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 <b>Via E-mail</b>
Rhonda Lien Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 <b>Via E-mail</b>	Marlene H. Dortch, Secretary Federal Communications Commission Office of the Secretary 445 12th Street, SW Washington, D.C. 20554
James Shook Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 <b>Via E-mail</b>	David H. Solomon Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554
Director, Division of Record and Reporting Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 32399-0850	Federal Energy Regulatory Commission Docket Room 1A-209 888 First Street, NE Washington, D.C. 20426
John D. Seiver Geoffrey C. Cook Rita Tewari COLE, RAYWID & BRAVERMAN 1919 Pennsylvania Avenue, N.W. Suite 200 Washington, D.C. 20006 <b>Via E-mail</b>	John W. Berresford Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

  
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OF COUNSEL