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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION APR -3 AM 11:20
WASHINGTON, D.C. 20554

COMMISSION
CLERK

Bright House Networks, LLC,

Complainant

v.

Tampa Electric Company,

Respondent.

060000

File No. EB-06-MD-003


To: Enforcement Bureau
Market Disputes Resolution Division

**MOTION TO AMEND POLE ATTACHMENT COMPLAINT
AND DECLARATION OF EUGENE WHITE**

Bright House Networks, LLC, hereby moves to file the accompanying **AMENDMENT TO POLE ATTACHMENT COMPLAINT AND DECLARATION OF EUGENE WHITE**. Good cause exists to grant Bright House Networks' motion and Tampa Electric Company will suffer no prejudice as a result of granting it. The amendment merely corrects a technical error in the Complaint and Declaration and, as such, will assist both the parties and the Commission in resolving the underlying matter on a complete and accurate record.

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

Respectfully submitted,



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March 28, 2006

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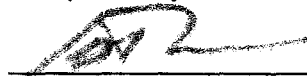
Respondent.

File No. EB-06-MD-003

**AMENDMENT TO POLE ATTACHMENT COMPLAINT
AND DECLARATION OF EUGENE WHITE**

For a complete and accurate record in this proceeding, two technical amendments are necessary to Bright House Networks, LLC's Pole Attachment Complaint filed against Tampa Electric Company on February 21, 2006 and the declaration of Eugene White attached thereto. At **paragraph 16 of the Complaint** and **paragraph 12 of Eugene White's declaration** the referenced year should be **1998** not 1989. Corrected pages of the Complaint and declaration are attached.

Respectfully submitted,



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15. BHN is currently attached to approximately 160,000 TECO poles in order to provide its array of cable communications services to its subscribers, including "Digital Phone." See White Declaration at ¶ 10; Exh. 2, at 3.

16. One of BHN's commercial customers is a telecommunications carrier that uses 7,375 of BHN's attachments to TECO's poles to provide circuit-switched telecommunications services to customers. See White Declaration at ¶ 13. BHN made TECO aware of this arrangement and the service provided over the leased capacity in 1998. See White Declaration at ¶ 12.

17. BHN made its attachments to TECO's poles pursuant to a pole attachment agreement between BHN and TECO, under which BHN pays TECO an annual rental rate for the attachments made to its utility poles. See Exh. 1.

18. On or about February 18, 2004, BHN committed to negotiating a new pole attachment agreement with TECO in order to consolidate ten (10) pole attachment agreements between the two companies and their predecessors dating back to 1965. Those negotiations were scheduled to be completed by June 1, 2004. See White Declaration at ¶ 7.

19. Those negotiations ultimately stalled on or about November 21, 2005 once TECO demanded that BHN pay a "telecommunications rate" for BHN attachments to approximately 160,000 poles because BHN was providing "Digital Phone" cable VoIP service on those attachments. ^{1/}

20. On November 21, 2005, TECO's Vice President for Energy Delivery, Thomas Hernandez, sent BHN a letter demanding that BHN immediately pay

^{1/} The FCC's "telecommunications rate" formula is specified at 47 U.S.C. § 224(e) and 47 C.F.R. 1.1404(e)(2) and shall be referred to herein as the "Telecom Rate."

9. Specifically, TECO's lawsuit is to collect back rental payments for that five-year period during which it asserts that BHN provided telecommunications service subject to the telecommunications service pole-attachment rate across its entire cable network.

10. This network contacts approximately 160,000 TECO poles across BHN's (and TECO's) service area. The principal basis for TECO's allegation is that BHN's "Digital Phone" product – in its view – constitutes a telecommunications service.

11. For the 2005 annual rental period alone, for example, TECO seeks to recover nearly two (2) million dollars in back rental payments on this theory. TECO arrived at this sum by calculating the difference between the rental assessed and paid by BHN under the \$5.63 rate applicable to attachments used to provide cable services (*i.e.*, the Cable Rate) and that which, according to TECO, BHN incurred and owed under the \$17.87 rate applicable to attachments used to provide telecommunications service (*i.e.*, the Telecom Rate). All told, TECO seeks to recover nearly seven (7) million dollars of allegedly outstanding rental payments it claims are due under the Telecom Rate formula for all of its approximately 160,000 pole attachments for a five year period stretching from 2005 back to 2001. This is a wildly inflated claim.

12. As part of this effort, TECO additionally claims that a fiber-optic capacity arrangement that BHN has with a commercial customer also entitles it to the higher attachment rate applicable to attachments used to provide telecommunications service. It is my understanding that this BHN customer uses its leased capacity to provide certain traditional circuit-switched telecommunications services to *its* customers.

BHN made TECO aware of this arrangement and the service provided over the leased capacity in **1998**.

13. Assuming that BHN's customer does provide traditional, circuit-switched telecommunications service, it would thus appear that BHN would be obliged to pay a higher Telecom Rate than the standard Cable Rate. There are 7,375 of these poles in our system – not 160,000 – and the rate should be no greater than \$8.56 per pole for 2005, not the \$17.87 that TECO asserts. (In addition, the Cable Rate that TECO has been charging may have been too high.) Before TECO sued BHN in state court, we sought to discuss this issue with TECO on or about December 8, 2005. Since the initiation of its lawsuit, BHN again attempted to satisfy TECO's back rental payment invoices as they relate to our customer's provision of telecommunications services by offering TECO payment of \$67,791.20, representing 7,375 poles at the Telecom Rate for the five-year period for which TECO seeks back pole attachment rent (less rental payments made under the Cable Rate).

14. TECO has yet to accept BHN's offer.

15. With respect to BHN's "Digital Phone" VoIP service, this service operates very differently from traditional circuit-switched services, and has not been treated or declared a telecommunications service by the FCC and thus is not a telecommunications service for the purpose of pole attachment rate calculations.

16. BHN began offering subscribers its "Digital Phone" service in January 2005. Thus, BHN did not provide that service during **four** years of the five-year period for which TECO seeks back rental payments (*i.e.*, 2001, 2002, 2003 and 2004).

CERTIFICATE OF SERVICE

I, Christie Poff, hereby certify that on this 28th day of March, 2006, I have had hand-delivered and/or placed in the United States mail, and/or sent via electronic mail, a copy or copies of the foregoing **MOTION TO AMEND POLE ATTACHMENT COMPLAINT AND DECLARATION OF EUGENE WHITE** and **AMENDMENT TO POLE ATTACHMENT COMPLAINT AND DECLARATION OF EUGENE WHITE**, with sufficient postage (*where necessary*) affixed thereto, upon the following:

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Washington, D.C. 20554

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A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a horizontal line extending to the right.