

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS,*
LLC D/B/A AT&T FLORIDA *

Complainant, *

v. *

FLORIDA POWER AND LIGHT
COMPANY, *

Respondent. *

Proceeding No. 19-187
Bureau ID No.: EB-19-MD-006

RECEIVED-FPSC
2019 JUL 16 AM 8:35
COMMISSION
CLERK

**FLORIDA POWER & LIGHT COMPANY'S OPPOSITION
AND OBJECTIONS TO AT&T'S FIRST SET OF INTERROGATORIES**

Defendant Florida Power and Light Company ("FPL"), pursuant to Rule 1.730, submits the following objections to the "First Set of Interrogatories" served by Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T").

Opposition

FPL disagrees with AT&T's claim that, "[t]he information sought in each Interrogatory is necessary to the resolution of this dispute, or will become necessary to the resolution of this dispute should FPL seek to rebut the presumption set forth at 47 C.F.R. § 1.1413(b)" AT&T's First Set of Interrogatories, p.1. Many of the interrogatories seek information that not only is unnecessary to the resolution of this dispute, but also irrelevant to any potential claim or defense in this proceeding, as set forth more fully below.

General Objections

FPL objects to AT&T's First Set of Interrogatories to the extent that they violate the scope, purpose and limitations set forth in Rule 1.730.

FPL objects to AT&T's First Set of Interrogatories insofar as they, in essence, ask for FPL's full, substantive response to the complaint within the deadline for responding to the interrogatories.

FPL generally objects to AT&T's First Set of Interrogatories insofar as AT&T's filing of its complaint was inappropriate given that AT&T never discussed or attempted to discuss the possibility of settlement with FPL with respect to the issues raised by the complaint prior to the initiation of this proceeding as required by 47 C.F.R. § 1.722. FPL intends to explain in a separately filed motion why this proceeding should be stayed because of AT&T's failure to comply with the Commission's pre-filing requirements.

Objections to Definitions

FPL objects to the definition of "FPL" on the grounds that it is overly broad and unduly burdensome and, if applied literally within each interrogatory, would seek information that is protected by the attorney-client privilege and work-product doctrine, would thwart the purpose of consulting and testifying experts, and would seek information that is not relevant to any claim or defense in this proceeding. AT&T defines "FPL" to mean "Florida Power & Light Company" and any persons associated with it, including but not limited to, each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, attorney, successors, predecessors, representatives, investigators, experts, employees, ex-employees, consultants, representatives and others who are in possession of, or who may have obtained, information for or on behalf of the above-mentioned persons or entities." *See* AT&T's First Set of Interrogatories, p. 2-3. There are many things improper about the scope of this definition but chief among them is that AT&T's definition of "FPL" would include several distinct legal entities and individuals over whom FPL has no control.

FPL objects to the definition of the term “identify” on the grounds that it would render each interrogatory in which the term is used vague, overly broad, unduly burdensome and not reasonably calculated in scope. For example, the definition of “identify” when “referring to a document” not only would require type, author, addressee, date and subject but also would require “all present locations by address and custodian.” AT&T’s First Set of Interrogatories, p. 3. As another example, the definition of “identify” when “referring to data” not only would require type, vintage, and location of collection but also would require “the rules or guidelines governing its collection, and all facts, figures, measurements, and other data collected and analyses performed.” *Id.*

Objections to Individual Interrogatories

Interrogatory No. 2. State all facts on which you rely for your contention that the pole attachment rental rates for AT&T’s use of FPL’s poles provided in response to Interrogatory 1 are “just and reasonable” under 47 U.S.C. § 224(b).

Objection. FPL objects to this interrogatory as being overly broad, unduly burdensome and, if taken literally, would require FPL to answer the complaint within the deadline established for responses to interrogatories. Subject to and without waiving this objection, FPL intends to respond in summary fashion to this interrogatory within its interrogatory response deadline and to provide further facts in response to this interrogatory with its answer to the complaint. FPL will further supplement this response as additional facts are revealed through the course of discovery.

Interrogatory No. 3. Explain in detail what steps, if any, FPL has taken to ensure that its Joint Use Agreements and License Agreements comply with the “just and reasonable” rate

provision of 47 U.S.C. § 224(b), the *Pole Attachment Order*, the *Verizon Florida* decision, the *Dominion* decision, and the rate section of the *Third Report and Order* (Section III.C).

Objection. FPL objects to this interrogatory to the extent it presumes FPL is under some sort of affirmative burden to audit or test individual provisions within a Joint Use Agreement or License Agreement, insofar as the justness and reasonableness of a “rate” is inextricably intertwined with the “terms and conditions.” Thus, given that the interrogatory is premised upon several incorrect or incomplete representations of the law, FPL objects on the grounds that the interrogatory seeks information that is not relevant to any claim or defense in this proceeding. This interrogatory appears to have been propounded for an improper purpose such as delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in this proceeding. FPL further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. Moreover, the publicly available version of the *Dominion* decision is redacted which would make it impossible for FPL to adequately respond to the interrogatory insofar as it relates to this decision. Subject to and without waiving the forgoing objections, FPL intends to respond with a summary description of the steps taken to ensure that its annual pole attachment rentals charged to CATVs and CLECs are in compliance with the Commission’s rules.

Interrogatory No. 4. Beginning with the 2014 rental year, identify all entities that have had a Joint Use Agreement or License Agreement with FPL and state whether the entity is an incumbent local exchange carrier, CLEC, cable company, or wireless provider.

Objection. FPL objects to this interrogatory as the provisions of FPL's joint use agreements with other incumbent local exchange carriers are not relevant to any claim or defense in this proceeding.

Interrogatory No. 5. State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with FPL that were in effect at any time from the 2014 rental year forward. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with FPL and the dates on which the Joint Use Agreement or License Agreement with FPL was in effect.

Objection. FPL objects to this interrogatory as overly broad and unduly burdensome insofar as, if taken literally, it would require a recitation of each and every provision in each of the multiple agreements identified in response to interrogatory number 4 over an extended period of time. Further, as noted above, although FPL does not take exception to the relevance of CATV and CLEC pole license agreements (and, more specifically, how the provisions of those very basic agreements compare to the vastly more favorable access terms and conditions given to AT&T under the joint use agreement), the provisions of FPL's joint use agreements with other incumbent local exchange carriers are not relevant to any claim or defense in this proceeding. Finally, FPL does not share these types of agreements with third parties and keeps this information strictly confidential. If FPL were to share the requested information with AT&T, it would give AT&T an unfair competitive advantage over its competitors. This interrogatory again appears to have been propounded for an improper purpose such as obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in this proceeding.

Interrogatory No. 6. Beginning with the 2014 rental year, state the annual pole attachment rental rate that FPL charged each entity identified in response to Interrogatory 4, the number of poles or attachments for which the pole attachment rental rate was charged, and whether the entity uses FPL's poles pursuant to a License Agreement or a Joint Use Agreement. Include in your response the formula, calculations, inputs, assumptions, and source data used to calculate each pole attachment rental rate charged and state whether the rate was charged on a per-pole, per attachment, or other basis and whether the rate was paid.

Objection. *See* objections to interrogatory numbers 4 and 5 above. Furthermore, in its prayer for relief, AT&T requests that Commission "set the just and reasonable rate, effective as of the 2014 rental year, as the rate that is properly calculated in accordance with the new telecom rate formula." Complaint ¶ 40. Because the information sought by the above interrogatory is wholly irrelevant to the relief expressly sought by AT&T in this proceeding (*i.e.* a rate calculated in accordance with the new telecom rate formula), FPL objects to this interrogatory as seeking information irrelevant to AT&T's claims as articulated in its Complaint. Moreover, in the event that the Commission rules that AT&T is not similarly situated to other attaching entities, the rates that those other entities are charged would again be irrelevant to the resolution of this proceeding. *See also* Complaint ¶ 41 (requesting that the Commission "set the just and reasonable rate, effective as of the 2014 rental year, at a rate that is no higher than the rate that is properly calculated in accordance with the pre-existing telecom rate formula.").

Interrogatory No. 7. With respect to each License Agreement identified in response to Interrogatory 5, identify any advantage or benefit that FPL contends AT&T receives over and above those provided to the attaching entity. Include in your response, beginning with the 2014

rental year, a quantification of the annual monetary value of each such claimed advantage or benefit expressed on a per-pole basis, the language from each License Agreement that establishes or supports the claimed advantage or benefit, and all data, formulas, calculations, inputs, assumptions, and source data used to quantify the monetary value of each claimed advantage or benefit.

Objection. *See* objections to interrogatory numbers 4 and 5 above. Subject to and without waiving these objections, FPL intends to fully quantify the advantages to AT&T under its joint use agreement (or at least those advantages that demonstrate the reasonableness, if not favorability to AT&T as compared to FPL's CATV and CLEC licensees) in its answer to AT&T's Complaint.

Interrogatory No. 8. Beginning with the 2014 rental year, for each claimed advantage or benefit identified in response to Interrogatory 7, state by year the amount of money that FPL collected from each entity identified in response to Interrogatory 4 concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

Objection. *See* objections to interrogatory numbers 4 and 5 above. Subject to and without waiving these objections, FPL intends to fully quantify the advantages to AT&T under its joint use agreement (or at least those advantages that demonstrate the reasonableness, if not favorability to AT&T as compared to FPL's CATV and CLEC licensees).

Interrogatory No. 10. Identify all data regarding poles jointly used by FPL and AT&T, including all survey, audit or sampling data, concerning pole height, the average number of

attaching entities, the space occupied by FPL, AT&T, and any other entity. Include in your response when the data was compiled or collected, the entity or entities that compiled or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, guidelines, upon which the data was collected.

Objection. FPL objects to the above interrogatory to the extent that it seeks information regarding its pole infrastructure that is not relevant to the subject of AT&T's Complaint in this proceeding (*i.e.* the determination of whether or not the rates contained in the parties' joint-use agreements are "just and reasonable"). Subject to and without waiving the forgoing objection, FPL will produce information that is available to it and is both responsive to the above interrogatory and relevant to the claims and defenses in this proceeding. In addition, FPL will supplement this response as new information becomes available that is both responsive to the above interrogatory and relevant to the claims and defenses in this proceeding. However, FPL further objects to the above interrogatory as unduly burdensome to the extent it would require FPL to create data (*e.g.*, information regarding accuracy or collection of the information being provided) beyond what it keeps in the ordinary course of business.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC

/s/ William C. Simmerson

Charles A. Zdebski

Robert J. Gastner

William C. Simmerson

1717 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

(Tel) 202.659.6600

(Fax) 202.659.6699

czdebski@eckertseamans.com

Counsel to Florida Power and Light Company

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposition and Objections to AT&T's First Set of Interrogatories to be served on the following by hand delivery, U.S. mail or electronic mail (as indicated):

Christopher S. Huther, Esq.
Claire J. Evans, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
chuther@wileyrein.com
cevans@wileyrein.com
(Via e-mail on July 8, 2019)
Attorneys for BellSouth Telecommunications, LLC

Robert Vitanza
Gary Phillips
David Lawson
AT&T Services, Inc.
1120 20th Street NW, Suite 1000
Washington, DC 20036
(Via U.S. Mail on July 9, 2019)

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(Via Hand Delivery on July 8, 2019)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(Via Hand Delivery on July 9, 2019)

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(Via U.S. Mail on July 9, 2019)

/s/ William C. Simmerson
William C. Simmerson