

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wendel, Fogleman) *CH*
Office of the General Counsel (Murphy) *TLT*

RE: Docket No. 20180213-TL – 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.

AGENDA: 9/1/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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, in which the IWW channel was to be deepened along a two mile section in the city of Fort

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.).

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.

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, 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, 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, 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 believe construction would begin in the first quarter of 2020. Nonetheless, FIND has asked that 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."

Discussion of Issues

Issue 1: Should the Commission require AT&T to relocate its subaqueous utility lines, beneath the Intracoastal Waterway in Broward County, in a timely and effective manner?

Recommendation: No. The Commission does not have jurisdictional authority to require AT&T to relocate its subaqueous utility lines, beneath the Intracoastal Waterway in Broward County, in a timely and effective manner. (Wendel, Fogleman, Murphy)

Staff Analysis: Neither Chapter 364, F.S., (governing Commission regulation of telecommunications companies) nor Chapter 350, F.S., (establishing the Commission's general authority) authorizes the Commission to require AT&T to relocate subaqueous utility lines currently located beneath the IWW. For a number of months, Commission 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 the Commission can do to accelerate the project.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order. (Murphy)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.