

Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**REDACTED**

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**AT&T'S FIRST SET OF INTERROGATORIES TO DUKE ENERGY FLORIDA**

Complainant, BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"), by and through its undersigned counsel, requests that Defendant, Duke Energy Florida, LLC ("Duke Energy Florida"), answer the following Interrogatories within twenty (20) calendar days of the date of this request pursuant to 47 C.F.R. § 1.730(c). Answers should be served on AT&T's counsel, Christopher S. Huther, by email at [chuther@wiley.law](mailto:chuther@wiley.law) and by mail at Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

The information sought in each Interrogatory is either necessary to the resolution of this dispute, or will become necessary to the resolution of this dispute should Duke Energy Florida seek to rebut the presumption set forth at 47 C.F.R. § 1.1413(b), because each seeks information regarding the pole attachment rental rate for AT&T's use of Duke Energy Florida's poles that is "just and reasonable" under 47 U.S.C. § 224 and the decisions of the Federal Communications Commission and its Enforcement Bureau. The information sought in each Interrogatory is not presently available from any other source, as it is not obtainable from a public source, is within

Duke Energy Florida's sole possession, custody, or control, or is otherwise not available to AT&T.

### DEFINITIONS

The following terms have the following meanings, unless the context requires otherwise:

1. "Any" and "all" include "any and all" and "each" and "every" include "each and every." "And" and "or" means both the conjunctive and the disjunctive.

2. "AT&T" means BellSouth Telecommunications, LLC d/b/a AT&T Florida and any persons associated with it, including, but not limited to, officers, directors, employees, agents, representatives, predecessors, successors, assigns, attorneys, and anyone acting or purporting to act on its behalf or on behalf of any of them.

3. "CLEC" means competitive local exchange carrier.

4. "Concerning," and derivatives thereof, has the broadest meaning that may be accorded to it and includes, but is not limited to, directly or indirectly relating, pertaining, mentioning, referencing, referring to, describing, constituting, containing, embodying, being connected with, setting forth, discussing, commenting upon, analyzing, supporting, establishing, contradicting, proving, disproving, or reflecting in any way.

5. "FCC" means Federal Communications Commission.

6. "Duke Energy Florida" means Duke Energy Florida, LLC 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, attorneys, 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.

7. “Identify” means:

(a) When referring to a person, the person’s full name, title, business address, e-mail address, and telephone number, and relationship to Duke Energy Florida. If you do not know the person’s current information, provide the person’s last known business affiliation and title, business address and telephone number, residential address and telephone number, e-mail address, and relationship to Duke Energy Florida.

(b) When referring to a document, the type of document (*e.g.*, letter, memorandum, e-mail, etc.) or some other means of identification, its author(s) and addressee(s), its date, its subject, and the name of any person in whose custody the document is kept in the usual course of business.

(c) When referring to an oral communication, the type of communication, the persons who participated in, heard, or witnessed it, the date of the communication, and the subject and substance of the communication, and identify any documents that set forth, summarize or refer to any portion of such oral communication.

(d) When referring to a business organization, the corporate name or other names under which said organization does business and the location and phone number of its principal place of business.

(e) When referring to data, the type of data, its vintage, the geographic location where the data was collected, the rules or guidelines governing the collection of the data, and all facts, figures, measurements, and other data collected and analyses performed.

If any of the foregoing information requested is not known, the response shall indicate what of the foregoing information is not known.

8. “JUA” means the Joint Use Agreement between Florida Power Company and Southern Bell Telephone and Telegraph Company, dated June 1, 1969, as amended.

9. “Joint Use Agreement” means any agreement entered into by Duke Energy Florida and any incumbent local exchange carrier that grants access to Duke Energy Florida’s distribution poles, including any amendments, exhibits, appendices, and operational guidelines, practices, or policies.

10. “License Agreement” means any agreement entered into by Duke Energy Florida and any CLEC, cable company, or wireless provider that grants access to Duke Energy Florida’s distribution poles, including any amendments, exhibits, appendices, and operational guidelines, practices, or policies.

11. “Parties” means Duke Energy Florida and AT&T.

12. “Person” or “Entity” have the fullest meanings allowed by law and include, without limitation, a natural person, corporation, firm, partnership, association, labor union, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, including all predecessors or successors in interest, and any officer, agent, employee, or representative of any of the foregoing.

13. “Pole Attachment Complaint” means the Pole Attachment Complaint and supporting Affidavits and Exhibits filed by AT&T against Duke Energy Florida at the Federal Communications Commission on August 25, 2020.

14. “You” and “your” have the same meaning as Duke Energy Florida.

15. Terms not otherwise defined have the same meaning as they are alleged to have in the Pole Attachment Complaint. The past tense includes the present tense, and vice versa. The



singular includes the plural, and vice versa. Terms are gender neutral and the use of one gender includes all genders.

### **INSTRUCTIONS**

1. In response to each Interrogatory, first restate the Interrogatory.
2. Provide all responsive information that is in the possession, custody or control of Duke Energy Florida or any other person acting in the interest of, or on behalf of, Duke Energy Florida. If Duke Energy Florida does not have responsive information, or has information that is only partially responsive, Duke Energy Florida should provide the available information and identify the information that is not available.
3. If any response contains any objection, state with specificity the grounds for the objection and the part of the Interrogatory to which the objection is made but respond to the Interrogatory fully insofar as it is not deemed objectionable.
4. If any information requested was, but is no longer, in your possession or subject to your control, or is no longer in existence, state whether it is missing or lost, destroyed, transmitted or transferred voluntarily or involuntarily to others, or otherwise disposed of and explain the circumstances surrounding the authorization for such disposition and the date or approximate date thereof.
5. These interrogatories are continuing and Duke Energy Florida must supplement its responses upon discovering or learning of additional information in its custody, possession, or control that was not produced or included in an earlier response.

### **INTERROGATORIES**

1. Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Florida contends is “just and reasonable” for AT&T’s use of Duke Energy

Florida's poles under 47 U.S.C. § 224(b). Include in your response all facts on which you rely for your contention that the annual pole attachment rental rates are "just and reasonable" under 47 U.S.C. § 224(b), the formula, calculations, inputs, assumptions, and source data used to calculate each annual pole attachment rental rate, and the corresponding pole attachment rental rate that would apply to Duke Energy Florida's use of AT&T's poles.

2. Beginning with the 2015 rental year, identify all entities that have had a Joint Use Agreement or License Agreement with Duke Energy Florida and state whether the entity is an incumbent local exchange carrier, CLEC, cable company, or wireless provider.

3. State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with Duke Energy Florida that were in effect at any time from the 2015 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 Duke Energy Florida and the dates on which the Joint Use Agreement or License Agreement with Duke Energy Florida was in effect. In lieu of quoting each rate, term, and condition from each Joint Use Agreement and License Agreement, Duke Energy Florida may produce a copy of each Joint Use Agreement and License Agreement.

4. Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Florida charged each entity identified in response to Interrogatory 2, the number of poles or attachments for which the pole attachment rental rate was charged, and whether the entity uses Duke Energy Florida'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.

5. With respect to each License Agreement identified in response to Interrogatory 3, identify any advantage or benefit that Duke Energy Florida contends AT&T receives over and above those provided to the attaching entity. Include in your response, beginning with the 2015 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.

6. Beginning with the 2015 rental year, for each claimed advantage or benefit identified in response to Interrogatory 5, state by year the amount of money that Duke Energy Florida collected from each entity identified in response to Interrogatory 2 concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

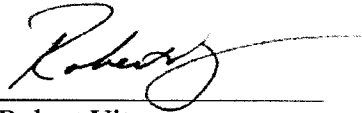
7. Beginning with the 2015 rental year, state the rate of return used by Duke Energy Florida in the calculation of rates under 47 C.F.R. § 1.1406(d), including the cost of debt, cost of equity, and capital structure, and, if different, Duke Energy Florida's state-authorized weighted average cost of capital and/or weighted cost of equity, including, as appropriate, the cost of debt, cost of equity, and capital structure. Include in your response the formula, calculations, inputs, assumptions, and source data used.

8. Identify all data regarding poles jointly used by Duke Energy Florida and AT&T, including all survey, audit or sampling data concerning pole height, the average number of attaching entities, the space occupied by Duke Energy Florida, 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.

Respectfully submitted,

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By:   
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1120 20th Street NW, Suite 1000  
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(214) 757-3357

Dated: August 25, 2020

*Attorneys for BellSouth Telecommunications,  
LLC d/b/a AT&T Florida*

## CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2020, I caused a copy of the foregoing AT&T's First Set of Interrogatories to Duke Energy Florida to be served concurrently with AT&T's Pole Attachment Complaint on the following (service method indicated):

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9050 Junction Drive  
Annapolis Junction, MD 20701  
(by ECFS)

Duke Energy Florida, LLC  
c/o CT Corporation System  
1200 South Pine Island Road  
Plantation, FL 33324  
(by hand delivery)

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(by overnight delivery)

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(by overnight delivery)

  
\_\_\_\_\_  
Frank Scaduto

**Remittance ID:3432531 Authorization**  
**Number:26PPB9LQ**  
**Successful Authorization -- Date Paid: 8/25/20**  
**FILE COPY ONLY!!**

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING  (1) LOCKBOX #979094	FEDERAL COMMUNICATIONS COMMISSION <b>REMITTANCE ADVICE</b>  <b>FORM 159</b> PAGE NO 1 OF 1	APPROVED BY OMB 3060-059 SPECIAL USE FCC USE ONLY
<b>SECTION A - Payer Information</b>		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) <b>Wiley Rein LLP</b>		(3) TOTAL AMOUNT PAID (dollars and cents) <b>\$295.00</b>
(4) STREET ADDRESS LINE NO. 1 <b>1776 K Street, N.W.</b>		
(5) STREET ADDRESS LINE NO. 2		
(6) CITY <b>Washington</b>	(7) STATE <b>DC</b>	(8) ZIP CODE <b>20006-2304</b>
(9) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) <b>202-7197000 x7235</b>	(10) COUNTRY CODE (IF NOT IN U.S.A.) <b>US</b>	
<b>FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED</b>		
(11) PAYER (FRN) <b>0002151744</b>	(12) FCC USE ONLY	
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(13) APPLICANT NAME <b>BellSouth Telecommunications, LLC d/b/a AT&amp;T Florida</b>		
(14) STREET ADDRESS LINE NO. 1 <b>1120 20th Street, NW</b>		
(15) STREET ADDRESS LINE NO. 2 <b>Suite 1000</b>		
(16) CITY <b>Washington</b>	(17) STATE <b>DC</b>	(18) ZIP CODE <b>20036</b>
(19) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) <b>202-4572030</b>	(20) COUNTRY CODE (IF NOT IN U.S.A.) <b>US</b>	
<b>FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED</b>		
(21) APPLICANT (FRN) <b>0020882668</b>	(22) FCC USE ONLY	
<b>COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>		
(23A) FCC Call Sign/Other ID <p style="text-align: center;">N/A</p>	(24A) Payment Type Code(PTC) <p style="text-align: center;">TPC</p>	(25A) Quantity <p style="text-align: center;">1</p>
(26A) Fee Due for (PTC) <p style="text-align: center;">\$295.00</p>	(27A) Total Fee <p style="text-align: center;">\$295.00</p>	FCC Use Only
(28A) FCC CODE 1 <p style="text-align: center;">N/A</p>	(29A) FCC CODE 2 <p style="text-align: center;">ATTFloridav.DukeEnergyFL</p>	
(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only
(28B) FCC CODE 1	(29B) FCC CODE 2	

**COMPLAINT INTAKE FORM  
FOR COMPLAINTS FILED UNDER SECTIONS 208, 224, 255, 716, AND 717 OF THE  
COMMUNICATIONS ACT OF 1934, AS AMENDED**

1. Case Name: BellSouth Telecommunications, LLC d/b/a AT&T Florida v. Duke Energy Florida, LLC
2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): BellSouth Telecommunications, LLC d/b/a AT&T Florida, One CNN Center, 1424C, Atlanta, GA 30303, P 214-757-3357, F 214-746-2211
3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): Duke Energy Florida, LLC, 299 First Avenue North, St. Petersburg, FL 33701
4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: 47 U.S.C. § 224

Answer Yes, No, or N/A to the following:

- Y 5. Complaint conforms to the specifications prescribed by 47 CFR § 1.721.
- Y 6. If Complaint concerns pole attachments, Complaint also conforms to the specifications prescribed by 47 CFR § 1.1404.
- Y 7. Complaint conforms to the format and content requirements of the Commission's rules, including but not limited to:
- Y a. If damages are sought, the Complaint comports with the specifications prescribed by 47 CFR § 1.723.
  - Y b. Complaint contains a certification that complies with 47 CFR § 1.722(g).
  - Y c. Complaint contains a certification that complies with 47 CFR § 1.722(h).
  - Y d. Complaint includes an information designation that complies with 47 CFR § 1.722(i).
  - Y e. Complaint attaches copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.
  - Y f. Complaint attaches a certificate of service that conforms to the specifications prescribed by 47 CFR §§ 1.47(g) and 1.734(f).
  - Y g. Complaint attaches verification of payment of filing fee in accordance with 47 CFR §§ 1.722(k) and 1.1106.
- N/A 8. If Complaint is filed pursuant to 47 U.S.C. § 271(d)(6)(B), complainant indicates whether it is willing to waive the 90-day complaint resolution deadline.
- Y 9. Complainant has service copy of Complaint by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 CFR §§ 1.47(e) and 1.734(c).
- Y 10. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 CFR § 1.49(b) and (c).
- Y 11. Complainant has filed the correct number of copies required by 47 CFR § 1.51(c), if applicable, and 47 CFR § 1.734(b).
- N/A 12. If Complaint is by multiple complainants, it complies with the requirements of 47 CFR § 1.725(a).
- N/A 13. If Complaint involves multiple grounds, it complies with the requirements of 47 CFR § 1.725(b).
- N/A 14. If Complaint is directed against multiple defendants, it complies with the requirements of 47 CFR § 1.734.
- Y 15. Complaint conforms to the specifications prescribed by 47 CFR § 1.49.

PUBLIC VERSION

Before the  
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Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**POLE ATTACHMENT COMPLAINT**

**BELLSOUTH TELECOMMUNICATIONS,  
LLC d/b/a AT&T FLORIDA**

**By Counsel:**

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Gary Phillips  
David Lawson  
AT&T SERVICES, INC.  
1120 20th Street NW, Suite 1000  
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(214) 757-3357

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Date: August 25, 2020



PUBLIC VERSION

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\* Certain information in this Pole Attachment Complaint and its supporting Affidavits and Exhibits has been designated confidential pursuant to 47 C.F.R. § 1.731. The designated information is marked with a text box in the confidential version of these pleadings and is redacted in the public version.

**I. SUMMARY**

BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”) files this Complaint against Duke Energy Florida, LLC (“Duke Energy Florida”) seeking a reduction of exceptionally high pole attachment rates that Duke Energy Florida has overcharged for years. Despite AT&T’s request for and efforts to negotiate “just and reasonable” rates to which it is entitled by law, Duke Energy Florida failed to provide even a single rate proposal in response.

In 2011, the Federal Communications Commission (“Commission”) issued its *Pole Attachment Order*, which found that incumbent local exchange carriers (“ILECs”), including AT&T, are “entitled to pole attachment rates, terms and conditions that are just and reasonable.”<sup>1</sup> For almost a decade, AT&T has been entitled to “the same rate as [a] comparable provider” where it attaches to an electric utility’s poles pursuant to materially comparable terms and conditions.<sup>2</sup> This makes sense—AT&T competes with the competitive local exchange carriers (“CLECs”) and cable companies that pay the Commission’s new telecom and cable rates; provides telephone, video, broadband, and other advanced services from facilities that occupy a similar amount of space on utility poles as these competitors; and is protected by the same right under 47 U.S.C. § 224 to “just and reasonable” rates.

Duke Energy Florida refuses to charge AT&T the lawful just and reasonable new telecom rate. Most recently, it charged AT&T [REDACTED] per pole for 2019 rent, nearly [REDACTED] times the \$4.54 per pole rate produced by the Commission’s new telecom rate formula. Duke Energy Florida’s overcharging continues despite the 2018 *Third Report and Order*, which found that the new

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<sup>1</sup> *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5327-28, 5331 (¶¶ 202, 209) (2011) (“*Pole Attachment Order*”).

<sup>2</sup> *Id.* at 5336 (¶ 217).

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telecom rate is the presumptive “just and reasonable” rate for ILECs under “new and newly renewed” agreements.<sup>3</sup> The new telecom rate presumption applies here—the parties’ Joint Use Agreement (“Agreement” or “JUA”) is a newly renewed agreement. And under the Commission’s presumption, AT&T is entitled to the new telecom rate—which was \$4.54 per pole in 2019—unless Duke Energy Florida can prove that the JUA provides AT&T net material benefits that advantage AT&T over its competitors, justifying a higher rate.

In the 15 months since negotiations began, Duke Energy Florida has not documented or quantified the value of any actual or alleged benefit. Instead, its executives theorized at an executive-level meeting that benefits *may* exist—and offered the same generic examples commonly asserted by power companies that either do not exist under the JUA, apply equally to AT&T’s competitors, or confirm that AT&T bears unique costs under the JUA that disadvantage AT&T relative to its competitors. Duke Energy Florida did not follow up in writing about its generalized claims or provide AT&T access to executed license agreements to permit a comparison. And, having first refused outright to lower AT&T’s rates or even make a rate offer, Duke Energy Florida’s representatives then stalled and prolonged negotiations with an illusory promise of an enterprise-wide rate offer that would provide rate relief to AT&T and affiliated ILECs operating in other States. The promised offer never arrived, leaving AT&T no choice but to file this Complaint to challenge Duke Energy Florida’s exceptionally high rates.

Duke Energy Florida’s rates are unlawfully high under any analysis. Even if Duke Energy Florida could rebut the new telecom rate presumption, the Commission set the pre-existing telecom rate—which was \$6.89 per pole for the 2019 rental year—as the maximum rate

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<sup>3</sup> *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (“*Third Report and Order*”).

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a utility can lawfully charge an ILEC. Yet Duke Energy Florida still charged AT&T [REDACTED] times that rate.

Duke Energy Florida has not provided any lawful basis for charging AT&T a rate higher than the new telecom rate. With AT&T facilities attached to over 62,000 poles, Duke Energy Florida continues to charge AT&T about [REDACTED] million each year over the lawful new telecom rate. The Commission should enforce its new telecom rate presumption and refund the amounts Duke Energy Florida unlawfully collected during the past 5 years. Doing so will stop Duke Energy Florida's longstanding violation of the law and provide the competitively neutral pole attachment rates Congress guaranteed by statute and the Commission found essential to its competition and broadband deployment goals.

**II. PARTIES AND JURISDICTION**

1. Complainant AT&T is an ILEC that provides telecommunications and other services in Florida. It is a Georgia limited liability company with a principal place of business at One CNN Center, 1424C, Atlanta, GA 30303. AT&T may be reached through undersigned counsel at (214) 757-3357.

2. Defendant Duke Energy Florida owns and controls poles in Florida that are used, in whole or in part, for wire communications. Duke Energy Florida is a subsidiary of Duke Energy Corporation and is not owned by a railroad, a person who is cooperatively organized, or a person owned by the Federal Government or a State. It is a Florida company with a principal place of business at 299 First Avenue North, St. Petersburg, FL 33701.<sup>4</sup>

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<sup>4</sup> See Ex. 18 at ATT00211 (Excerpt, Duke Energy Form 10-K for the year ended Dec. 31, 2019).

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3. AT&T and Duke Energy Florida are parties to a 1969 Agreement that was amended in 1980 and 1990 and renewed after the March 11, 2019 effective date of the *Third Report and Order*.<sup>5</sup> The parties share an estimated 67,569 poles, with Duke Energy Florida owning about 62,363 of the joint use poles (92.3%) and AT&T owning about 5,233 of the joint use poles (7.7%).<sup>6</sup>

4. The Commission has jurisdiction over this Pole Attachment Complaint pursuant to 47 U.S.C. § 224(b), which states that it “shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall ... hear and resolve complaints concerning such rates, terms, and conditions.”<sup>7</sup>

5. The State of Florida has not certified to the Commission that it regulates the rates, terms, and conditions for pole attachments and so has not reverse-preempted the Commission’s jurisdiction pursuant to 47 U.S.C. § 224(c).

6. A separate action between the parties has not been filed with the Commission, any court, or other government agency based on the same claim or same set of facts, in whole or in part, and AT&T does not seek prospective relief that is identical to the relief proposed or at issue in a notice-and-comment rulemaking proceeding that is currently before the Commission.<sup>8</sup>

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<sup>5</sup> See Ex. 1 at ATT00089-110 (JUA, as amended); *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 n.475); see also Section III.A.1, below.

<sup>6</sup> Ex. 3 at ATT00159 (Invoice dated Dec. 30, 2019) (“2019 Invoice”); see also Ex. B at ATT00025 (Aff. of D. Miller, Aug. 24, 2020 (“Miller Aff.”) ¶ 6).

<sup>7</sup> 47 U.S.C. § 224(b)(1).

<sup>8</sup> Duke Energy Corporation and other electric utilities unsuccessfully challenged the new telecom rate presumption at the U.S. Court of Appeals for the Ninth Circuit, where judgment was entered but the mandate has not yet issued. See *City of Portland v. United States*, No. 18-72689, 2020 WL 4669906 (9th Cir. Aug. 12, 2020). Another group of electric utilities sought review of the Commission’s new telecom rate presumption in a petition for reconsideration at the FCC, but the pending petition does not impact the effectiveness of the presumption and cannot impact

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7. Prior to the filing of this Complaint, AT&T notified Duke Energy Florida in writing of the allegations that form the basis of this Complaint and invited a response within a reasonable time. AT&T also, in good faith, sought to settle this dispute through two face-to-face executive-level meetings and numerous follow-up discussions.<sup>9</sup>

**III. DUKE ENERGY FLORIDA HAS LONG CHARGED AT&T UNJUST AND UNREASONABLE POLE ATTACHMENT RENTAL RATES.**

8. As of mid-2011, AT&T was entitled to a “competitively neutral” pole attachment rate—meaning the new telecom rate—because it attaches to Duke Energy Florida’s poles on terms and conditions that are materially comparable to those of “a telecommunications carrier or a cable operator.”<sup>10</sup> But Duke Energy Florida has continued to unlawfully charge AT&T “pole attachment rates significantly higher than the [new telecom] rates charged to similarly situated telecommunications attachers.”<sup>11</sup>

9. In 2018, the Commission adopted its new telecom rate presumption to rectify reports of such persistent overcharges, finding that, for “new and newly-renewed pole attachment agreements,” ILECs are presumptively comparable to their competitors and entitled to the new telecom rate.<sup>12</sup> In discussions with AT&T, Duke Energy Florida offered no valid basis to rebut that presumption, only positing a handful of possible and undocumented competitive advantages that do not in fact exist. Accordingly, the Commission should order Duke Energy Florida to

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AT&T’s statutory right to just and reasonable pole attachment rates for use of Duke Energy Florida’s poles.

<sup>9</sup> See Ex. B at ATT00026-30 (Miller Aff. ¶¶ 10-17); see also Section III.B, below.

<sup>10</sup> *Pole Attachment Order*, 26 FCC Rcd at 5333-38 (¶¶ 214-220).

<sup>11</sup> See *Third Report and Order*, 33 FCC Rcd at 7767 (¶ 123) (quotation marks omitted).

<sup>12</sup> *Id.* at 7769 (¶ 126); 47 C.F.R. § 1.1413(b).

reduce the rental rates it charges AT&T to the competitively neutral new telecom rental rate established by law over nine years ago.

**A. AT&T Is Entitled To The New Telecom Rental Rate Under The Commission's 2018 Third Report And Order.**

10. The Commission's new telecom rate presumption is the most recent step in the Commission's longstanding effort to ensure that "similarly situated attachers ... pay similar pole attachment rates for comparable access."<sup>13</sup> With or without the presumption, AT&T is entitled to rate relief in this case. But the presumption does apply and entitles AT&T to the new telecom rate for its use of Duke Energy Florida's poles.

**1. The New Telecom Rate Presumption Applies, But Duke Energy Florida Charges AT&T Rates That Are Far Higher.**

11. AT&T is presumptively entitled to the new telecom rate because the JUA is a "newly-renewed" agreement as defined by the *Third Report and Order*. In that *Order*, the Commission applied its new telecom rate presumption to all "new and newly-renewed joint use agreements," and defined "newly-renewed agreements" to include those agreements "that are automatically renewed, *extended*, or placed in evergreen status."<sup>14</sup> The JUA's initial term expired on January 1, 1979, but it "shall *continue* in force thereafter" until it is terminated upon 6 months written notice.<sup>15</sup> Continue and extend are synonyms: "Continue" means "[t]o carry further in time, space or development: *extend*"<sup>16</sup> and "extend" means "to lengthen, prolong; to

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<sup>13</sup> *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123).

<sup>14</sup> *Id.* at 7770 (¶ 127 n.475) (emphasis added).

<sup>15</sup> Ex. 1 at ATT00102-103 (JUA, Art. XVI) (emphasis added).

<sup>16</sup> "Continue," *Webster's II New College Dictionary* 244 (2001) (emphasis added); *see also* "Continue," *Oxford English Dictionary* (3d ed. online) ("To carry on, keep up, maintain, go on with, persist in (an action, usage, etc.)").

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continue ...”<sup>17</sup> Consequently, the JUA has automatically renewed or extended after the effective date of the *Third Report and Order*, and the Commission’s rate presumption applies.<sup>18</sup>

12. Under the presumption, AT&T must be charged a properly calculated new telecom rate determined in accordance with Commission rule 1.1406(d)(2).<sup>19</sup> Using publicly available data and information provided with Duke Energy Florida’s annual rental invoices, AT&T estimates that the properly calculated new telecom rate for use of Duke Energy Florida’s poles averaged about \$4.50 per pole during the applicable 5-year statute of limitations period.<sup>20</sup> Duke Energy Florida instead charged, and AT&T paid, contract rates averaging about [REDACTED] per pole:<sup>21</sup>

	2015	2016	2017	2018	2019
Contract rate paid by AT&T (per pole)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
New telecom rate (per pole)	\$4.56	\$4.46	\$4.51	\$4.78	\$4.54

AT&T has thus consistently paid Duke Energy Florida contract rates that were nearly and sometimes more than [REDACTED] times the new telecom rates to which AT&T is entitled<sup>22</sup> and well above

<sup>17</sup> “Extend,” *Oxford English Dictionary* (3d ed online); see also “Extend,” *Webster’s II New College Dictionary* 396 (2001) (“To stretch or reach”); “Extend,” *Merriam-Webster’s Collegiate Dictionary* 411 (1996) (“To stretch out in distance, space, or time”).

<sup>18</sup> The JUA also automatically “renews” because its terms “repeat so as to reaffirm” or “begin again” absent termination by a party. See “Renew,” *Webster’s II New College Dictionary* 938 (2001); “Renew,” *Merriam-Webster’s Collegiate Dictionary* 990 (10th ed. 1996); see also *Ocean Bank of Miami v. La Esquina Presidencial, Inc.*, 623 So. 2d 520, 521 (Fla. Dist. Ct. App. 1993) (“To renew a contract means to begin again or continue in force the old contract.”) (citing *Black’s Law Dictionary* 1296 (6th ed. 1990)).

<sup>19</sup> 47 C.F.R. § 1.1413(b).

<sup>20</sup> See 47 C.F.R. § 1.1407(a)(3); Fla. Stat. § 95.11(2)(b); see also Section III.C, below.

<sup>21</sup> See Ex. A at ATT00006-07 (Aff. of D. Rhinehart, Aug. 24, 2020 (“Rhinehart Aff.”) ¶ 11); Ex. B at ATT00026 (Miller Aff. ¶ 8).

<sup>22</sup> Ex. A at ATT00007 (Rhinehart Aff. ¶ 12).



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the \$26.12 per pole rate that, in part, led the Commission to adopt the new telecom rate presumption in order to accelerate rate relief to ILECs.<sup>23</sup> Duke Energy Florida's contract rates are excessively and unreasonably high.

**2. AT&T Is Entitled To The New Telecom Rate Because Duke Energy Florida Cannot Rebut The Presumption.**

13. The new telecom rate presumption is rebuttable, but Duke Energy Florida cannot meet its burden. Duke Energy Florida would need “clear and convincing evidence that [AT&T] receives *net benefits* under its pole attachment agreement with [Duke Energy Florida] that *materially advantage* [AT&T] over other telecommunications attachers.”<sup>24</sup>

14. Duke Energy Florida does not have such evidence under the ground rules that the Commission has set for this analysis: when comparing the JUA with the license agreements executed by AT&T's competitors, Duke Energy Florida must weigh and account for all of the different rights *and responsibilities* (of which there are many) placed on AT&T as compared to its competitors.<sup>25</sup> For example, an ILEC that bears the cost to perform a service itself (*e.g.*, a pole inspection) is not advantaged relative to its competitor that pays the utility pole owner to perform the same service.<sup>26</sup> In addition, reciprocal joint use agreement terms—terms that AT&T

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<sup>23</sup> *Third Report and Order*, 33 FCC Rcd at 7768-69 (¶ 125).

<sup>24</sup> *Id.* at 7768 (¶ 123) (emphasis added); *see also* 47 C.F.R. § 1.1413(b).

<sup>25</sup> *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) (“A failure to weigh, and account for, the different rights and responsibilities in joint use agreement could lead to marketplace distortions.”); *see also* Ex. C at ATT00040-45 (Aff. of M. Peters, Aug. 24, 2020 (“Peters Aff.”) ¶¶ 18-26); Ex. D at ATT00067-68 (Aff. of C. Dippon, Aug. 24, 2020 (“Dippon Aff.”) ¶¶ 41-42).

<sup>26</sup> *Verizon Va. v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3759 (¶ 18) (EB 2017) (“*Dominion Order*”) (“Where Verizon performs a particular service itself and incurs costs comparable to its competitors in performing that service, ... Dominion may not ‘embed in Verizon’s rental rate costs that Dominion does not incur.’”); *see also* Ex. C at ATT00037-38, ATT00039-40 (Peters Aff. ¶¶ 13, 17); Ex. D at ATT00068 (Dippon Aff. ¶ 42).

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must also provide to Duke Energy Florida for its use of AT&T's poles—impose unique costs on AT&T that, by definition, license agreements do not impose on AT&T's competitors that use the same Duke Energy Florida poles.<sup>27</sup> In those situations, these unique costs can offset any “benefits” that might otherwise justify charging AT&T a rate higher than the new telecom rate that may be charged those competitors.<sup>28</sup>

15. Duke Energy Florida rejected AT&T's rate reduction request during the parties' executive-level meetings, theorizing that AT&T may enjoy “benefits” under the JUA.<sup>29</sup> It never provided a Duke Energy Florida license agreement, never followed-up in writing about any actual or alleged benefits, never documented or quantified the value of any of these illusory benefits, and never identified relevant language in the JUA or its operative license agreements.<sup>30</sup>

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<sup>27</sup> See Ex. C at ATT00044-45 (Peters Aff. ¶ 26); Ex. D at ATT00069-70 (Dippon Aff. ¶ 44); see also Reply Comments of Progress Energy Florida n/k/a Duke Energy Florida, et al. at 28-29, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Oct. 4, 2010) (stating that joint use agreements, unlike license agreements, require “ILECs and electric utilities [to] share the benefits (*and burdens*) of pole ownership ....”) (emphasis added).

<sup>28</sup> See *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (requiring utility to prove that the ILEC “receives *net benefits* under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers”) (emphasis added); *BellSouth Telecommc'ns, LLC v. Fla. Power & Light Co.*, Proceeding No. 19-187, 2020 WL 2568977, at \*7 (¶ 15) (EB 2020) (“*FPL 2020 Order*”) (“FPL overlooks the fact that AT&T must provide many of the same advantages that FPL provides AT&T.”); Ex. C at ATT00044-45 (Peters Aff. ¶ 26); Ex. D at ATT00069-70 (Dippon Aff. ¶ 44).

<sup>29</sup> See Ex. C at ATT00035 (Peters Aff. ¶ 8).

<sup>30</sup> *Id.* at ATT00035-36 (Peters Aff. ¶ 9). An executive representing Duke Energy Florida and its out-of-state affiliate, Duke Energy Progress, forwarded a draft license agreement that Duke Energy Progress (not Duke Energy Florida) apparently uses as a starting point in *its* negotiations elsewhere, but he did not point to any specific provision in that draft to support a claim about alleged competitive benefits provided by the JUA. See *id.*; Ex. 2 at ATT00112-153 (Draft License Agreement). The Duke Energy Progress draft license agreement, which may not have been signed by any attacher anywhere, cannot depict the terms and conditions applicable to “a typical competitor or an average of [AT&T's] competitors” using the same poles in Florida. See *Dominion Order*, 32 FCC Rcd at 3759 (¶ 20) (emphasis added); see also Ex. C at ATT00036

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And, the so-called “benefits” that the executives posited during the parties’ face-to-face meetings are non-existent or not competitive benefits at all<sup>31</sup> and included several previously rejected by the Commission.

16. *First*, the executives stated that Duke Energy Florida has installed poles taller than required for electric service in order to accommodate communications attachers, trimmed trees when deploying new pole lines, and regularly inspects its pole network to proactively identify and repair damaged poles.<sup>32</sup> These alleged “benefits” extend equally to AT&T’s competitors attached to the same poles.<sup>33</sup> By definition, they are not *competitive* benefits that advantage AT&T over those competitors and thus, cannot rebut the presumption.<sup>34</sup>

17. *Second*, the executives representing Duke Energy Florida listed “benefits” that do not actually exist under the JUA. They claimed that AT&T would benefit if it is excused from a permit application requirement, but AT&T in fact submits a permit application before it attaches to Duke Energy Florida’s poles and uses [REDACTED]

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(Peters Aff. ¶ 10); Ex. D at ATT00070 (Dippon Aff. ¶ 45). But even if it were somehow relevant, it still does not support Duke Energy Florida’s assertion that AT&T may enjoy net material benefits in the JUA—let alone prove AT&T in fact enjoys net material benefits that justify a rental rate higher than the new telecom rate. Ex. C at ATT00036-45 (Peters Aff. ¶¶ 11-27); Ex. D at ATT00066-72 (Dippon Aff. ¶¶ 39-49).

<sup>31</sup> Ex. C at ATT00037, ATT00039, ATT00040, ATT00041 (Peters Aff. ¶ 12, 16, 18, 20); Ex. D at ATT00066-67 (Dippon Aff. ¶ 40).

<sup>32</sup> Ex. C at ATT00037 (Peters Aff. ¶ 12).

<sup>33</sup> See 47 C.F.R. § 1.1413(b) (To rebut the presumption, a utility requires “clear and convincing evidence” that the ILEC receives net material benefits as compared to “telecommunications carriers or cable television systems providing telecommunications services *on the same poles*”) (emphasis added).

<sup>34</sup> See *id.*; see also *FPL 2020 Order*, 2020 WL 2568977, at \*7 (¶ 15) (“FPL did not build its poles just to accommodate AT&T.”).

██████████<sup>35</sup> They also said AT&T may be advantaged if it pays for make-ready based on scheduled costs (*i.e.*, costs estimated in advance) instead of costs estimated on a per-project basis, but AT&T pays Duke Energy Florida based on the latter per-project approach.<sup>36</sup> AT&T also reduces the amount of make-ready work it requires Duke Energy Florida to perform by completing much of AT&T's own make-ready and engineering work itself and by inspecting every new AT&T attachment to a Duke Energy Florida pole for compliance with safety and construction standards.<sup>37</sup> AT&T's cost to complete this make-ready, engineering, and survey work is necessarily comparable to the cost to complete similar work for AT&T's competitors, although AT&T often encounters longer delays when deploying new facilities because AT&T currently is *not* eligible for one-touch make-ready or the make-ready deadlines that accelerate deployment for AT&T's competitors.<sup>38</sup>

18. *Third*, the executives claimed that AT&T has historically defended the allocation of space in the JUA, which places AT&T at the bottom of the communications space on a pole.<sup>39</sup> But rather than defend that location, AT&T's services affiliate recently encouraged the

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<sup>35</sup> Ex. C at ATT00039 (Peters Aff. ¶ 16); Ex. D at ATT00070 (Dippon Aff. ¶ 44); *see also* Ex. 1 at ATT00092 (JUA § 3.1) (“Whenever either party desires to reserve space on any pole of the other ... it shall make written application to the other party specifying in such application the location of the pole in question....”); Ex. 2 at ATT00141 (Draft License Agreement ██████████); Ex. 16 at ATT00204 (Pole Attachment Request Form).

<sup>36</sup> Ex. C at ATT00039 (Peters Aff. ¶ 16); Ex. D at ATT00069 (Dippon Aff. ¶ 44).

<sup>37</sup> Ex. C at ATT00039 (Peters Aff. ¶ 17).

<sup>38</sup> *Id.* at ATT00040 (Peters Aff. ¶ 17); Ex. D at ATT00068 (Dippon Aff. ¶ 42); *see also* 47 C.F.R. § 1.1411.

<sup>39</sup> Ex. C at ATT00041 (Peters Aff. ¶ 20).

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Commission to clarify that electric utilities may *not* impose a blanket ban on the installation of facilities *below* the typical location of AT&T's wireline facilities.<sup>40</sup>

19. AT&T also does *not* enjoy a competitive benefit when it is the lowest attacher on a pole.<sup>41</sup> The location does not reduce costs for AT&T because AT&T requires the same safety precautions, vehicles, and other equipment to work on its facilities as are required on its competitors' facilities located a foot or two higher on the pole.<sup>42</sup> But the location does *increase* costs for AT&T.<sup>43</sup> As the lowest attacher, AT&T is most likely to receive a request to temporarily raise its facilities to accommodate an oversized vehicle or a load that exceeds standard vertical clearance.<sup>44</sup> Also increasing costs, the lowest attacher is usually the last to transfer its facilities to a replacement pole, and is often required to make multiple trips to a pole because the attachers located higher on the pole delayed transferring their facilities as scheduled.<sup>45</sup> And the lowest attacher is more susceptible to damage to its facilities. When a pole leans (*e.g.*, from weather damage, normal wear and tear, improperly engineered or constructed competitor facilities), the lowest facilities on the pole (typically, those of AT&T) can become low-hanging without notice and vulnerable to being struck by large vehicles.<sup>46</sup> In addition, the

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<sup>40</sup> See, *e.g.*, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, WC Docket No. 17-84, 2020 WL 4428179, at \*3 (¶ 9 n.28) (July 29, 2020).

<sup>41</sup> Ex. C at ATT00041-43 (Peters Aff. ¶ 21-23); Ex. D at ATT00070-71 (Dippon Aff. ¶ 46); Ex. 17 at ATT00206-209 (Damage Reports).

<sup>42</sup> Ex. C at ATT00042 (Peters Aff. ¶ 22).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; Ex. D at ATT00071 (Dippon Aff. ¶ 46).

<sup>45</sup> Ex. C at ATT00039-40, ATT00042 (Peters Aff. ¶¶ 17, 22); Ex. D at ATT00071 (Dippon Aff. ¶ 46).

<sup>46</sup> Ex. C at ATT00042-43 (Peters Aff. ¶¶ 22-23); Ex. 17 at ATT00206-209 (Damage Reports).

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lowest facilities are more vulnerable to damage by workers ascending a pole to work on facilities that are above.<sup>47</sup> And so, while AT&T does not maintain separate records that record the damage attributable to its location on a pole and often repairs the damage without reporting it, its records nonetheless reflect the added costs AT&T's typical location on a pole has imposed.<sup>48</sup>

20. *Finally*, the executives for Duke Energy Florida claimed it is a “benefit” to AT&T when Duke Energy Florida occasionally replaces a damaged AT&T pole following an emergency.<sup>49</sup> Because AT&T pays Duke Energy Florida for the cost of these pole replacements, there is no financial benefit to AT&T and no cost to Duke Energy Florida.<sup>50</sup> Rather, the pole replacement costs paid by AT&T are a competitive *disadvantage* as compared to AT&T's competitors, which are not required to own poles and replace them following an emergency.<sup>51</sup> Duke Energy Florida did not identify any net material competitive advantage that rebuts the presumption that AT&T is entitled to the new telecom rate.<sup>52</sup>

21. Even if Duke Energy Florida could rebut the presumption, having failed to do so during the parties' executive-level discussions, it still is overcharging AT&T. In the 2018 *Third Report and Order*, the Commission set the pre-existing telecom rate as the *maximum* “just and reasonable” rate if a utility can rebut the new telecom rate presumption with clear and

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<sup>47</sup> Ex. C at ATT00042 (Peters Aff. ¶ 22); Ex. 17 at ATT00206-209 (Damage Reports).

<sup>48</sup> Ex. C at ATT00042-43 (Peters Aff. ¶ 23); Ex. 17 at ATT00206-209 (Damage Reports).

<sup>49</sup> See Ex. C at ATT00040 (Peters Aff. ¶ 18).

<sup>50</sup> *Id.*; Ex. D at ATT00068 (Dippon Aff. ¶ 41); see also *Dominion Order*, 32 FCC Rcd at 3759 (¶ 18) (“Dominion may not ‘embed in Verizon’s rental rate costs that Dominion does not incur.’”).

<sup>51</sup> See Ex. C at ATT00040-41 (Peters Aff. ¶¶ 18-19); Ex. D at ATT00068 (Dippon Aff. ¶ 41).

<sup>52</sup> 47 C.F.R. § 1.1413(b).

convincing evidence.<sup>53</sup> The Commission created this “hard cap” to eliminate uncertainty arising from the 2011 *Pole Attachment Order*, which looked to the pre-existing telecom rate as a “reference point” when an agreement provides an ILEC a net material advantage over its competitors.<sup>54</sup>

22. It is self-evident from the below table that the per pole rates that Duke Energy Florida has charged, and AT&T has paid, substantially exceed the pre-existing telecom rate:<sup>55</sup>

	2015	2016	2017	2018	2019
Contract rate paid by AT&T (per pole)	\$██████	\$██████	\$██████	\$██████	\$██████
Pre-existing telecom rate (per pole)	\$6.91	\$6.76	\$6.83	\$7.25	\$6.89

Even in this best-case scenario for Duke Energy Florida, it has charged AT&T pole attachment rates that averaged more than █ times the pre-existing telecom rate.<sup>56</sup> Thus, there is no set of circumstances under which the contract rates charged by Duke Energy Florida are lawful. In all events, the Commission should eliminate these extraordinary overcharges.

**B. Even Apart From The 2018 *Third Report and Order*, AT&T Was Entitled To Just And Reasonable Rates Back To 2011.**

23. The Commission’s *Third Report and Order* simplifies this case by presuming that the new telecom rate is the “just and reasonable” rate absent clear and convincing evidence from Duke Energy Florida to the contrary. Although the Commission adopted the *Third Report and Order* in 2018, AT&T has been entitled to the “just and reasonable” new telecom rate since the July 12, 2011 effective date of the *Pole Attachment Order*. In that *Order*, the Commission

<sup>53</sup> *Third Report and Order*, 33 FCC Rcd at 7769-71 (¶¶ 126-29).

<sup>54</sup> *Id.* at 7771 (¶ 129); *see also Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

<sup>55</sup> *See* Ex. A at ATT00009 (Rhinehart Aff. ¶ 17); Ex. B at ATT00026 (Miller Aff. ¶ 8).

<sup>56</sup> Ex. A at ATT00009-10 (Rhinehart Aff. ¶ 18).

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issued guidance that an ILEC could justify pole attachment rate relief (based on the new telecom rate) by demonstrating that the rates were unjust and unreasonable; the direct result of unequal bargaining power; locked in by a JUA's evergreen provision; and not justified by any net material benefits that advantage AT&T over its competitors.<sup>57</sup> Duke Energy Florida's exceptionally high rental rates have all these characteristics.

24. *First*, the contract rates are not just and reasonable. The contract rates paid by AT&T during the statute-of-limitations period have averaged about [REDACTED] times the new telecom rate applicable to AT&T's competitors and over [REDACTED] times the pre-existing telecom rate.<sup>58</sup>

25. The JUA rates also disproportionately divide annual pole costs between AT&T and Duke Energy Florida.<sup>59</sup> The Commission expected that ILECs and electric utilities would

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<sup>57</sup> See *Pole Attachment Order*, 26 FCC Rcd at 5333-37 (¶¶ 214-18); see also Ex. D at ATT00060-72 (Dippon Aff. ¶¶ 26-49).

<sup>58</sup> See Ex. A at ATT00007, ATT00009-10 (Rhinehart Aff. ¶¶ 12, 18); Ex. B at ATT00026 (Miller Aff. ¶ 8); see also *FPL 2020 Order*, 2020 WL 2568977, at \*4 (¶ 10) ("We further find that the JUA rate is unreasonable, particularly when compared with the rate FPL charges [C]LECs and cable companies to attach to the same poles."). Making matters worse, AT&T reduced the rates it charges CLECs and cable companies attached to its distribution poles to reflect the new telecom rate methodology the Commission adopted in 2011—thereby reducing AT&T's rental revenue during the same years that Duke Energy Florida increased AT&T's rates. See *Third Report and Order*, 33 FCC Rcd at 7768-69 (¶ 125) (noting concern that survey data showed ILEC rental revenue from CLECs and cable companies decreased since 2008, but ILEC rental payments to electric utilities increased). The Enforcement Bureau previously asked ILECs to disclose the rates they charge CLECs and cable companies. See *Verizon Fla. v. Fla. Power & Light Co.*, 30 FCC Rcd 1140, 1150 (¶ 25 n.84) (2015) ("*FPL 2015 Order*"). For the 2015 through 2019 rental years, AT&T charged new telecom and cable rates that ranged from [REDACTED] through [REDACTED] per pole, assuming 1 foot of space occupied. See Ex. A at ATT00003 (Rhinehart Aff. ¶ 2 n.1).

<sup>59</sup> The JUA formula divides Duke Energy Florida's entire annual pole cost between AT&T and Duke Energy Florida ([REDACTED] vs. [REDACTED]) without regard to rentals received from other attachers on the pole. See Ex. 1 at ATT00109, ATT00099 (JUA §§ 10.4(b), 10.6). As a result, when there are 4 communications attachers on a pole (reflecting the presumptive number of attaching communications attachers), Duke Energy Florida collects over [REDACTED] of its pole costs from communications attachers ([REDACTED] from AT&T and 7.4% from each attacher paying a new telecom



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each pay “roughly the same proportionate rate given the parties’ relative usage of the pole ‘such as the same rate per foot of occupied space.’”<sup>60</sup> Instead, Duke Energy Florida charges AT&T a JUA rate that is only slightly lower than the rate Duke Energy Florida pays AT&T ( [REDACTED] vs. [REDACTED] per pole in 2019) while occupying far more space on a pole.<sup>61</sup> AT&T requires space comparable to its competitors, is presumed to occupy 1 foot of pole space, and Duke Energy Florida cannot lawfully “reserve” any additional space for AT&T.<sup>62</sup> Duke Energy Florida, in contrast, occupies 10.5 feet of space under the FCC’s rate assumptions, which includes 3.3 feet of safety space that is “usable and used by the electric utility” but not expressly assigned to Duke Energy Florida under the JUA.<sup>63</sup>

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rate) that collectively require less than half the space that Duke Energy Florida requires. *See* Ex. D at ATT00064-65 (Dippon Aff. ¶ 35). In contrast, if Duke Energy Florida collected new telecom rates from all 4 communications attachers, Duke Energy Florida would be responsible for a far more proportional 70.4% of the pole cost for its use of 77.8% of the space. *Id.* at ATT00065 (Dippon Aff. ¶ 36).

<sup>60</sup> *See Dominion Order*, 32 FCC Rcd at 3760 (¶ 21 n.78) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662)).

<sup>61</sup> Ex. B at ATT00026 (Miller Aff. ¶ 8); Ex. C at ATT00043-44 (Peters Aff. ¶ 25); Ex. D at ATT00063 (Dippon Aff. ¶ 33).

<sup>62</sup> *See* Ex. C at ATT00043-44 (Peters Aff. ¶ 25); 47 C.F.R. § 1.1410. The JUA designates 3 feet of “standard space” for use by AT&T, Ex. 1 at ATT00090 (JUA § 1.1.6), but AT&T does not want, use, or require 3 feet of space for its current or future attachments and cannot sublet the space, Ex. C at ATT00043 (Peters Aff. ¶ 25). And Duke Energy Florida has not in fact reserved that “standard space” for AT&T’s “exclusive use.” Ex. C at ATT00043-44 (Peters Aff. ¶ 25); Ex. 1 at ATT00090 (JUA § 1.1.6). Nor could it. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (¶ 1170) (1996) (“Permitting an [I]LEC, for example, to reserve space for local exchange service ... would favor the future needs of the [I]LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.”). Duke Energy Florida instead double- and triple-recovers by collecting rent from third parties attached in the space allocated to and paid for by AT&T under the JUA. *See* Ex. C at ATT00044 (Peters Aff. ¶ 25); *see also* Ex. D at ATT00064-65 (Dippon Aff. ¶¶ 34-36).

<sup>63</sup> *See* Ex. 1 at ATT00090 (JUA § 1.1.6(C)) (stating that “clearance requirements” are in addition to Duke Energy Florida’s space allocation); *FPL 2020 Order*, 2020 WL 2568977, at \*7 (¶ 16)

26. *Second*, Duke Energy Florida's substantial pole ownership advantage "continuously impacted [AT&T's] ability to negotiate a just and reasonable rate over time."<sup>64</sup> The FCC has previously found that an electric utility's relatively high rates coupled with its "nearly two-to-one pole ownership advantage" supported an inference of bargaining leverage, which justified rate relief for the ILEC.<sup>65</sup> In this case, Duke Energy Florida's pole ownership advantage when the current rate provision was adopted in 1990 was much greater, at *9-to-1* (90% vs. 10%), and has only increased further during the last 3 decades (92% vs. 8%).<sup>66</sup> This disparity in pole ownership, coupled with a rate provision that cannot be changed without Duke Energy Florida's agreement, has enabled Duke Energy Florida to require AT&T to pay and continue paying unlawful pole attachment rates.<sup>67</sup>

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("[T]he Commission has long held that the communication safety space is for the benefit of the electric utility, not communications attachers."); *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12130 (¶ 51) (2001) ("*Consolidated Partial Order*") (holding "the 40-inch safety space ... is usable and used by the electric utility"); *see also* Ex. D at ATT00062-63 (Dippon Aff. ¶ 31).

<sup>64</sup> *Dominion Order*, 32 FCC Rcd at 3757 (¶ 13 n.53); *see also Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216); Ex. D at ATT00058-59, ATT00061-66 (Dippon Aff. ¶¶ 23-25, 30-38).

<sup>65</sup> *Dominion Order*, 32 FCC Rcd at 3757 (¶ 13); *see also FPL 2020 Order*, 2020 WL 2568977, at \*8 (¶ 18) (finding rate relief required where the electric utility owns 66% of the jointly used poles); *Pole Attachment Order*, 26 FCC Rcd at 5329 (¶ 206) (estimating that electric utilities "own approximately 65-70 percent of poles").

<sup>66</sup> *See* Ex. B at ATT00025 (Miller Aff. ¶¶ 6-7); Ex. 3 at ATT00159 (2019 Invoice); Ex. 5 at ATT00172 (1990 Invoice); *see also FPL 2020 Order*, 2020 WL 2568977, at \*8 (¶ 18) ("the Commission in the *Pole Attachment Order* concluded that it should regulate [I]LEC joint use agreements because current, not past, pole ownership ratios had reduced [I]LEC bargaining power.").

<sup>67</sup> *See* Ex. D at ATT00058-59, ATT00061-66 (Dippon Aff. ¶¶ 23-25, 30-38).

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27. *Third*, AT&T “genuinely lacks the ability to terminate” the unlawful rates and obtain new “just and reasonable” rates through negotiations.<sup>68</sup> The JUA includes an “evergreen” provision that renders the rates effectively inescapable—even if AT&T were to terminate the JUA, it would have to continue paying the contract rates.<sup>69</sup> And, AT&T cannot obtain a lower rate without Duke Energy Florida’s concurrence, because the JUA states that, unless both parties agree otherwise, “the annual rates for joint use pole attachments shall be determined” using the JUA’s rate formula.<sup>70</sup> AT&T asked Duke Energy Florida to renegotiate a “just and reasonable” rate as required by law.<sup>71</sup> More than 15 months have passed since AT&T made that request. Yet despite numerous communications and two face-to-face meetings, Duke Energy Florida still has not made AT&T a *single offer*.<sup>72</sup> AT&T thus “genuinely lacks the ability to obtain a new arrangement” as its “attempts to negotiate a new rate with [Duke Energy Florida] in light of the *Pole Attachment Order* were unsuccessful.”<sup>73</sup>

28. *Finally*, AT&T has been entitled to a new telecom rate since the 2011 effective date of the *Pole Attachment Order* for the same reason that it is entitled to a new telecom rate

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<sup>68</sup> See *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216).

<sup>69</sup> See *FPL 2015 Order*, 30 FCC Rcd at 1150 (¶ 25) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216)) (finding that an evergreen clause is evidence that the ILEC “genuinely lacks the ability to terminate an existing agreement”); see also *FPL 2020 Order*, 2020 WL 2568977, at \*4 (¶ 11); Ex. 1 at ATT00103 (JUA, Art. XVI) (stating that, after termination, “other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination”).

<sup>70</sup> See Ex. 1 at ATT00109 (JUA § 10.4(b)); see also *FPL 2020 Order*, 2020 WL 2568977, at \*4 (¶ 11).

<sup>71</sup> Ex. 6 at ATT00174-175 (Letter from D. Miller, AT&T, to S. Freeburn (May 22, 2019)) (“AT&T May 22, 2019 Letter”).

<sup>72</sup> See Ex. B at ATT00026-30 (Miller Aff. ¶¶ 10-17).

<sup>73</sup> See *FPL 2020 Order*, 2020 WL 2568977, at \*4-5 (¶¶ 11, 12).

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under the Commission's new telecom rate presumption: Duke Energy Florida did not identify, substantiate, or quantify anything it provides AT&T under the JUA that gives AT&T a net material benefit over its competitors justifying a rental rate higher than the new telecom rate.<sup>74</sup>

29. The 2011 *Pole Attachment Order* adopted the standard that an ILEC should pay “the same rate” as its CLEC and cable competitors if its joint use agreement “does not provide a material advantage to [the ILEC] relative to cable operators or telecommunications carriers.”<sup>75</sup> Under this standard, AT&T should have been paying “the same rate as the comparable provider, *i.e.*, the New Telecom Rate”<sup>76</sup> as of July 12, 2011 because Duke Energy Florida cannot justify a higher rate based on its generalized claims of “advantage” that do not exist.<sup>77</sup>

30. Moreover, any analysis of “competitive neutrality” must “account for ... the different rights *and responsibilities*” in joint use agreements and license agreements,<sup>78</sup> including the many that *disadvantage* AT&T as compared to its competitors.<sup>79</sup> For example, the JUA, “in

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<sup>74</sup> See *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); *FPL 2015 Order*, 30 FCC Rcd at 1142 (¶ 7); see also Ex. C at ATT00036-45 (Peters Aff. ¶¶ 11-27); Ex. D at ATT00066-72 (Dippon Aff. ¶¶ 39-49); Section III.A.2, above. Duke Energy Florida also declined AT&T's request for copies of executed license agreements to compare with the JUA. See Ex. 6 at ATT00174-175 (AT&T May 22, 2019 Letter) (“[I]f Duke Energy believes that a rate higher than the new telecom rate is justified by net competitive advantages, we request copies of Duke Energy's executed license agreements and all data and quantifications that support its claim.”); *Dominion Order*, 32 FCC Rcd at 3759 (¶ 20) (finding electric utility failed to justify its rates where it “omitt[ed] the information needed to analyze whether, and, if so, the extent to which, Verizon has been advantaged relative to a typical competitor or an average of its competitors.”).

<sup>75</sup> *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217) (emphasis added).

<sup>76</sup> See *FPL 2015 Order*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)) (internal quotation mark omitted).

<sup>77</sup> See Section III.A.2, above; see also Ex. C at ATT00036-45 (Peters Aff. ¶¶ 11-27); Ex. D at ATT00066-72 (Dippon Aff. ¶¶ 39-49).

<sup>78</sup> *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) (emphasis added).

<sup>79</sup> Ex. C at ATT00040-45 (Peters Aff. ¶¶ 18-26); Ex. D at ATT00067-69 (Dippon Aff. ¶¶ 41, 44).

contrast to cable or telecommunications carrier pole lease agreements—reflect[s] a decades-old contractual responsibility [for AT&T] to share in infrastructure costs” and requires AT&T to “still own many poles today” and incur the associated pole ownership, maintenance, and disposal costs.<sup>80</sup> Also, because “ILECs, unlike CLEC and [cable] pole licensees, own numerous poles to which electric utilities are attached,”<sup>81</sup> AT&T must provide Duke Energy Florida each and every alleged “benefit” that Duke Energy Florida claims to provide to AT&T under the JUA.<sup>82</sup> CLECs do not incur a similar obligation or its attendant costs.<sup>83</sup> AT&T is also competitively disadvantaged by the lack of guaranteed access to Duke Energy Florida’s poles; under the JUA, AT&T may be denied the right to attach to new pole lines at any time, without the statutorily guaranteed access its competitors enjoy.<sup>84</sup> These significant competitive *disadvantages* for AT&T—with no associated actual and material competitive advantages alleged—establish that the just and reasonable rate for AT&T’s use of Duke Energy Florida’s poles is the new telecom rate even if the presumption does not attach.<sup>85</sup>

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<sup>80</sup> *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654); Ex. C at ATT00040-41 (Peters Aff. ¶¶ 18-19); Ex. D at ATT00067 (Dippon Aff. ¶ 41); *see also* Brief of Duke Energy, et al. at 10, *Am. Elec. Power Serv. Corp. v. FCC*, No. 19-70490 (9th Cir. filed June 24, 2019) (“Duke Energy 9th Cir. Br.”) (stating that joint use agreements require ILECs to incur “capital costs necessary to build the pole network and the ongoing operating costs of the network”).

<sup>81</sup> Duke Energy 9th Cir. Br. at 46.

<sup>82</sup> Ex. C at ATT00044 (Peters Aff. ¶ 26); Ex. D at ATT00069 (Dippon Aff. ¶ 44).

<sup>83</sup> Ex. C at ATT00044 (Peters Aff. ¶ 26); Ex. D at ATT00069 (Dippon Aff. ¶ 44).

<sup>84</sup> Ex. 1 at ATT00092, ATT00102-103 (JUA §§ 2.2, 16.1); *see also* Ex. C at ATT00043 (Peters Aff. ¶ 24); 47 U.S.C. § 224(f).

<sup>85</sup> *See Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 n.478) (“[T]he 2011 *Pole Attachment Order*’s guidance regarding review of [I]LEC pole attachment complaints will continue to apply” where the presumption does not).

**C. AT&T Should Pay A Properly Calculated New Telecom Rate And Be Refunded Its Overpayments.**

31. Because the new telecom rate is the just and reasonable rate under the Commission's new telecom rate presumption and the standard it adopted in 2011, Duke Energy Florida must charge AT&T a properly calculated new telecom rate determined in accordance with 47 C.F.R. § 1.1406(d)(2).<sup>86</sup> The best data available to AT&T shows that the applicable new telecom rates for AT&T's use of Duke Energy Florida's poles are \$4.56, \$4.46, \$4.51, \$4.78, and \$4.54 per pole for the 2015 through 2019 rental years, respectively, which comprise the applicable 5-year statute of limitations period.<sup>87</sup> These rates were calculated using Duke Energy Florida's FERC Form 1 data, Duke Energy Florida's most recently filed rate of return data, the distribution pole counts and distribution plant depreciation rate used by Duke Energy Florida when invoicing AT&T, and the Commission's presumptive inputs for pole height (37.5 feet), unusable space (24 feet), space occupied by AT&T (1 foot), average number of attaching entities in an urbanized area (5), and electric utility appurtenance factor (15%).<sup>88</sup>

32. The Commission should order Duke Energy Florida to refund the millions of dollars that AT&T has paid in excess of the just and reasonable rate, "plus interest, consistent with the applicable statute of limitations."<sup>89</sup> The applicable statute of limitations is 5 years because this action involves a Florida contract, and the Commission treats disputes involving the

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<sup>86</sup> 47 C.F.R. § 1.1413(b); *see also FPL 2015 Order*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)) ("competitive neutrality counsels in favor of affording [I]LECs the same rate as the comparable provider, *i.e.*, the New Telecom Rate"); (internal quotation mark omitted).

<sup>87</sup> Ex. A at ATT00006-07 (Rhinehart Aff. ¶ 11).

<sup>88</sup> *Id.* at ATT00003-07, ATT00012-16 (Rhinehart Aff. ¶¶ 4-11 & Exs. R-1 – R-2).

<sup>89</sup> 47 C.F.R. § 1.1407(a)(3).

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rates, terms, and conditions of pole attachment agreements consistently “with the way that claims for monetary recovery are generally treated under the law.”<sup>90</sup> This follows from a long line of precedent that “[w]hen there is no statute of limitations expressly applicable to a federal statute, .... ‘the general rule is that a state limitations period for an analogous cause of action is borrowed and applied to the federal claim.’”<sup>91</sup> And where, as here, the federal claim involves a contract, “contract law provides the best analogy” and the court should “adopt the general contract law statute of limitations.”<sup>92</sup> Thus, in the *Dominion Order*, the Enforcement Bureau cited the parties’ agreement to the applicability of a 5-year statute of limitations for actions involving a Virginia contract.<sup>93</sup> The comparable statute of limitations in Florida is also 5 years.<sup>94</sup>

33. To date, AT&T has overpaid Duke Energy Florida more than [REDACTED] million during the applicable 5-year statute of limitations based on proportional new telecom rates for both

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<sup>90</sup> See *Pole Attachment Order*, 26 FCC Rcd at 5289-90 (¶¶ 110-12); see also *In the Matter of Implementation of Section 224 of the Act; A Nat’l Broadband Plan for Our Future*, 25 FCC Rcd 11864, 11902 (¶ 88) (2010) (“Generally speaking, a plaintiff is entitled to recompense going back as far as the applicable statute of limitations allows. There does not appear to be a justification for treating pole attachment disputes differently.”).

<sup>91</sup> *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018) (quoting *Cty. of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985)). See also *Spiegler v. District of Columbia*, 866 F.2d 461, 463-64 (D.C. Cir. 1989) (“When Congress has not established a statute of limitations for a federal cause of action, it is well-settled that federal courts may ‘borrow’ one from an analogous state cause of action, provided that the state limitations period is not inconsistent with underlying federal policies.”).

<sup>92</sup> *Hoang*, 910 F.3d at 1101. Moreover, the Commission could have, but did not, specify a one-size-fits-all federal statute of limitations, further reinforcing that the “applicable statute of limitations” is drawn from state law.

<sup>93</sup> See *Dominion Order*, 32 FCC Rcd at 3764 (¶ 28 n.104) (citing Va. Code § 8.01-246(2)).

<sup>94</sup> See Fla. Stat. § 95.11(2)(b).

parties.<sup>95</sup> The Commission should require Duke Energy Florida to refund these amounts, which were collected in violation of federal law. The refund will be consistent with the Commission's intention that "monetary recovery in a pole attachment action extend as far back in time as the applicable statute of limitations allows."<sup>96</sup> Any other result "discourages pre-complaint negotiations between the parties," "fails to make injured attachers whole, and is inconsistent with the way that claims for monetary recovery are generally treated under the law."<sup>97</sup> And here, AT&T should be made as whole as possible for the unjust and unreasonable rates that it has paid Duke Energy Florida, which Duke Energy Florida has invoiced in violation of federal law for many more years than covered by the applicable statute of limitations period.<sup>98</sup> By awarding refunds, the Commission can reduce the harm from Duke Energy Florida's longstanding violation of federal law, inform negotiations, and confirm for the industry that it will enforce the ILEC rate reforms that were "designed to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."<sup>99</sup>

#### IV. COUNT I – UNJUST AND UNREASONABLE RATES

34. AT&T incorporates paragraphs 1 through 33 as if fully set forth herein.

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<sup>95</sup> Ex. A at ATT00008, ATT00021 (Rhinehart Aff. ¶ 15 & Ex. R-4) (calculating a net rental overpayment of [REDACTED] for the 2015 – 2019 rental years); Ex. B at ATT00026 (Miller Aff. ¶ 8).

<sup>96</sup> *Pole Attachment Order*, 26 FCC Rcd at 5290 (¶ 112).

<sup>97</sup> *Id.* at 5289 (¶ 110).

<sup>98</sup> See Ex. B at ATT00026 (Miller Aff. ¶ 9).

<sup>99</sup> *Pole Attachment Order*, 26 FCC Rcd at 5241 (¶ 1).



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35. The Commission is statutorily required to ensure that the pole attachment rates that Duke Energy Florida charges AT&T are just and reasonable.<sup>100</sup>

36. The rates that Duke Energy Florida charges AT&T under the JUA are, and have long been, unjust and unreasonable in violation of 47 U.S.C. § 224.

37. The just and reasonable rate for AT&T's attachments to Duke Energy Florida's poles is the new telecom rate under the presumption adopted in the 2018 *Third Report and Order* and the principle of competitive neutrality adopted in the 2011 *Pole Attachment Order*.<sup>101</sup> The following table includes the new telecom rates, calculated using the best data available to AT&T for its use of Duke Energy Florida's poles and the proportional new telecom rates that would apply to Duke Energy Florida's use of AT&T's poles:<sup>102</sup>

	2015	2016	2017	2018	2019
New telecom rate for AT&T's use of Duke Energy Florida's poles (per pole)	\$4.56	\$4.46	\$4.51	\$4.78	\$4.54
Proportional new telecom rate for Duke Energy Florida's use of AT&T's poles (per pole)	\$12.58	\$11.66	\$9.44	\$12.60	\$10.31

Because Duke Energy Florida denied AT&T these just and reasonable rates, AT&T has already overpaid Duke Energy Florida by more than [REDACTED] million in net pole attachment rentals during the relevant refund period.<sup>103</sup>

<sup>100</sup> 47 U.S.C. § 224(b)(1).

<sup>101</sup> See *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

<sup>102</sup> Ex. A at ATT00007-08 (Rhinehart Aff. ¶ 14).

<sup>103</sup> *Id.* at ATT00008, ATT00021 (Rhinehart Aff. ¶ 15 & Ex. R-4) (calculating overpayment for 2015 – 2019 rental years of [REDACTED] using new telecom rental rates for AT&T and Duke Energy Florida); Ex. B at ATT00026 (Miller Aff. ¶ 8).

38. Alternatively, even if Duke Energy Florida could show that the JUA provides AT&T a net material advantage over its competitors, the just and reasonable rate for AT&T's use of Duke Energy Florida's poles is not higher than the rate calculated using the FCC's pre-existing telecom formula.<sup>104</sup> The following table includes the pre-existing telecom rates, calculated using the best data available to AT&T for its use of Duke Energy Florida's poles and the proportional pre-existing telecom rates that would apply to Duke Energy Florida's use of AT&T's poles:<sup>105</sup>

	2015	2016	2017	2018	2019
Pre-existing telecom rate for AT&T's use of Duke Energy Florida's poles (per pole)	\$6.91	\$6.76	\$6.83	\$7.25	\$6.89
Proportional pre-existing telecom rate for Duke Energy Florida's use of AT&T's poles (per pole)	\$19.06	\$17.66	\$14.30	\$19.08	\$15.63

Under these alternative circumstances, AT&T has already overpaid Duke Energy Florida by more than █ million in net pole attachment rentals during the relevant refund period.<sup>106</sup>

#### V. REQUEST FOR RELIEF

39. AT&T respectfully requests that the Commission find that Duke Energy Florida charged and continues to charge AT&T unjust and unreasonable rates in violation of federal law.

40. AT&T respectfully requests that the Commission set the just and reasonable rate, effective as of the 2015 rental year and going forward, as the rate that is properly calculated in accordance with the new telecom rate formula.

<sup>104</sup> See *Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

<sup>105</sup> Ex. A at ATT00010 (Rhinehart Aff. ¶ 19).

<sup>106</sup> *Id.* at ATT00010, ATT00021 (Rhinehart Aff. ¶ 20 & Ex. R-4) (calculating overpayment for 2015 – 2019 rental years of █ using pre-existing telecom rental rates for AT&T and Duke Energy Florida); Ex. B at ATT00026 (Miller Aff. ¶ 8).

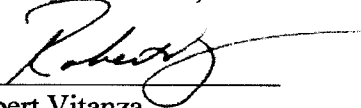
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41. Alternatively, if Duke Energy Florida attempts to rebut the presumption, and the Commission concludes that Duke Energy Florida has met its burden to prove by clear and convincing evidence that the JUA provides AT&T a net material advantage over its competitors, AT&T respectfully requests that the Commission set the just and reasonable rate, effective as of the 2015 rental year, at a rate justified by the proven ongoing per pole value of the net material competitive advantages and no higher than the rate that is properly calculated in accordance with the pre-existing telecom rate formula.

42. AT&T respectfully requests that the Commission order Duke Energy Florida to refund all amounts paid in excess of a just and reasonable rate beginning with the 2015 rental year and grant AT&T such other relief as the Commission deems just, reasonable, and proper.

Respectfully submitted,

By: \_\_\_\_\_

  
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Gary Phillips  
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(214) 757-3357

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Dated: August 25, 2020

*Attorneys for BellSouth Telecommunications,  
LLC d/b/a AT&T Florida*

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**INFORMATION DESIGNATION**

1. The AT&T employees with relevant information about this rental rate dispute are identified in this Pole Attachment Complaint and its supporting Affidavits and Exhibits.

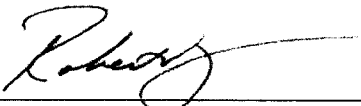
2. The Joint Use Agreement and correspondence exchanged by the parties during the rental rate negotiations, except to the extent such correspondence contains confidential and privileged settlement communications designated under Federal Rule of Evidence 408 and its state law equivalents, are attached as Exhibits to this Pole Attachment Complaint. Additional correspondence exchanged by the parties is already in Duke Energy Florida's possession. Also attached are Affidavits from AT&T employees involved in the rate negotiations, as well as from outside expert Christian M. Dippon, Ph.D., calculations of the rental rates that result from the Commission's new and pre-existing telecom rate formulas, and calculations of the amounts that Duke Energy Florida has collected in violation of 47 U.S.C. § 224(b).

3. Should Duke Energy Florida seek to rebut the new telecom rate presumption, additional information will become relevant. AT&T previously sought to obtain some of this information from Duke Energy Florida, such as a complete set of executed license agreements, and the support and quantification of the value associated with any competitive "benefit" that Duke Energy Florida believes would justify a rental rate higher than the properly calculated new telecom rate. AT&T seeks such information in interrogatories being served contemporaneously with this Pole Attachment Complaint. AT&T reserves the right to rely on information that is not appended to this Pole Attachment Complaint if it is provided by Duke Energy Florida or becomes relevant.

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**RULE 1.721(M) VERIFICATION**


I, Robert Vitanza, as signatory to this submission, hereby verify that I have read this Pole Attachment Complaint and, to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.

  
\_\_\_\_\_  
Robert Vitanza

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**DECLARATION OF PAYMENT**

I, Frank Scaduto, counsel for Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"), hereby declare, under penalty of perjury, that AT&T paid the \$295 filing fee electronically using the Commission's electronic filing and payment system "Fee Filer" ([www.fcc.gov/feefiler](http://www.fcc.gov/feefiler)) on August 25, 2020, as required by Section 1.1106 of the Commission's Rules, 47 C.F.R. § 1.1106. AT&T's 10-digit FCC Registration Number is 0020882668.



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Frank Scaduto

PUBLIC VERSION

**CERTIFICATE OF SERVICE**

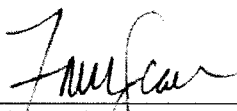
I hereby certify that on August 25, 2020, I caused a copy of the foregoing Complaint, Affidavits, and Exhibits in support thereof, to be served on the following (service method indicated):

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9050 Junction Drive  
Annapolis Junction, MD 20701  
(confidential version of Complaint,  
Affidavits, and Exhibits by hand delivery;  
public version of Complaint, Affidavits,  
and Exhibits by ECFS)

Duke Energy Florida, LLC  
c/o CT Corporation System  
1200 South Pine Island Road  
Plantation, FL 33324  
(confidential and public versions of  
Complaint, Affidavits, and Exhibits by hand  
delivery)

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426  
(public version of Complaint, Affidavits,  
and Exhibits by overnight delivery)

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(public version of Complaint, Affidavits,  
and Exhibits by overnight delivery)

  
\_\_\_\_\_  
Frank Scaduto

PUBLIC VERSION

Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**Affidavits**

- A. Affidavit of Daniel P. Rhinehart (August 24, 2020).
- B. Affidavit of Dianne W. Miller (August 24, 2020).
- C. Affidavit of Mark Peters (August 24, 2020).
- D. Affidavit of Christian M. Dippon, Ph.D. (August 24, 2020).

**Exhibits**

- 1. Joint Use Agreement Between Florida Power Corporation (“Duke Energy Florida”) and Southern Bell Telephone and Telegraph Company (“AT&T”), dated June 1, 1969, as amended.
- 2. Draft “Telecommunications Pole Attachment License Agreement Between Duke Energy Progress, LLC and \_\_\_\_\_.”
- 3. Invoices from Duke Energy Florida for the 2015 – 2019 Rental Years.
- 4. Duke Energy Florida’s JUA Rate Development for the 2015 – 2019 Rental Years.
- 5. Invoice from Florida Power Corporation for the 1990 Rental Year.
- 6. Letter from D. Miller, AT&T, to S. Freeburn, Duke (May 22, 2019).
- 7. Emails between D. Miller, AT&T, and S. Freeburn, Duke (May 22 – June 18, 2019).
- 8. Letter from D. Miller, AT&T, to S. Freeburn, Duke (Sept. 5, 2019).



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9. Emails between D. Miller, AT&T, and S. Freeburn, Duke (Sept. 6 – 12, 2019).
10. Emails between D. Miller, AT&T, and S. Freeburn, Duke (Nov. 7, 2019).
11. Email and Letter from S. Freeburn, Duke, to D. Miller, AT&T (Nov. 13, 2019).
12. Emails between D. Miller, AT&T, and S. Freeburn, Duke (Nov. 13 – Dec. 4, 2019).
13. Emails between D. Miller, AT&T, and S. Freeburn, Duke (Dec. 13 – 18, 2019) (without attachments).
14. Email from S. Freeburn, Duke, to D. Miller, AT&T (Jan. 16, 2020).
15. Emails between D. Miller, AT&T, and S. Freeburn, Duke (Jan. 30 – Feb. 18, 2020).
16. Duke Energy Joint Use Attachment Request Form.
17. Aerial Facility Damage Reports.
18. Excerpt, Duke Energy's Form 10-K for the year ended Dec. 31, 2019.
19. Excerpts, Duke's Earnings Surveillance Reports for years ending 2014 – 2018.

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# **Exhibit A**

**ATT00001**

Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**AFFIDAVIT OF DANIEL P. RHINEHART  
IN SUPPORT OF POLE ATTACHMENT COMPLAINT**

STATE OF IOWA                                    )  
  ) ss.  
COUNTY OF POWESHIEK                    )

I, Daniel P. Rhinehart, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”). I am executing this Affidavit in support of AT&T’s Pole Attachment Complaint against Duke Energy Florida, LLC (“Duke Energy Florida”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. My job title is Director – Regulatory. My current responsibilities include supporting AT&T and various affiliated entities in the areas of cost analysis, rate development, and universal services. In this role, I direct the development of the pole attachment and conduit occupancy rates charged by AT&T and affiliated operating companies pursuant to Federal Communications Commission (“FCC”) and state formulas, including the calculation of the rental

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rates that AT&T charges cable and CLEC attachers in Florida.<sup>1</sup> In my role, I also review and evaluate the propriety of pole attachment rates paid by AT&T and affiliated entities. I have also testified in a number of federal and state cases regarding the reasonableness of a variety of rates and charges during the 41 years that I have worked in the telecommunications industry. I received a BS – Education with high distinction from the University of Nevada – Reno, where I majored in math, and an MBA with honors from St. Mary’s College in Moraga, California.

3. As a result of my experience, I am familiar with the manner in which rates are calculated under the new and pre-existing telecom pole attachment rate formulas adopted by the FCC. I have relied on the best data available to AT&T when making the rate calculations described in this Affidavit. I also have personal knowledge of AT&T’s negotiations with Duke Energy Florida for a just and reasonable pole attachment rate and attended two face-to-face executive-level meetings with Duke Energy Florida, one on July 26, 2019 and a follow-up meeting on October 24, 2019. I reserve the right to supplement or revise this Affidavit as additional data becomes available.

**A. New Telecom Rates for AT&T’s Use of Duke Energy Florida’s Poles**

4. I calculated the per-pole rental rates that result from the FCC’s new telecom rate formula for AT&T’s use of Duke Energy Florida’s poles during the 2015 through 2019 rental years. My calculations are attached as Exhibit R-1. My calculations are limited to these 5 rental years because I understand that a 5-year statute of limitations applies. I am willing to provide calculations for additional rental years should they become relevant.

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<sup>1</sup> AT&T’s new telecom and cable rates in Florida ranged from [REDACTED] per pole during the 2015 through 2019 rental years, assuming 1 foot of space occupied.

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5. The attached calculations use the FCC's new telecom rate formula, which has 2 basic components: (1) a space factor that reflects the percentage of usable and unusable pole space assigned to the attacher and (2) an annual pole cost, as shown in the following graphic:<sup>2</sup>

$$\begin{array}{c}
 \text{Rate} = \qquad \qquad \qquad \text{Space Factor} \qquad \qquad \qquad \times \qquad \qquad \qquad \text{Annual Pole Cost} \\
 \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \Downarrow \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \Downarrow \\
 \text{Rate} = \left[ \frac{\left( \frac{\text{Space Occupied}}{\text{Pole Height}} \right) + \left( \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right] \times \text{Net Cost of Bare Pole} \times \text{Carrying Charge Rate} \times \text{No. of Attachers Cost Allocator}
 \end{array}$$

6. The space factor is calculated using presumptive inputs of 1 foot for space occupied by a communications attacher, 24 feet for unusable space, 37.5 feet for pole height, and 5 for the average number of attaching entities in an urbanized area (or 3 for non-urbanized areas) unless a pole owner rebuts these presumptive values with actual data.<sup>3</sup> The use of these presumptive values is appropriate to calculate the new telecom rate for joint use poles owned by Duke Energy Florida because Duke Energy Florida has produced nothing to AT&T that would rebut the presumptions.

7. I calculated a space factor of 11.20% for AT&T's use of Duke Energy Florida's poles using the presumptive inputs as follows:

$$\text{Space Factor} = \frac{1 \text{ foot} + \left( \frac{2}{3} \times \frac{24 \text{ feet}}{5 \text{ Attaching Entities}} \right)}{37.5 \text{ feet}} = 11.20\%$$

<sup>2</sup> See 47 C.F.R. § 1.1406(d)(2)(i).

<sup>3</sup> See 47 C.F.R. §§ 1.1409(c), 1.1410.

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The use of the urbanized area presumption of 5 attaching entities is appropriate because the parties' overlapping service areas includes Orlando, Gainesville, and Palm Bay, Florida.<sup>4</sup> Each of these is an urbanized area with a population greater than 50,000, and under FCC rules, "[i]f any part of the utility's service area within the state has a designation of urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities."<sup>5</sup>

8. The second component of the new telecom formula—the annual pole cost—has three subparts: (1) net cost of a bare pole, (2) carrying charge rate, and (3) a cost allocator that reflects the average number of attachers used in the space factor calculation.<sup>6</sup> The first subpart—the net cost of a bare pole—is calculated as follows:

$$\begin{array}{rcccl} \text{Net Cost of} & & & & \\ \text{Bare Pole} & = & \frac{\text{Net Pole Investment}}{\text{Number of Poles}} & \times & \text{Appurtenance} \\ & & & & \text{Factor} \end{array}$$

Net pole investment is calculated by reducing the gross investment shown in FERC Form 1 for Account 364 (Poles, Towers & Fixtures) by the depreciation and deferred tax reserves assigned or allocated to this account.<sup>7</sup> The appurtenance factor eliminates investment in non-pole

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<sup>4</sup> 47 C.F.R. § 1.1409(c); *see also* Compl. Ex. B at ATT00025 (Aff. of D. Miller, Aug. 24, 2020 (“Miller Aff.”) ¶ 6); QuickFacts, U.S. Census Bureau, *available at* <https://www.census.gov/quickfacts>.

<sup>5</sup> 47 C.F.R. § 1.1409(c).

<sup>6</sup> 47 C.F.R. § 1.1406(d)(2)(i).

<sup>7</sup> *Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Order on Reconsideration, 16 FCC Rcd 12103, 12122-123 (¶ 32), 12161 (¶ 121), 12176 (App'x E-2) (2001) (“2001 Consolidated Order”).

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appurtenances from the pole costs used to calculate rates and is presumptively 15% for poles owned by investor-owned utilities.<sup>8</sup>

9. The second subpart—the carrying charge rate—is the sum of 5 components: an administrative element, maintenance element, depreciation element, taxes element, and rate of return.<sup>9</sup> The first four components (administrative, maintenance, depreciation, and taxes) are calculated using data in Duke Energy Florida’s FERC Form 1 and the distribution plant depreciation rate Duke Energy Florida provided with its annual calculation of rental rates under the parties’ joint use agreement (“JUA”).<sup>10</sup> The fifth component (rate of return) is Duke Energy Florida’s “weighted average cost of capital, both debt and equity.”<sup>11</sup> My calculation of Duke Energy Florida’s rate of return for the 2015 through 2019 rental years is attached as Exhibit R-2 and is based entirely on information provided in Duke Energy Florida’s filings at the Florida Public Service Commission, relevant excerpts of which are attached to AT&T’s Complaint.<sup>12</sup>

10. The third subpart—the cost allocator—is 0.66 in this case under FCC rules based on the applicable presumptive input of 5 attaching entities.<sup>13</sup>

11. The following table shows the per-pole new telecom rates that apply to AT&T’s use of Duke Energy Florida’s poles during the 2015 through 2019 rental years using these inputs:

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<sup>8</sup> *Amendment of Rules & Policies Governing the Attachment of Cable Television Hardware to Util. Poles*, Report and Order, 2 FCC Rcd 4387, 4390 (¶ 19) (1987) (“1987 Pole Attachment Order”).

<sup>9</sup> *2001 Consolidated Order*, 16 FCC Rcd at 12156 (¶ 110) & 12176 (App’x E-2).

<sup>10</sup> See Compl. Ex. 4 at ATT00160-170 (Duke Energy Florida’s JUA Rate Development for the 2015 – 2019 rental years).

<sup>11</sup> See *Matter of Multimedia Cablevision, Inc.*, 11 FCC Rcd 11202, 11215 (¶ 36) (1996).

<sup>12</sup> See Compl. Ex. 19 at ATT00212-236 (Excerpts from Duke Energy Florida’s Earnings Surveillance Reports).

<sup>13</sup> 47 C.F.R. § 1.1406(d)(2)(i).

Rate		=	Space Factor	x	Annual Pole Cost				
Rental Year	New Telecom Rate (per pole)	=	Space Factor	x	Net Cost of Bare Pole	x	Carrying Charge Rate	x	Cost Allocator
2015	\$4.56		11.20%		\$133.71		46.16%		0.66
2016	\$4.46		11.20%		\$125.84		47.98%		0.66
2017	\$4.51		11.20%		\$135.93		44.87%		0.66
2018	\$4.78		11.20%		\$169.80		38.10%		0.66
2019	\$4.54		11.20%		\$170.60		36.03%		0.66

12. In contrast, AT&T paid Duke Energy Florida pole attachment rates for the 2015 through 2019 rental years that were, on average, about [REDACTED] times the applicable new telecom rate:

Rental Year	New Telecom Rate (per pole)	JUA Rate Paid by AT&T (per pole)	JUA Rate Compared to New Telecom Rate
2015	\$4.56	\$ [REDACTED]	[REDACTED] times
2016	\$4.46	\$ [REDACTED]	[REDACTED] times
2017	\$4.51	\$ [REDACTED]	[REDACTED] times
2018	\$4.78	\$ [REDACTED]	[REDACTED] times
2019	\$4.54	\$ [REDACTED]	[REDACTED] times
Simple Average	\$4.57	\$ [REDACTED]	[REDACTED] times

**B. AT&T's Overpayments Compared to New Telecom Rates**

13. I calculated AT&T's overpayments for the 2015 through 2019 rental years by comparing the net rental amount that Duke Energy Florida invoiced AT&T for annual pole attachment rent to the net rental amount that AT&T would have paid if both companies paid proportional new telecom rates. I calculate the overpayments using "proportional" rates because the Commission "anticipat[ed] that incumbent LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole."<sup>14</sup>

14. My calculation of the proportional new telecom rates for Duke Energy Florida's use of AT&T's poles are attached as Exhibit R-3. I used the same new telecom rate formula

<sup>14</sup> *Verizon Va. v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3760 (¶ 21 n.78) (EB 2017) (citing *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662)).



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described above, *see* Section A, but calculated (1) a space factor that accounts for Duke Energy Florida's greater use of space on the pole, and (2) annual pole costs based on AT&T-specific data, such as the publicly reported AT&T cost data that AT&T used to calculate rates for other attachers during the rental year and the 5% appurtenance factor that presumptively applies when calculating rates for ILEC-owned poles.<sup>15</sup> The following table includes the proportional new telecom rates that I calculated:

	2015	2016	2017	2018	2019
New telecom rate for AT&T's use of Duke Energy Florida's poles (per pole)	\$4.56	\$4.46	\$4.51	\$4.78	\$4.54
Proportional new telecom rate for Duke Energy Florida's use of AT&T's poles (per pole)	\$12.58	\$11.66	\$9.44	\$12.60	\$10.31

15. My overpayment calculation for the 2015 through 2019 rental years is attached as Exhibit R-4. It shows that AT&T overpaid Duke Energy Florida by more than [REDACTED] million in net pole rent for the 2015 through 2019 rental years as compared to proportional new telecom rates:

Rental Year	AT&T's Net Rent Payment to Duke Energy Florida	-	Net Rent at Proportional New Telecom Rates	=	AT&T's Overpayment
2015	\$ [REDACTED]		\$235,229		\$ [REDACTED]
2016	\$ [REDACTED]		\$232,978		\$ [REDACTED]
2017	\$ [REDACTED]		\$244,013		\$ [REDACTED]
2018	\$ [REDACTED]		\$232,051		\$ [REDACTED]
2019	\$ [REDACTED]		\$229,158		\$ [REDACTED]
<b>Total 5-Year Overpayment (2015-2019)</b>					<b>\$ [REDACTED]</b>

<sup>15</sup> See 1987 Pole Attachment Order, 2 FCC Rcd at 4390 (¶ 19).

**C. AT&T Has Also Paid Far More Than the Pre-Existing Telecom Rate**

16. I also calculated rental rates using the FCC’s pre-existing telecom rate formula, meaning the telecom rate formula in effect prior to the 2011 *Pole Attachment Order*.<sup>16</sup> I calculated these rates because the FCC set pre-existing telecom rates as a “hard cap” under the 2018 *Third Report and Order*, and as a “reference point” under the 2011 *Pole Attachment Order*, on the rental rate that may be charged an ILEC that has net benefits under a joint use agreement that materially advantage the ILEC over its competitors.<sup>17</sup> My pre-existing telecom rate calculations are included in Exhibit R-1.

17. The pre-existing telecom rate formula differs from the new telecom rate formula in that it does not include a cost allocator in the annual pole cost calculation to account for the number of attaching entities on the pole. The formula is in all other respects the same. The following table shows my calculation of the per-pole pre-existing telecom rates that apply to AT&T’s use of Duke Energy Florida’s poles during the 2015 through 2019 rental years:

<b>Rental Year</b>	<b>Pre-Existing Telecom Rate (per pole)</b>	<b>=</b>	<b>Space Factor</b>	<b>x</b>	<b>Net Cost of Bare Pole</b>	<b>x</b>	<b>Carrying Charge Rate</b>
2015	<b>\$6.91</b>		11.20%		\$133.71		46.16%
2016	<b>\$6.76</b>		11.20%		\$125.84		47.98%
2017	<b>\$6.83</b>		11.20%		\$135.93		44.87%
2018	<b>\$7.25</b>		11.20%		\$169.80		38.10%
2019	<b>\$6.89</b>		11.20%		\$170.60		36.03%

18. AT&T paid Duke Energy Florida pole attachment rates for the 2015 through 2019 rental years that were, on average, [REDACTED] times these pre-existing telecom rates:

<sup>16</sup> *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) (“*Pole Attachment Order*”).

<sup>17</sup> *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7771 (¶ 129) (2018); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

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Rental Year	Pre-Existing Telecom Rate (per pole)	JUA Rate Paid By AT&T (per pole)	JUA Rate Compared to Pre-Existing Telecom Rate
2015	\$6.91	\$ [REDACTED]	[REDACTED] times
2016	\$6.76	\$ [REDACTED]	[REDACTED] times
2017	\$6.83	\$ [REDACTED]	[REDACTED] times
2018	\$7.25	\$ [REDACTED]	[REDACTED] times
2019	\$6.89	\$ [REDACTED]	[REDACTED] times
Simple Average	\$6.93	\$ [REDACTED]	[REDACTED] times

19. AT&T's annual net rental payments to Duke Energy Florida have also far exceeded the net rent that AT&T would have paid if both companies paid proportional pre-existing telecom rates, as shown in Exhibit R-4. My calculations use proportional pre-existing telecom rates for Duke Energy Florida's use of AT&T's poles, which are included in Exhibit R-3. The following table includes the proportional pre-existing telecom rates that I calculated:

	2015	2016	2017	2018	2019
Pre-existing telecom rate for AT&T's use of Duke Energy Florida's poles (per pole)	\$6.91	\$6.76	\$6.83	\$7.25	\$6.89
Proportional pre-existing telecom rate for Duke Energy Florida's use of AT&T's poles (per pole)	\$19.06	\$17.66	\$14.30	\$19.08	\$15.63

20. My calculations show that AT&T overpaid Duke Energy Florida by more than [REDACTED] million in net pole rent for the 2015 through 2019 rental years as compared to proportional pre-existing telecom rates:

Rental Year	AT&T's Net Rent Payment to Duke Energy Florida	-	Net Rent at Proportional Pre-Existing Telecom Rates	=	AT&T's Overpayment
2015	\$ [REDACTED]		\$356,463		\$ [REDACTED]
2016	\$ [REDACTED]		\$353,145		\$ [REDACTED]
2017	\$ [REDACTED]		\$369,514		\$ [REDACTED]
2018	\$ [REDACTED]		\$352,064		\$ [REDACTED]
2019	\$ [REDACTED]		\$347,908		\$ [REDACTED]
<b>Total 5-Year Overpayment (2015-2019)</b>					<b>\$ [REDACTED]</b>

*Daniel P Rhinehart*

Daniel P. Rhinehart

Sworn to before me on  
this 24th day of August, 2020

Notary Public

*Angie M. Thompson*  
8-24-20



ANGIE M THOMPSON

Commission Number 732530

My Commission Expires

01/24/2023

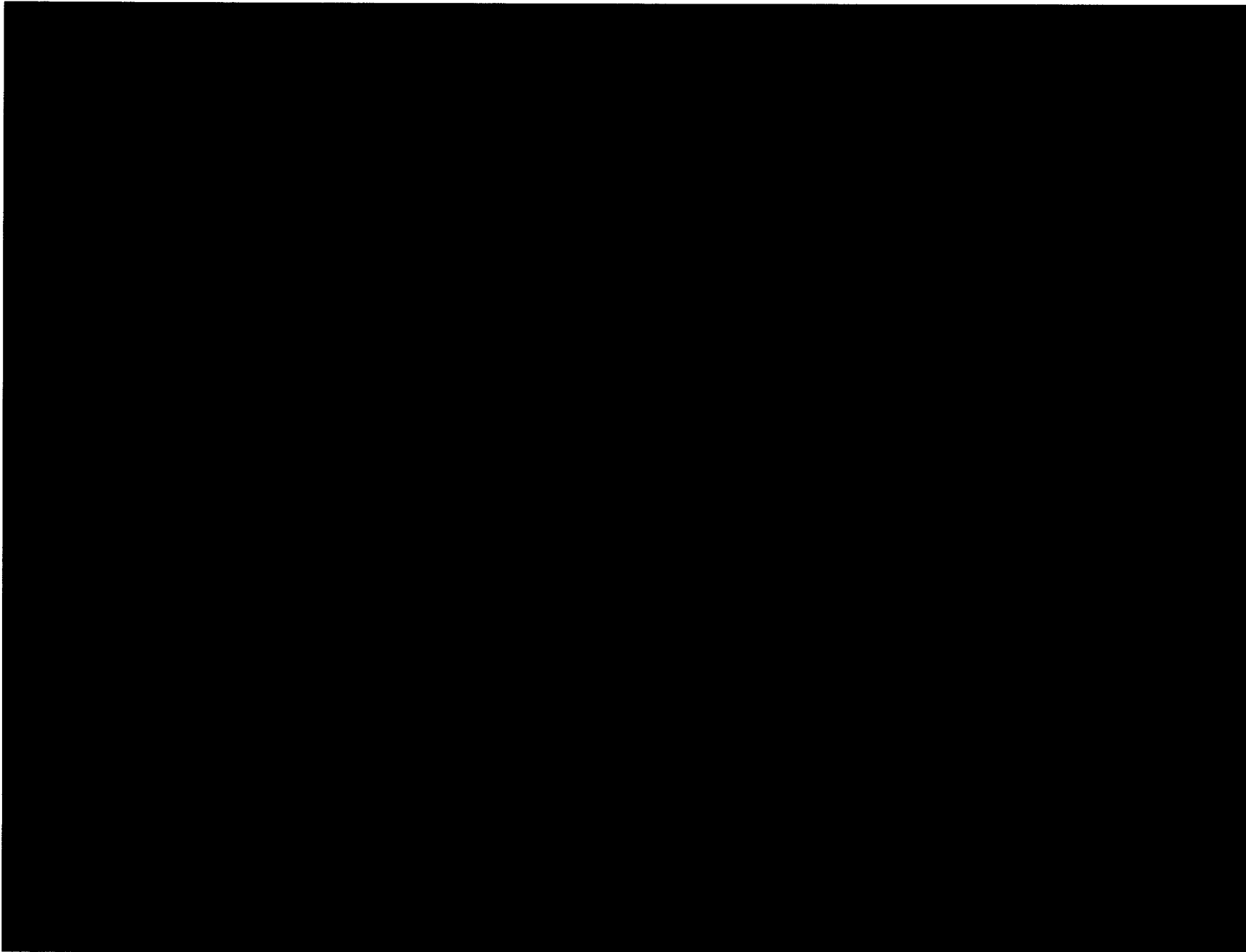
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# **Exhibit R-1**

**ATT00012**



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**ATT00014**

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## **Exhibit R-2**

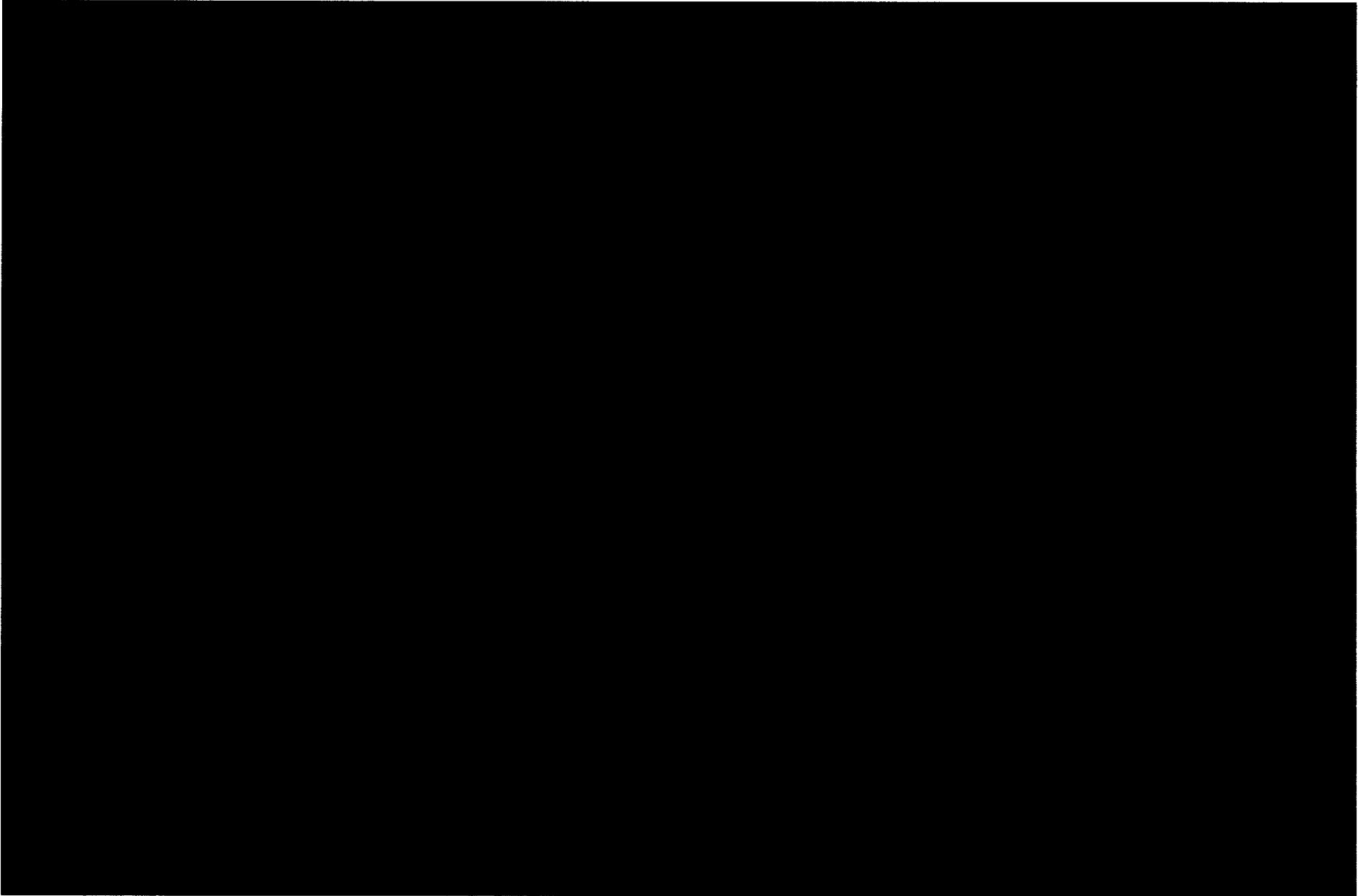
**ATT00015**



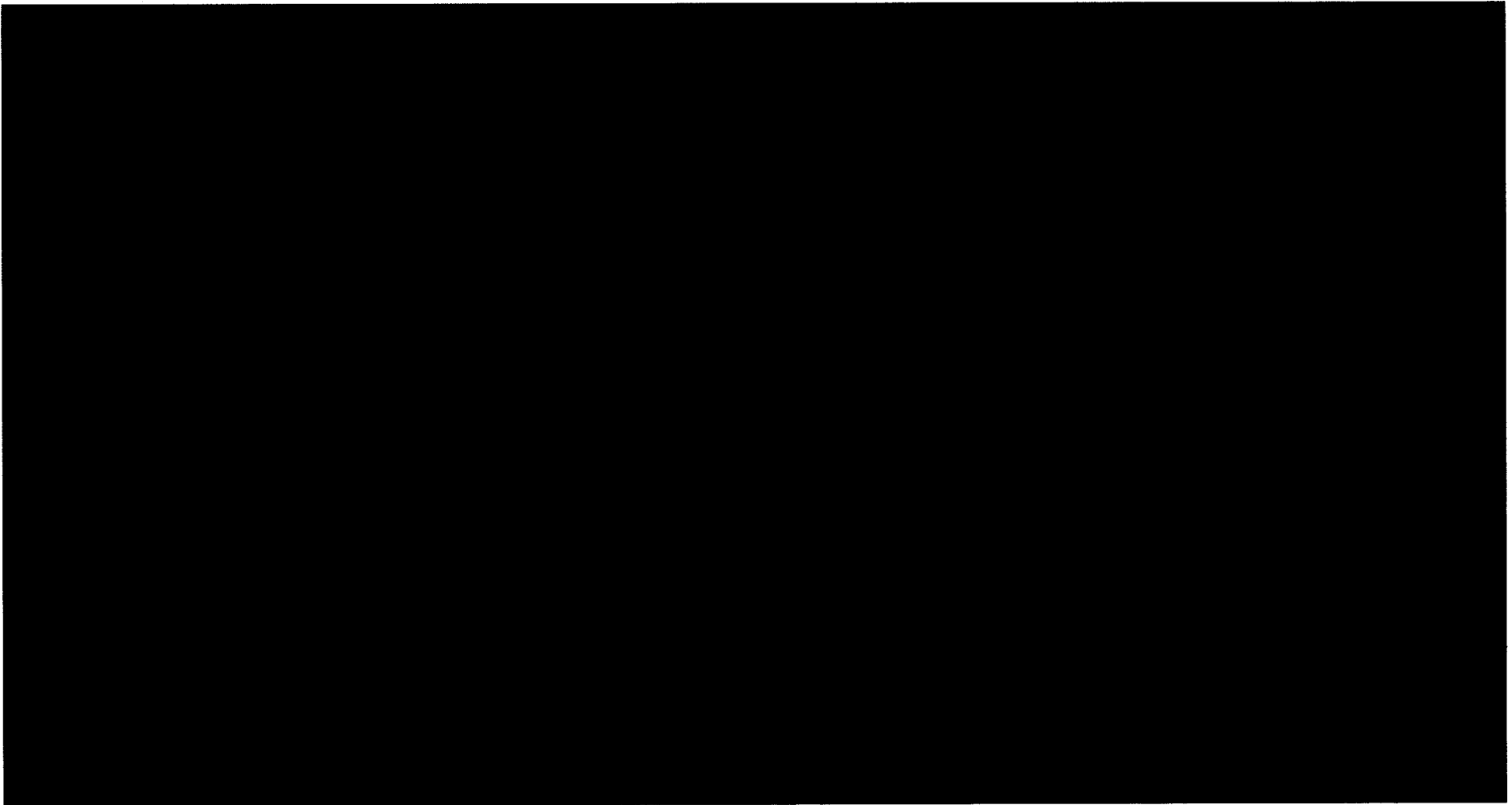


# Exhibit R-3

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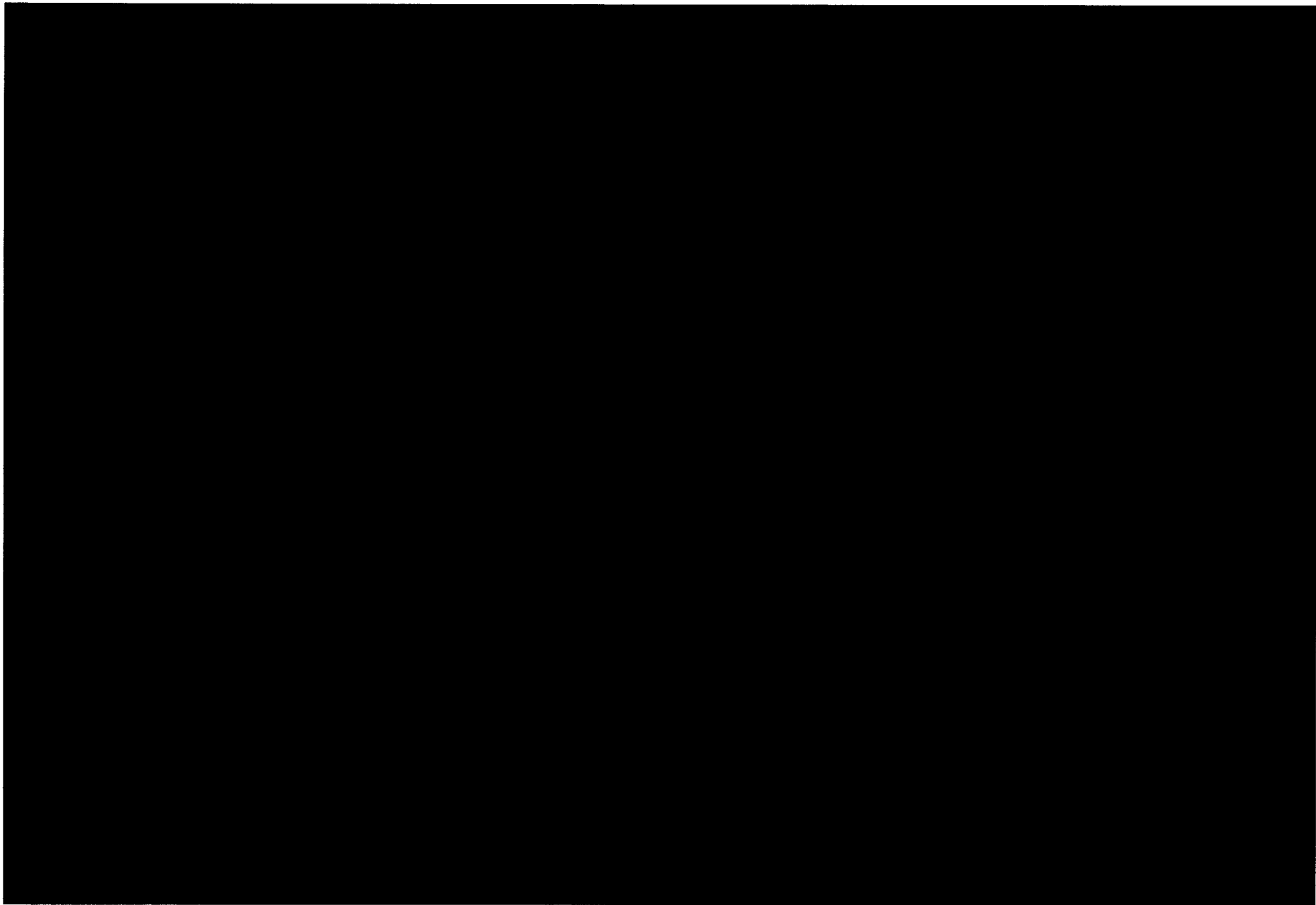
**ATT00018**



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# **Exhibit R-4**

**ATT00020**



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# **Exhibit B**

**ATT00022**

Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**AFFIDAVIT OF DIANNE W. MILLER  
IN SUPPORT OF POLE ATTACHMENT COMPLAINT**

STATE OF SOUTH CAROLINA    )  
  ) ss.  
COUNTY OF BEAUFORT         )

I, Dianne W. Miller, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”), which is a Georgia limited liability company d/b/a AT&T Florida with a principal place of business at One CNN Center, 1424C, Atlanta, GA 30303. AT&T Florida (“AT&T”) is an incumbent local exchange carrier (“ILEC”) that provides telecommunications and other services in Florida.

2. I am executing this Affidavit in support of AT&T’s Pole Attachment Complaint against Duke Energy Florida, LLC (“Duke Energy Florida”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath. I reserve the right to supplement or revise this Affidavit as additional information becomes available.



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3. My job title is Director – Construction & Engineering, with responsibility for the National Joint Utility Team. In this role, I support various AT&T-affiliated ILECs across 21 states in the negotiation and implementation of joint use agreements with investor-owned, municipal, and cooperative utilities. I also interact with operational and field teams, assist with joint use issues impacting the wireline network, and negotiate the rates, terms, and conditions of joint use.

4. I have over 46 years of experience in the telecommunications industry. I was hired by Southern Bell Telephone and Telegraph Company in 1973 in an administrative role supporting plant operations. I remained with the Company through its merger with South Central Bell Telephone Company to become BellSouth Telecommunications, Inc., which later became BellSouth Telecommunications, LLC. I obtained a BA in Business Economics *magna cum laude* from Wofford College while working as a dispatching manager for field technicians. I have since served in a variety of managerial and executive capacities involving network operations, DSL deployment, and joint use. Among other positions, I served as a Supervisor in the Construction Management Center in the late 1980s, where I was responsible for pole transfers and coordinating repairs of broken poles and lines. In the 1990s, I was a Construction Manager and participated in joint utility meetings on issues related to permitting, rights-of-way, road relocations, and deployment to new areas. In the early 2000s, I was a Director with responsibility for all joint use agreements across a 9-state southeastern region. Over the years, I have had a variety of other jobs involving wireline deployment and coordination with utilities on issues related to shared infrastructure.

5. I initiated and participated in AT&T's executive-level negotiations with Duke Energy Florida to try to obtain a just and reasonable pole attachment rate. AT&T became party

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to a Joint Use Agreement with Duke Energy Florida (“Florida JUA”) that was entered into by Florida Power Corporation and Southern Bell Telephone and Telegraph Company in 1969 and amended in 1980 and 1990. The Florida JUA, as amended, is attached to the Complaint as Exhibit 1. AT&T sometimes refers to the Florida JUA as the Progress Energy Florida JUA because it was managed by Progress Energy Florida before the merger of Duke Energy and Progress Energy.

6. AT&T’s overlapping service territory with Duke Energy Florida includes, but is not limited to, Orlando, Gainesville, and Palm Bay, Florida. Duke Energy Florida owns the vast majority of the utility poles the parties share. Each year, Duke Energy Florida issues AT&T an invoice for the net pole attachment rental amount that results when Duke Energy Florida’s rent for use of AT&T’s poles is subtracted from AT&T’s rent for use of Duke Energy Florida’s poles. Duke Energy Florida’s most recent invoice for annual pole attachment rent, issued in December 2019 for the 2019 rental year, states that Duke Energy Florida owns 62,363 (92.3%) and AT&T owns 5,233 (7.7%) of 67,596 poles jointly used by the parties.

7. Duke Energy Florida charges AT&T for pole attachment rent calculated using a rental rate formula in the 1990 amendment to the Florida JUA. According to Duke Energy Florida’s invoice for 1990 rent, which is attached to the Complaint as Exhibit 5, Duke Energy Florida then owned most of the poles the parties shared as well. The 1990 invoice states that Duke Energy Florida then owned 48,278 (89.5%), and AT&T owned 5,675 (10.5%), of 53,953 utility poles jointly used by the parties at that time.

8. The rental rate formula in the Florida JUA assigns to AT&T an exceptionally high [REDACTED] of Duke Energy Florida’s annual pole costs and does not account for the presence of or rent

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received by any third parties on the jointly used poles. Since 2015, Duke Energy Florida has charged, and AT&T has paid, pole attachment rent calculated as follows:

Rental Year	AT&T's Rent to Duke Energy Florida		-	Duke Energy Florida's Rent to AT&T		=	Net Rent
	Per-Pole Rate for AT&T's Use of Duke Energy Florida's Poles	x Duke Energy Florida Poles	-	Per-Pole Rate for Duke Energy Florida's Use of AT&T's Poles	x AT&T Poles	=	Net Rent Paid by AT&T
2015	\$ [REDACTED]	60,807	-	\$ [REDACTED]	3,342	=	\$ [REDACTED]
2016	\$ [REDACTED]	60,972	-	\$ [REDACTED]	3,342	=	\$ [REDACTED]
2017	\$ [REDACTED]	61,098	-	\$ [REDACTED]	3,342	=	\$ [REDACTED]
2018	\$ [REDACTED]	62,336	-	\$ [REDACTED]	5,233	=	\$ [REDACTED]
2019	\$ [REDACTED]	62,363	-	\$ [REDACTED]	5,233	=	\$ [REDACTED]

9. Duke Energy Florida's invoices for the 2015 through the 2019 rental years are attached to the Complaint as Exhibit 3. AT&T has processed payment on each of these invoices to ensure that they all have been paid in full before the filing of the Complaint. AT&T also paid Duke Energy Florida more than [REDACTED] million in additional net annual pole attachment rent since the July 12, 2011 effective date of the *Pole Attachment Order* (reflecting the July 12, 2011 through the 2014 time period), but I understand that AT&T's request for relief begins with the 2015 rental year because of a 5-year statute of limitations.

10. The rental rates AT&T has paid Duke Energy Florida have been extremely high when compared to the rates that AT&T calculated, based on the best data available to it, using the FCC's new and pre-existing telecom rate formulas.<sup>1</sup> AT&T has tried to eliminate this significant rate disparity through negotiations with Duke Energy Florida. Prior to filing this

<sup>1</sup> See Compl. Ex. A at ATT00007, ATT00009 (Affidavit of Daniel P. Rhinehart (Aug. 24, 2020) ¶¶ 11, 17).

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Complaint, AT&T notified Duke Energy Florida in writing of the basis for this Complaint and, in good faith, sought to settle this dispute through telephone calls, the exchange of correspondence, and two face-to-face executive-level meetings. Copies of some of the correspondence the parties exchanged during AT&T's more than yearlong effort to obtain a just and reasonable rate are attached to the Complaint as Exhibits 6 to 15.<sup>2</sup>

11. I participated in the rate negotiations with Duke Energy Florida as Director – Construction & Engineering with responsibility for the National Joint Utility Team. In May 2019, I sent a letter requesting executive-level negotiations with Duke Energy Florida and one of its affiliates in North and South Carolina, Duke Energy Progress, which has a joint use agreement with AT&T North Carolina and AT&T South Carolina (“Carolinas JUA”). I understood that Scott Freeburn, Joint Use Manager at Duke Energy Corporation, had responsibility for the joint use agreements of these former Progress Energy companies and hoped our negotiations would be more efficient and successful if they included the Florida JUA and the Carolinas JUA.

12. Mr. Freeburn and I scheduled the executive-level meeting for July 26, 2019 and, at Mr. Freeburn's request, held the meeting at Duke Energy Corporation's offices in Raleigh, North Carolina. I attended the meeting for AT&T, AT&T North Carolina, and AT&T South Carolina, along with Mark Peters, Area Manager – Regulatory Relations, and Dan Rhinehart, Director – Regulatory. Mr. Freeburn and David Hatcher, Managing Director Infrastructure Solutions, attended for Duke Energy Florida and Duke Energy Progress (“the Duke companies”).

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<sup>2</sup> In connection with the parties' good-faith efforts to resolve this dispute privately, certain settlement materials were exchanged pursuant to Federal Rule of Evidence 408 and its state law equivalents. Those materials are not included as exhibits to the Complaint.

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During the meeting, we agreed to exchange certain data and continue our discussions by telephone and email.

13. AT&T's review of the data that Duke Energy Florida provided confirmed our prior conclusion that the just and reasonable rate for AT&T's use of Duke Energy Florida's poles should be the new telecom rate that federal law guarantees AT&T's competitors. I wrote to Mr. Freeburn on September 5, 2019, explained AT&T's position, and offered to return to Raleigh for a second executive-level meeting with the hope that we could settle our rate dispute.

14. Mr. Freeburn and I scheduled the second executive-level meeting for October 24, 2019, again at Duke Energy Corporation's offices in Raleigh, North Carolina. I attended the meeting for AT&T, again with Mr. Peters and Mr. Rhinehart. Mr. Freeburn and Mr. Hatcher attended the meeting for the Duke companies, along with Andy Russell, Project Manager, and Greg Fields, Managing Director Connected Communities.

15. We were unable to resolve our dispute at the October 24th meeting. Among other things, the executives for the Duke companies informed us that they would not entertain a change to rental rates for existing pole attachments, would not consider refunding any past overpayments, and considered the parties too far apart to make an offer. However, about 10 days after the meeting, Mr. Freeburn reached out and asked for an opportunity to develop and provide AT&T an enterprise-wide rate proposal that would include rates charged by Duke Energy Florida, Duke Energy Progress, and three other Duke operating companies that have joint use agreements with AT&T Florida affiliated companies. Mr. Freeburn requested pole cost data for two States in order to prepare the offer, which we agreed to provide. We asked Mr. Freeburn to provide comparable information for the three Duke operating companies he was adding to the discussions so AT&T could evaluate the anticipated proposal. Mr. Freeburn sent me the

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information about the three companies on December 13, 2019, and I sent Mr. Freeburn the information he requested on December 18, 2019.

16. Mr. Freeburn emailed that he thought he would provide the enterprise-wide rate proposal within 4 weeks of his receipt of the information I provided, so I expected to receive the proposal by January 15, 2020, before the due date on Duke Energy Florida's 2019 pole rental invoice. I called Mr. Freeburn on January 15 and we exchanged emails and talked by phone several additional times in January and February. Each time, Mr. Freeburn assured me he was still trying to obtain internal approvals to make a settlement proposal. Relying on Mr. Freeburn's representations, AT&T paid the 2019 pole rental invoice issued by Duke Energy Florida with the understanding that the parties would negotiate refunds for AT&T's overpayments. On February 18, 2020, I let Mr. Freeburn know that AT&T was not prepared to wait indefinitely for a rate proposal that might never be provided. Mr. Freeburn said he would follow up again on the status of the settlement proposal.

17. As of the signing of this Affidavit, I have not received a rate proposal or any other communication from Mr. Freeburn. As a result, in more than 15 months, Duke Energy Florida never made a rate offer of any amount—let alone an offer that would provide AT&T just and reasonable pole attachment rates. Duke Energy Florida never identified in writing any net material advantage it claims to provide AT&T under the Florida JUA relative to the terms and conditions it provides AT&T's competitors, never provided data or quantifications of value to support any such allegations, and never gave AT&T access to any of Duke Energy Florida's signed license agreements to allow AT&T to compare their terms and conditions to the Florida JUA. Duke Energy Florida also never explained why it continues to charge AT&T rental rates that are much higher than the rates that AT&T calculated, based on the best data available to it,

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using the FCC's pre-existing telecom rate formula, which the Commission set as the maximum lawful rate for an ILEC. Instead, Duke Energy Florida simply chose not to negotiate and to force AT&T to file a complaint in order to obtain the just and reasonable rental rates to which it has been entitled by law since 2011.

*Dianne W. Miller*

Dianne W. Miller

Sworn to before me on  
this 24th day of August, 2020

Notary Public

*Jennifer D. Dean*

My Commission Expires  
June 9, 2030



PUBLIC VERSION

# **Exhibit C**

**ATT00031**



Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**AFFIDAVIT OF MARK PETERS  
IN SUPPORT OF POLE ATTACHMENT COMPLAINT**

STATE OF TEXAS                    )  
  ) ss.  
COUNTY OF TARRANT            )

I, Mark Peters, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”). I am executing this Affidavit in support of AT&T’s Pole Attachment Complaint against Duke Energy Florida, LLC (“Duke Energy Florida”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath. I reserve the right to supplement or revise this Affidavit as additional information becomes available.

2. My job title is Area Manager – Regulatory Relations. My current responsibilities include supporting various AT&T-affiliated entities with respect to regulatory, legislative, or contractual matters involving joint use, utility poles, conduit, and ducts. I am familiar with AT&T’s Joint Use Agreement with Duke Energy Florida (“Florida JUA”), support AT&T’s

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administration of the Florida JUA, and participated in AT&T's executive-level meetings with Duke Energy Florida in an effort to agree on a just and reasonable pole attachment rate.

3. I have over 22 years of experience with AT&T-affiliated entities, which I will refer to collectively as the "Company." My employment with the Company began in 1998, when I was hired by Southwestern Bell Telephone Company as a Systems Technician. From 2000 to 2002, I filled engineering roles to support digital loop carrier and fiber multiplexer installations. I subsequently joined the national staff for the Construction and Engineering department, working initially on application development as a business client representative and, in 2009, I became the first national subject matter expert on issues relating to the Company's joint use relationships with electric companies. In this capacity, I supported the negotiation and revision of new and replacement joint use agreements and amendments, assisted in the implementation and administration of joint use agreements, provided input on proposed legislation concerning pole attachments, and helped establish joint use operational standards for the Company's incumbent local exchange carriers ("ILECs"). I continue to provide this joint use support in my current position, which I assumed in 2013. I also provide support on matters relating to third-party access to Company-owned utility poles and conduit, including the negotiation and implementation of license agreements with third parties attached to Company-owned poles and conduit.

4. I am also a Senior Master Sergeant in the U.S. Air Force Reserves. My military career began after high school, when I served on active duty in the U.S. Air Force for 10 years. I was honorably discharged at the rank of Staff Sergeant. I have Associates Degrees in Applied Science, Information Technology and Networking from Tarrant County College, and in Applied Science, Transportation Logistics from the Community College of the Air Force.

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5. Over the course of my career, I have reviewed several hundred pole attachment agreements, including joint use agreements and license agreements. I am aware of the terms and conditions that typically apply to cable companies and competitive local exchange carriers (“CLECs”) that attach to poles owned by ILECs and investor-owned utilities. My knowledge also includes the practices and procedures surrounding the joint use of utility poles, including poles in AT&T’s overlapping service area with Duke Energy Florida.

6. In May 2019, AT&T asked Duke Energy Florida for a competitively neutral just and reasonable rate that complies with federal law. AT&T also asked Duke Energy Florida to schedule a face-to-face meeting and to provide copies of its executed license agreements with AT&T’s competitors if it “believes that a rate higher than the new telecom rate is justified by net competitive advantages.”<sup>1</sup> In the same letter, AT&T North Carolina and AT&T South Carolina made the same requests of Duke Energy Progress under their Joint Use Agreement (“Carolinas JUA”).<sup>2</sup> AT&T sought to consolidate the Florida and Carolinas negotiations for efficiency and based on the understanding that Scott Freeburn, Joint Use Manager at Duke Energy Corporation, had responsibility for the joint use agreements of the two former Progress Energy companies, Duke Energy Florida and Duke Energy Progress.

7. During the 15 months since AT&T asked Duke Energy Florida for a just and reasonable rate, I attended two meetings with Mr. Freeburn and other executives representing Duke Energy Florida and Duke Energy Progress. The meetings took place at Duke Energy Corporation’s headquarters in Raleigh, North Carolina on July 26 and October 24, 2019. We

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<sup>1</sup> Compl. Ex. 6 at ATT00173-175 (Letter from D. Miller, AT&T, to S. Freeburn, Duke (May 22, 2019)).

<sup>2</sup> *Id.*

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were unable to negotiate a just and reasonable rate at either meeting or during the companies' continued discussions thereafter when Mr. Freeburn promised, but never provided, a rate offer.

8. At the first meeting on July 26, 2019, Mr. Freeburn and the other executives representing Duke Energy Florida and Duke Energy Progress (“the Duke companies”) suggested that AT&T may enjoy “benefits” that justify a rate higher than the new telecom rate and offered some possible examples. It was my impression that their suggestion and examples were standard electric company talking points—they were abstract and generalized, rather than the result of a study specific to the Florida JUA or the Carolinas JUA. The executives for the Duke companies did not distinguish between the two JUAs, did not point to any relevant language in either JUA, and did not share any executed license agreements with AT&T to permit a comparison with the JUAs. My colleagues and I nonetheless addressed each issue they raised and explained why we disagreed with each of the unsupported “benefits” they listed. As I explain below, they pointed to “benefits” that apply equally to AT&T’s competitors, that do not exist under the Florida JUA, or that disadvantage AT&T as compared to its competitors.

9. Duke Energy Florida did not follow up with a written list of alleged competitive benefits it claims to provide to AT&T under the Florida JUA or any supporting documentation or value quantifications to support any such allegations. Duke Energy Florida also never sent AT&T copies of its signed license agreements in response to AT&T’s request for the agreements so it could compare their terms and conditions to the Florida JUA. Mr. Freeburn did share some Duke Energy Florida rate information and a draft “Telecommunications Pole Attachment License Agreement” for Duke Energy Progress (not Duke Energy Florida).<sup>3</sup> But he did not

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<sup>3</sup> See Compl. Ex. 2 at ATT00111-153 (Draft License Agreement). Mr. Freeburn later provided additional information related to the rates charged by three other Duke operating companies after Mr. Freeburn emailed in November 2019 to inform us that he was preparing an enterprise-wide offer that would include rates charged by Duke Energy Florida, Duke Energy Progress, and three

identify any particular provision in the draft license agreement to try to support a claim that AT&T receives net material benefits over its competitors.

10. Duke Energy Progress's draft license agreement does not and cannot show that the Florida JUA provides AT&T net benefits that materially advantage AT&T "over other telecommunications carriers or cable television systems providing telecommunications services on the same poles."<sup>4</sup> It is a draft, not an executed agreement, that may or may not have been signed by any CLEC or cable company. It also applies to poles owned by Duke Energy Progress in the Carolinas, not to poles in Florida owned by Duke Energy Florida.

11. But assuming the draft license agreement reflected the starting-point terms and conditions that Duke Energy Florida might seek in negotiations with AT&T's competitors, I compared the draft license agreement to the Florida JUA and considered its terms in light of the theoretical "benefits" Duke raised during our executive-level meetings. Based on that review and my familiarity with hundreds of joint use and license agreements, it is my conclusion that the Florida JUA does not give AT&T a net material advantage over CLECs and cable companies with respect to the attachment and maintenance of facilities on Duke Energy Florida's utility poles, and certainly does not justify the exceptionally high pole attachment rates that Duke Energy Florida charges AT&T, which far exceed the new telecom rate *and* the pre-existing telecom rate, which is the maximum rate that Duke Energy Florida may lawfully charge AT&T.

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additional Duke operating companies that have joint use agreements with AT&T Florida affiliated companies. *See* Compl. Ex. 10 at ATT00186-187 (Email from S. Freeburn, Duke, to D. Miller, AT&T (Nov. 7, 2019)); Compl. Ex. 11 at ATT00188-190 (Email from S. Freeburn, Duke, to D. Miller, AT&T (Nov. 13, 2019)); Compl. Ex. 13 at ATT00194-196 (Email from S. Freeburn, Duke, to D. Miller, AT&T (Dec. 13, 2019)). Notwithstanding several email exchanges regarding the status of the promised rate offer, Mr. Freeburn never made the promised enterprise-wide rate offer and the rates charged by those other Duke entities are not at issue in this proceeding.

<sup>4</sup> 47 C.F.R. § 1.1413(b).

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12. Many of the “benefits” that the Duke companies raised at our meetings are not *competitive* benefits at all because they impact AT&T and its competitors equally. For example, the executives representing the Duke companies stated that Duke Energy Florida installed a “build-to-suit” network (meaning that it installed poles taller than it required for electric service so that the poles could also accommodate communications attachments), that it conducts initial tree trimming when deploying new pole lines, and that it regularly inspects its poles to proactively identify and repair damaged poles. Even if true, AT&T and its competitors all use Duke Energy Florida’s poles and so are equally impacted by these “benefits.” By definition, when AT&T and its competitors attach to the same Duke Energy Florida pole, the pole is tall enough to accommodate communications attachments<sup>5</sup> and has been subjected to the same tree trimming and same periodic safety and reliability inspections. In other words, these purported benefits do not advantage AT&T over those competitors.

13. Duke Energy Progress’s draft license agreement suggests that Duke Energy Florida may also [REDACTED]  
[REDACTED].<sup>6</sup> If Duke Energy Florida has a similar provision in its executed license agreements and if it enforces that provision, it would not competitively advantage AT&T or justify a rate higher than the new telecom rate. AT&T incurs the same costs to itself inspect its new and existing AT&T

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<sup>5</sup> Indeed, the default presumptions for the FCC’s rate formulas assume that a 37.5-foot pole can accommodate 5 attaching entities and still have 24 feet of unusable space. *See* 47 C.F.R. §§ 1.1409(c), 1.1410. These presumptions are consistent with the fact that, with 6 feet of unusable space below ground and 18 feet of unusable space above ground, 4 communications attachers can attach 1 foot apart in the communications space located 18 – 21 feet above ground and there will still be 10.5 feet on the pole for the electric utility.

<sup>6</sup> Compl. Ex. 2 at ATT00129 (Draft License Agreement [REDACTED]).

attachments to ensure their compliance with safety standards and specifications.<sup>7</sup> AT&T's technicians perform a post-attachment inspection of every new AT&T attachment and conduct regular and ongoing inspections of AT&T's poles and attachments when working in the field. Duke Energy Florida does not incur costs for these inspections conducted by AT&T, so should not collect a higher rate because of them.

14. The draft license agreement also suggests that Duke Energy Florida may have the [REDACTED]. If this is true under its executed agreements, it would not provide AT&T a net material competitive advantage. The absence of a [REDACTED] in the Florida JUA is reciprocal, meaning that Duke Energy Florida is *also* not subject to [REDACTED] when using AT&T's poles. In addition, AT&T is comparable to its competitors because they—like AT&T—should never pay [REDACTED]. AT&T's competitors are given 3 opportunities to avoid [REDACTED]. [REDACTED]<sup>8</sup> [REDACTED].<sup>9</sup> Assuming AT&T would pay [REDACTED] under these terms is absurd.

<sup>7</sup> See also, e.g., Compl. Ex. 1 at ATT00097 (Florida JUA § 8.1) (“Each party shall, at its own expense and at all times, maintain all of its attachments in accordance with the specifications contained in the CODE and keep said attachments in safe condition and in thorough repair.”).

<sup>8</sup> Compl. Ex. 2 at ATT00129 (Draft License Agreement [REDACTED]).

<sup>9</sup> *Id.* (Draft License Agreement [REDACTED]). The draft license agreement also references [REDACTED]

15. Other potential “benefits” raised at our meetings by the executives representing the Duke companies are also not competitive benefits in my experience. They seem to have selected these alleged “benefits” from the types of competitive advantages that electric utilities have alleged in the past even though they do not apply under the Florida JUA.<sup>10</sup>

16. The Duke companies first stated there may be “benefits” to AT&T regarding permitting and make-ready, but the Florida JUA disproves the claim. With respect to permitting, the Duke company executives stated that AT&T would be advantaged if it was not required to submit the same permit request as its competitors, but the Florida JUA requires AT&T to complete and submit a permit application [REDACTED]

[REDACTED].<sup>11</sup> With respect to make-ready, the executives said AT&T may be advantaged if it pays for make-ready performed by a Duke company based on a cost schedule containing pre-set cost estimates instead of based on a per-project cost estimate, but AT&T does pay Duke Energy Florida for make-ready based on a per-project cost estimate.

17. AT&T also reduces the amount of make-ready it requires of Duke Energy Florida by performing much of its own make-ready, thereby imposing less of a burden on Duke Energy Florida than AT&T’s competitors. The draft license agreement suggests that AT&T’s competitors may pay Duke Energy Florida [REDACTED] the same work that AT&T completes, at cost, to survey a pole and determine whether and what make-ready is needed and

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<sup>10</sup> See *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7771 (¶ 128) (2018).

<sup>11</sup> See Compl. Ex. 1 at ATT00092 (Florida JUA § 3.1); see also Compl. Ex. 2 at ATT00141 (Draft License Agreement [REDACTED]); Compl. Ex. 16 at ATT00203 (Pole Attachment Request Form).



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whether the attachment was made consistent with construction and safety standards.<sup>12</sup> The cost to complete the same work should be about the same under either approach because labor and material costs are comparable in the same general area. The time to complete the same work should be comparable as well, although AT&T often needs to wait longer than its competitors to begin the required work, which delays AT&T's ability to deploy its facilities. As an ILEC, AT&T currently is not eligible for one-touch make-ready and the make-ready deadlines the Commission adopted to accelerate deployment for AT&T's competitors. And, because of AT&T's typical location as the lowest communications attacher on a utility pole, AT&T generally needs to wait for all existing attachers to sequentially visit the pole and move or relocate their attachments before AT&T can begin the work it requires to attach. This can take significant time, which is out of AT&T's control. AT&T's competitors, in contrast, are eligible for one-touch make-ready and are protected by the Commission's make-ready deadlines, and so can often deploy their facilities faster.

18. Executives for the Duke companies also claimed that AT&T may enjoy "benefits" which are actually *disadvantages* in my experience. At our July 2019 meeting, they said the Duke companies sometimes replace AT&T-owned poles when they are damaged from a traffic accident, storm, or other emergency. But if Duke Energy Florida replaces AT&T's pole, Duke Energy Florida may invoice AT&T for the cost of the pole replacement.<sup>13</sup> AT&T's competitors do not bear similar pole replacement costs because license agreements, by definition, do not require AT&T's competitors to own poles or incur the cost to maintain and replace them due to damage or decay.

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<sup>12</sup> See Compl. Ex. 2 at ATT00125 (Draft License Agreement [REDACTED]).

<sup>13</sup> Compl. Ex. 1 at ATT00096 (Florida JUA § 4.7).

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19. In fact, the Florida JUA imposes substantial pole ownership, maintenance, and disposal costs on AT&T that are not required by the draft license agreement.<sup>14</sup> AT&T's Construction & Engineering employees are trained in Duke Energy Florida's wind loading and safety standards and the National Electric Safety Code ("NESC"), as well as AT&T's safety, reliability, and quality standards. AT&T has responsibility for repairing its poles when alerted to a problem, for replacing its poles when they pose a safety hazard, for disposing of poles that are replaced or no longer required, and for relocating its poles to accommodate a road widening or other project. These are all responsibilities and costs that license agreements do not impose on AT&T's competitors.

20. The Duke company executives also claimed at our October 24, 2019 meeting that AT&T has historically "defended" its allocation of space at the lowest point in the communications space. I am not aware of any such efforts to "defend" that typical location and AT&T's services affiliate recently did the exact opposite: it asked the Commission to clarify that electric utilities may *not* impose a blanket ban on the installation of facilities *below* the typical location of AT&T's wireline facilities.<sup>15</sup>

21. AT&T's typical location on Duke Energy Florida's poles is a competitive *disadvantage* that resulted from history rather than choice. Standard construction practices in the early days of joint use placed AT&T's facilities there because AT&T was the only consistent communications attacher on utility poles at that time. AT&T cannot now request a different location; efficient network management requires consistency in the placement of each attachers'

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<sup>14</sup> See, e.g., *id.* at ATT00097 (Florida JUA § 8.1).

<sup>15</sup> See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, WC Docket No. 17-84, 2020 WL 4428179, at \*3 (¶ 9 n.28) (July 29, 2020) ("*Declaratory Ruling*").

facilities so all companies can quickly identify the ownership of facilities on a pole and avoid the physical damage that would result if facilities crisscrossed mid-span. But AT&T has clarified that it has no objection—but instead encourages—the placement of communications facilities *below* AT&T's facilities.<sup>16</sup>

22. AT&T's typical location on a pole does *not* save AT&T costs, as there is no material difference between the time and effort required to work on AT&T's facilities and on its competitors' facilities located a foot or two higher. The same safety measures, preparation, vehicles, and other equipment are required. The location does, however, *increase* AT&T's costs as compared to higher locations on the pole for several reasons. Because of its typical location, AT&T incurs increased transfer costs when it needs to make multiple trips to a pole to verify that prerequisite transfers above it have been completed. AT&T is also the communications attacher that is the most likely to receive a request to temporarily raise its facilities to accommodate an oversized vehicle or load that exceeds standard vertical clearance. Also, when a pole leans, which may be the result of weather damage, normal wear and tear, or improperly engineered or constructed facilities of other attachers, AT&T's facilities can become low-hanging without notice to AT&T and vulnerable to being struck by large vehicles. AT&T's typical position on the pole also increases the risk that AT&T's facilities will be damaged by climbers and ladders, which may puncture cables or break support wires, and by motor vehicles when cables span roadways.

23. AT&T does not keep records that isolate damage to its aerial facilities resulting from their location on a pole and often repairs such damage when observed in the field without submitting a damage report. However, to provide the Commission the best information available

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<sup>16</sup> See *id.* at \*4 (¶ 11 n.41).

to AT&T, I reviewed recent damage reports from counties where AT&T and Duke Energy Florida share poles for instances in which damage can be attributed to AT&T's location as the lowest attacher on the pole. The examples I identified are attached to AT&T's Complaint as Exhibit 17.

24. AT&T is competitively *disadvantaged* under the Florida JUA for other reasons as well. AT&T is not protected by a statutory right of access to Duke Energy Florida's poles in the same manner as AT&T's competitors. Because of their statutory right of access, AT&T's competitors are guaranteed space on every Duke Energy Florida pole, subject to limited statutory exceptions.<sup>17</sup> AT&T, in contrast, is not guaranteed space on any Duke Energy Florida pole to which it is not already attached. This is because the Florida JUA gives Duke Energy Florida the right to exclude poles from joint use *and* the right to terminate AT&T's ability to attach to new pole lines at any time and for any reason.<sup>18</sup>

25. AT&T has also been competitively *disadvantaged* by the Florida JUA's unrealistic allocation of 3 feet of space on a pole for AT&T's "exclusive" use, although the space is also occupied by AT&T's competitors without any offset to AT&T. AT&T does not need, want, or use 3 feet of space across Duke Energy Florida's poles for its existing facilities, for future facilities, or for any other purpose, and it cannot sublet that space to others.<sup>19</sup> Duke Energy Florida also does not and cannot reserve 3 feet of space on its poles for AT&T's exclusive use because the Commission decided nearly a quarter century ago that such space

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<sup>17</sup> 47 U.S.C. § 224(f); *see also Declaratory Ruling*, 2020 WL 4428179, at \*2-5 (¶¶ 7-13).

<sup>18</sup> *See* Compl. Ex. 1 at ATT00092, ATT00102-103 (Florida JUA §§ 2.2, 16.1).

<sup>19</sup> *See id.* at ATT00090 (Florida JUA § 1.1.6) (designating "standard space" for use by "each party").

reservations are unlawful.<sup>20</sup> AT&T installs light-weight copper and fiber optic cables that are comparable in size to the facilities of AT&T's competitors and occupy about the same amount of space across Duke Energy Florida's poles, which is presumed to be 1 foot of space.<sup>21</sup> The draft license agreement does not limit [REDACTED] and allows AT&T's competitors [REDACTED].<sup>22</sup> AT&T's competitors, as a result, routinely attach their facilities within the 3 feet of space the Florida JUA allocates to AT&T for its exclusive use, allowing Duke Energy Florida to collect rent from multiple attachers for use of the same space.

26. The discussion of "benefits" at our meetings by the Duke companies was also incomplete because Duke Energy Florida did not account for the reciprocal nature of many terms in the Florida JUA, where AT&T must extend the same terms to Duke Energy Florida for its use of AT&T's poles. By contrast, license agreements typically do not impose reciprocal obligations on CLEC and cable competitors—making this a significant difference between the costs and obligations imposed on AT&T as compared to its competitors. When determining whether AT&T enjoys a "net material advantage" over its competitors, the additional costs and obligations associated with these reciprocal terms—many of which have an equal impact on AT&T and Duke Energy Florida irrespective of their pole ownership disparity—must be considered. By definition, AT&T cannot receive a "net advantage" over its competitors if it

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<sup>20</sup> See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16079 (¶ 1170) (1996) ("Permitting an incumbent LEC, for example, to reserve space for local exchange service ... would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.").

<sup>21</sup> 47 C.F.R. § 1.1410.

<sup>22</sup> See, e.g., Compl. Ex. 2 at ATT00151 (Draft License Agreement: [REDACTED]).

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must afford to Duke Energy Florida each and every alleged "benefit" that it receives. This is so because the unique cost to AT&T from providing that alleged "benefit" cancels out any unique value from the alleged "benefit" that it receives, leaving a net value of zero.

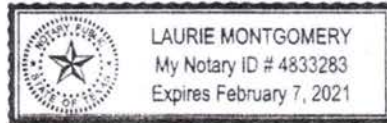
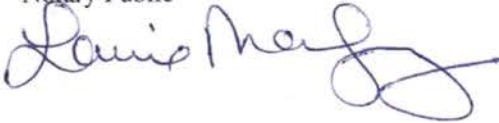
27. For all these reasons, it is my opinion that Duke Energy Florida has not and cannot identify any net benefit it provides AT&T under the Florida JUA that gives AT&T a material advantage over its cable and CLEC competitors that could justify AT&T's payment of a higher rental rate for use of Duke Energy Florida's poles.



Mark Peters

Sworn to before me on  
this 24th day of August, 2020

Notary Public



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# **Exhibit D**

**ATT00046**

Before the  
Federal Communications Commission  
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS,  
LLC d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-\_\_\_\_  
Bureau ID No. EB-20-MD-\_\_\_\_

**AFFIDAVIT OF CHRISTIAN M. DIPPON, PH.D.  
IN SUPPORT OF POLE ATTACHMENT COMPLAINT**

CITY OF WASHINGTON            )  
  ) ss.  
DISTRICT OF COLUMBIA        )

I, Christian M. Dippon, Ph.D., being sworn, depose and say:

1. My name is Christian M. Dippon. My business address is 1255 23rd Street, Suite 600, Washington, DC 20037. I am a Managing Director at the Washington, DC, office of NERA Economic Consulting (NERA) where I also serve as Chair of the Global Energy, Environment, Communications & Infrastructure (EECI) practice. I have specialized in complex litigation and regulatory matters in the communications, Internet, and high-tech sectors for over 24 years. I received a Bachelor of Science in Business Administration (with honors) from the California State University, a Master of Arts in Economics from the University of California, and a Doctor of Philosophy in Economics from Curtin University (Perth, Australia).



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2. My research has included the dynamics of the multisided markets of the Internet ecosystem, the competitive ramifications of disruptive technologies and market consolidations, and the need (or lack of need) for regulatory intervention. I have authored and edited several books as well as book chapters in anthologies and have written numerous articles on telecommunications competition and strategies. I also frequently lecture in these areas at industry conferences, continuing legal education programs, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Financial Post*, have cited my work.

3. I have offered expert testimony in regulatory and litigation cases in the telecommunications sector and have testified in depositions, jury and bench trials in state and federal courts, domestic (AAA) and international (UNCITRAL, ICC, ICSID) arbitrations, and in matters before international courts, the Federal Communications Commission (FCC), the International Trade Commission (ITC), the Federal Aviation Administration (FAA), the Canadian Radio-television and Telecommunications Commission (CRTC), and the Competition Bureau Canada. I attach a copy of my curriculum vitae as Exhibit A.

4. This affidavit was prepared at the request of counsel for Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) in this matter. Counsel requested that I examine whether the pole attachment rates that Duke Energy Florida, LLC (Duke Energy Florida), a subsidiary of Duke Energy, charges AT&T are just and reasonable and competitively neutral and, if not, whether calculating the rates based on the FCC's new telecom rate formula offers an economically superior outcome. Counsel also asked me to examine whether there are factors that individually or collectively provide AT&T a net competitive advantage that would

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warrant pole attachment rates for AT&T that are higher than the rates calculated under the FCC's new telecom rate formula.

5. My conclusions regarding this assignment are as follows. First, the pole attachment rates that Duke Energy Florida has been charging AT&T under the parties' 1969 Joint Use Agreement (JUA), as amended in 1980 and 1990,<sup>1</sup> are *not* just and reasonable *or* competitively neutral. Second, Duke Energy Florida's present refusal to lower the JUA rates to a level that has previously been found fully compensatory and that Duke Energy Florida must charge AT&T's competitors is evidence of Duke Energy Florida's abuse of its position as the owner of the vast majority of poles jointly used by the parties. Third, the application of the FCC's new telecom rate formula will ensure competitive neutrality and thus is a superior economic outcome. Fourth, Duke Energy Florida has provided no basis for its deviation from the applicable new telecom rate by showing that the JUA provides AT&T net material competitive benefits with respect to its use of Duke Energy Florida's poles.

6. AT&T retained me as an independent expert in this matter. As such, neither my compensation nor my firm's compensation is dependent in any way on the substance of my opinions or the outcome of this matter. I may revise and supplement my opinions upon further review and analysis of any new data, materials, analysis, or pleadings.

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<sup>1</sup> Joint Use Agreement Between Florida Power Corporation and Southern Bell Telephone and Telegraph Company, June 1, 1969 (hereinafter JUA), amended October 16, 1980 (hereinafter 1980 Amendment) and January 2, 1990 (hereinafter 1990 Amendment).

## I. BACKGROUND

### A. The Dispute

7. This matter concerns a dispute between AT&T and Duke Energy Florida with respect to what are just and reasonable rates for AT&T's use of Duke Energy Florida's utility poles. AT&T is an incumbent local exchange carrier (ILEC) in Florida that offers landline voice, video, and broadband Internet access services over a copper and fiber network that depends, in part, on utility pole infrastructure.<sup>2</sup> AT&T competes in the provision of its services with competitive local exchange carriers (CLECs) that obtain wholesale access to AT&T's last-mile infrastructure at cost-based rates due to the Telecommunications Act of 1996.<sup>3</sup> In addition, due to technological progress, AT&T now faces competition from cable, satellite, and fixed wireless providers in the provision of Internet access, voice services, and video programming. AT&T also increasingly competes with mobile wireless providers for voice and data traffic. With the deployment of 5G services, AT&T soon will face more competition from mobile wireless providers for broadband Internet.<sup>4</sup>

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<sup>2</sup> AT&T TV's video service is available in Duke Energy Florida's service territory in the Gainesville, Panama City, and the Orlando-Daytona Beach-Melbourne-TV markets. See Prime Utility Rights of Way through North and Central Florida, Duke Energy General Information and Frequently asked Questions (<http://prgnprojectsolutions.com/PermittingLiaison/index.htm>, accessed Aug. 20, 2020); see also S&P Global, Market Intelligence, U.S. Multichannel Operator Comparison by Market, 3rd quarter 2019. For examples of AT&T's broadband, see "Internet and TV services in Gainesville" (<https://www.att.com/local/florida/gainesville>, accessed Aug. 20, 2020), "Internet and TV services in Panama City" (<https://www.att.com/local/florida/panama-city>, accessed Aug. 20, 2020), "Internet and TV services in Orlando" (<https://www.att.com/local/florida/orlando>, accessed Aug. 20, 2020); AT&T, "Ultra-Fast Internet Powered by AT&T Fiber Available in 12 New Metros" December 12, 2018 (<https://about.att.com/story/2018/internet-powered-by-att-fiber-available-12-metros.html>).

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104, 110 Stat. 56, codified throughout Title 47 of the United States Code (47 U.S.C.).

<sup>4</sup> See AT&T, "AT&T's 5G Network is Live Across the Country," July 28, 2020 ([https://about.att.com/newsroom/2020/5G\\_markets.html](https://about.att.com/newsroom/2020/5G_markets.html), accessed Aug. 20, 2020); AT&T

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8. One of AT&T's predecessor companies, Southern Bell Telephone and Telegraph Company, entered into the JUA with Florida Power Corporation, a predecessor to Duke Energy Florida,<sup>5</sup> in 1969 to jointly use each other's poles "in those parts of the State of Florida now or hereafter served by both the Telephone Company and the Electric Company."<sup>6</sup> Duke Energy Florida is the second largest power company in Florida, covering about 13,000 square miles and serving about 1.8 million customers.<sup>7</sup> Duke Energy Florida had a monopoly on the provision of electricity over its distribution network when it entered the JUA, and it continues to face no significant competitive threats today. Thus, whereas competitive forces for AT&T have changed significantly since entering the JUA in 1969, Duke Energy Florida remains a regulated utility with no meaningful competition.

9. The asymmetrical change in market conditions is central to this dispute. It transitioned AT&T from a retail price-regulated company to a participant in a competitive market where prices are determined by demand and supply conditions. In contrast, Duke Energy Florida's retail market remains uncompetitive, though the utility benefits from the increase in

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Comments, GN Docket No. 18-238, Sept. 17, 2018, p. 7 ("With 5G services offering speeds of up to 1 Gig and beyond, consumers will undoubtedly view wireless services as an even more compelling alternative to fixed.").

<sup>5</sup> Duke Energy acquired Progress Energy, which was the owner of Florida Power (subsequently called Progress Energy Florida) in 2012. See Duke Energy, "About Us" (<https://www.duke-energy.com/Our-Company/About-Us/Our-History>, accessed Aug. 20, 2020); see also POWERGrid International, "CP&L and Florida Power officially re-branded Progress Energy," January 2, 2003 (<https://www.power-grid.com/2003/01/02/cpl-and-florida-power-officially-re-branded-progress-energy/#gref>).

<sup>6</sup> JUA, Art. II, Section 2.1.

<sup>7</sup> See Florida Energy Facts (<http://floridaenergy.ufl.edu/florida-energy-facts/>, accessed Aug. 20, 2020); see also Duke Energy Corporation, SEC, Form 10-K, December 31, 2019, p. 24.

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wholesale demand for pole attachments caused by the change in competition for communication services.

10. Article X of the JUA details the pole attachment “rental and procedure for payments” with the rate described in Section 10.4.<sup>8</sup> Section 10.4 has been amended twice since 1969.<sup>9</sup> Rates are currently set under a 1990 amendment, which was adopted when Duke Energy Florida owned 48,278 (or 89.5 percent) of the poles and AT&T owned 5,675 (or 10.5 percent) of 53,953 poles jointly used by the parties.<sup>10</sup>

11. Per Section 10.4 of the 1990 amendment, the “yearly rental charges for each company” are “calculated by the party owning the majority of poles.”<sup>11</sup> Given the electric utility’s majority pole ownership, this has always been Duke Energy Florida. The amendment specifies that the rental charges be calculated based on “the majority pole owner’s annual pole cost,” which is defined as “the net investment per bare pole cost ... multiplied by an annual carrying charge rate comprised of: return (cost of capital), depreciation, federal and state taxes, other taxes, maintenance expense and administrative expense.”<sup>12</sup> The annual rate for Duke Energy Florida’s use of AT&T’s poles is [REDACTED] percent of this “annual pole cost” and the annual rate for AT&T’s use of Duke Energy Florida’s poles is [REDACTED] percent of this “annual pole cost.”

12. The 1990 amendment lists the 1989 “annual pole cost” at [REDACTED], “which yields an annual rate of [REDACTED] for the Electric Company, as a Licensee; and [REDACTED] for the Telephone

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<sup>8</sup> JUA, Art. X.

<sup>9</sup> JUA, Art. X, Section 10.4; 1980 Amendment, Section 1; 1990 Amendment, Section 1.

<sup>10</sup> See Affidavit of Dianne W. Miller, Aug. 24, 2020, ¶ 7 (hereinafter Miller Aff.).

<sup>11</sup> 1990 Amendment, Section 1 at Section 10.4(a).

<sup>12</sup> Ibid, Section 1 at Section 10.4(b).

Company, as Licensee.”<sup>13</sup> For subsequent years, the JUA specifies, “rates shall be adjusted yearly by the party owning the majority of the jointly used poles.”<sup>14</sup>

13. Thus, Duke Energy Florida charges AT&T a per-pole annual rental rate that reflects [REDACTED] percent of its annual pole costs, whereas Duke Energy Florida assigns to itself a per-pole annual rental rate that is [REDACTED] percent of the annual pole cost. This means AT&T pays a rate that is [REDACTED] percent of the rate Duke Energy Florida pays (i.e., [REDACTED]). For instance, in 2019, Duke Energy Florida’s rate to use AT&T’s poles was [REDACTED] per pole, while AT&T’s rate for use of Duke Energy Florida’s poles was [REDACTED] percent of this amount, or [REDACTED] per pole.<sup>15</sup>

14. For over fifteen months, AT&T has been seeking to negotiate with Duke Energy Florida in order to receive just and reasonable and competitively neutral rates based on the FCC’s new telecom formula.<sup>16</sup> AT&T calculates the new telecom rate as \$4.54 per pole for the 2019 rental year based on the data that it has.<sup>17</sup> AT&T’s request is consistent with the FCC’s 2011 *Pole Attachment Order*. It also ensures that AT&T is not competitively disadvantaged relative to CLECs and cable providers that must be charged rates based on this formula.

15. I understand Duke Energy Florida has rejected AT&T’s request to obtain just and reasonable and competitively neutral rates that would put the telecom provider at par with its competitors. Rather, Duke Energy Florida insists on the same contractual relationship that has

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid., Section 2 at Section 11.1.

<sup>15</sup> See Duke Energy Florida’s invoice to AT&T, Invoice #F44819, Period January 1, 2019 – December 31, 2019, Date of Invoice December 30, 2019 (hereinafter 2019 Invoice).

<sup>16</sup> See Dianne Miller (AT&T) letter to Scott Freeburn (Duke Energy Corporation), re: Pole Attachment Rental Rates, May 22, 2019.

<sup>17</sup> See Affidavit of Daniel P. Rhinehart, Aug. 24, 2020, ¶ 11 (hereinafter Rhinehart Aff.).

been in place since 1969, well before AT&T faced competition from CLECs, cable providers, and mobile wireless providers. As its principal reason for declining AT&T's request, Duke Energy Florida states that it "considered the parties too far apart to make an offer."<sup>18</sup> This refusal to negotiate reveals that Duke Energy Florida does not intend to offer AT&T just, reasonable, and competitively neutral rates. Duke Energy Florida offers no explanation as to why its position is so far from AT&T's position given the FCC's pole attachment orders, which established the relevant metrics for setting pole attachment rates. From an economic perspective, the electric utility's response makes it clear that Duke Energy Florida realizes AT&T has no viable alternative to payment of the current rates absent regulatory intervention.

**B. The FCC's Definitions of Just, Reasonable, and Competitively Neutral Rates**

16. In assessing Duke Energy Florida's refusal to negotiate, it is important to review the FCC's orders that entitle ILECs to receive just, reasonable, and competitively neutral attachment rates. Two FCC orders – one issued in 2011 and another in 2018 – offer specific guidance on this topic and define just and reasonable rates and competitively neutral rates.

17. In 2011, the FCC issued a comprehensive *Pole Attachment Order* "to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."<sup>19</sup> The FCC was "persuaded by evidence in the record that widely disparate pole rental rates distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband, contrary to the

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<sup>18</sup> Miller Aff., ¶ 15.

<sup>19</sup> *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), ¶ 1 (hereinafter *Pole Attachment Order*).

policy goals of the [Communications] Act” because “access to poles and other infrastructure is critical to deployment of telecommunications and broadband services.”<sup>20</sup>

18. Among the 2011 reforms were those intended to rationalize pole attachment rates to “minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services.”<sup>21</sup> The FCC explained that it was requiring “competitively neutral” pole attachment rates to “help remove market distortions that affect attachers’ deployment decisions” and “improve[ ] the ability of different providers to compete with each other on an equal footing, better enabling efficient competition.”<sup>22</sup>

19. The FCC applied this principle of competitive neutrality to the pole attachment rates that ILECs pay electric utilities like Duke Energy Florida.<sup>23</sup> Per the FCC, when an ILEC is “attaching to other utilities’ poles on terms and conditions that are comparable to those that apply to a telecommunications carrier or a cable operator – which generally will be paying a rate equal or similar to the cable rate under our rules – competitive neutrality counsels in favor of affording [the ILEC] the same rate as the comparable provider (whether the telecommunications carrier or the cable operator).”<sup>24</sup> The FCC continues, “Just as considerations of competitive neutrality counsel in favor of similar treatment of similarly situated providers, so too should differently situated providers be treated differently.”<sup>25</sup> Therefore, if a JUA “includes provisions that materially advantage the [ILEC] *vis a vis* a telecommunications carrier or cable operator,” the

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<sup>20</sup> Ibid, ¶ 6.

<sup>21</sup> Ibid, ¶ 126.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, ¶¶ 217, 218.

<sup>24</sup> Ibid, ¶ 217.

<sup>25</sup> Ibid, ¶ 218.



FCC found that “a different rate should apply.”<sup>26</sup> The FCC, however, stated, “[T]he pre-existing, high-end telecom rate” would serve “as a reference point” on that rate because it “helps account for particular arrangements that provide net advantages to [ILECs] relative to cable operators or telecommunications carriers.”<sup>27</sup>

20. In 2018, the FCC responded to reports that despite the 2011 *Pole Attachment Order* “electric utilities continue to charge pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers.”<sup>28</sup> To address this persisting problem, the FCC took another step in its *Third Report and Order* to eliminate “outdated disparities between the pole attachment rates [ILECs] must pay compared to other similarly-situated telecommunications attachers.”<sup>29</sup> In particular, the FCC adopted a presumption that for new and newly renewed joint use agreements, ILECs “are similarly situated to other telecommunications attachers” and entitled to a pole attachment rate “no higher than the pole attachment rate for telecommunications attachers calculated in accordance with section 1.1406(e)(2) of the Commission’s rules,” meaning the FCC’s new telecom rate formula.<sup>30</sup> To rebut this presumption, an electric utility must prove by clear and convincing evidence that an ILEC “receives net benefits that materially advantage the incumbent LEC over other

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 14 FCC Rcd 18049 (2018), ¶ 123 (hereinafter *Third Report and Order*) (internal quotation marks omitted).

<sup>29</sup> Ibid, ¶ 3.

<sup>30</sup> Ibid, ¶¶ 123, 126.

telecommunications attachers.”<sup>31</sup> In the event that the electric utility rebuts the presumption, the FCC sets the preexisting telecom rate (meaning the rate derived from the telecom rate formula in effect prior to the 2011 *Pole Attachment Order*) as the maximum just and reasonable rate that may be charged based on the ongoing per-pole value of the proven net material competitive benefits.<sup>32</sup>

21. Thus, the FCC requires that just and reasonable rates meet two necessary and related conditions. First, a just and reasonable rate must be competitively neutral. That is, the rate must be consistent with the rates charged to similarly situated telecommunications attachers. Consequently, unless Duke Energy Florida can prove material net benefits accruing to AT&T over its CLEC and cable competitors, Duke Energy Florida must charge AT&T the same rental rate it charges AT&T’s competitors. Duke Energy Florida has not documented or quantified the value of any net benefits to AT&T, and my review of alleged benefits raised generally by Duke Energy Florida indicate that there are no such benefits.

22. Second, the just and reasonable rate charged to an ILEC is one that falls within a specified range between the FCC’s new telecom and preexisting telecom rate formulas. For the 2019 rental year, AT&T calculates this range between \$4.54 per pole and \$6.89 per pole.<sup>33</sup> The low end of this range – the FCC’s new telecom rate formula – reflects the maximum just and reasonable rate that may be charged to AT&T’s CLEC and cable competitors for pole attachments when “providing telecommunications services.”<sup>34</sup> The FCC’s new telecom rate is

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<sup>31</sup> Ibid, ¶ 128.

<sup>32</sup> Ibid, ¶ 129.

<sup>33</sup> Rhinehart Aff., ¶¶ 11, 17.

<sup>34</sup> 47 C.F.R. § 1.1406(d)(2). This so-called “new telecom rate” approximates the rate that results from the FCC’s cable formula, which applies to AT&T’s cable competitors for pole attachments

thus appropriately the presumptive just and reasonable rate for ILECs under the FCC's *Third Report and Order* because it is the competitively neutral rate where other terms and conditions of attachment are materially comparable. The high end of the range (the FCC's preexisting telecom rate formula) permits recovery of additional pole costs as appropriate to reflect any net material advantages provided to an ILEC as compared to a CLEC or cable competitor. As I detail in the following section, Duke Energy Florida's current rate demand is over [REDACTED] times the lower end of this range. I understand the utility has not explained why it deems its rate demand to be compliant with the FCC's just and reasonable rate mandate. Duke Energy Florida simply suggested that AT&T *may* enjoy benefits under the JUA (and, as part of the same discussion, under a joint use agreement between the parties' affiliates in North and South Carolina).<sup>35</sup>

23. I note that the FCC's definition of just and reasonable is consistent with economic principles. Access to Duke Energy Florida's pole infrastructure is an essential input to AT&T's services in the common operating area in Florida. In 1990, when the JUA was amended to its current form, Duke Energy Florida owned 48,278 (or 89.5 percent) of the poles whereas AT&T owned 5,675 (or 10.5 percent) of the poles.<sup>36</sup> Currently Duke Energy Florida owns 62,363 of the poles (or 92.3 percent) as compared to AT&T's 5,233 (or 7.7 percent).<sup>37</sup> Duplication of Duke Energy Florida's pole network by AT&T, or any other party, is not economically feasible or socially desirable. Therefore, Duke Energy Florida has market power when granting access to its

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when they are "providing cable services." 47 C.F.R. § 1.1406(d)(1); see also *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order on Reconsideration, 30 FCC Rcd 13731 (2015), ¶¶ 1-4 (hereinafter *Cost Allocator Order*).

<sup>35</sup> Affidavit of Mark Peters, Aug. 24, 2020, ¶ 8 (hereinafter Peters Aff.).

<sup>36</sup> Miller Aff., ¶ 7.

<sup>37</sup> 2019 Invoice.

pole infrastructure under the essential facilities doctrine (i.e., pole attachment is a bottleneck service).<sup>38</sup> Accentuating this market power is the fact that although AT&T faces numerous competitors and operates in a generally unregulated environment, Duke Energy Florida does not face competition in electricity distribution and therefore operates as a “regulated public utility.”<sup>39</sup>

24. There is also evidence that Duke Energy Florida has exercised this market power because it refuses to align AT&T’s rental rate, which reflects █ percent of annual pole costs, with the pole attachment rates guaranteed to CLECs and cable operators, which reflect 7.4 percent of annual pole costs. Relatedly, Duke Energy Florida’s refusal to negotiate reveals that the utility realizes AT&T has no alternatives absent regulatory intervention and that Duke Energy Florida thus has bargaining power in negotiating a pole attachment rate with AT&T.

25. By requiring Duke Energy Florida to set its pole attachment rates on a competitively neutral basis, the FCC ensures that there are limits to the market power that Duke Energy Florida exercises, thereby avoiding the distorted competitive outcome present in Florida. By requiring that the rates be competitively neutral with reference to a regulatory prescribed formula, the FCC ensures that Duke Energy Florida (or any pole owner for that matter) cannot exercise its market power by charging excessive rates to some broadband providers but not others.

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<sup>38</sup> “[F]irms who supply ‘essential’ or ‘bottleneck’ facilities in an economy: inputs or facilities which others (including rivals) need to access on reasonable terms in order to be able to operate in an industry.” (Christopher Decker, *Modern Economic Regulation: An Introduction to Theory and Practice* (Cambridge: Cambridge Univ. Press, 2015), p. 49.)

<sup>39</sup> Duke Energy Corporation, SEC, Form 10-K, December 31, 2019, p. 24.

**II. THE RATES CHARGED BY DUKE ENERGY FLORIDA ARE NOT JUST AND REASONABLE OR COMPETITIVELY NEUTRAL**

26. Whereas Duke Energy Florida has not justified maintaining the current attachment rates, there are several indicators that the rates charged by Duke Energy Florida violate competitive neutrality and are unjust and unreasonable.

**A. Duke Energy Florida's Rates Violate the FCC's Definition of Just and Reasonable Pole Attachment Rates**

27. First and foremost, the rates charged by Duke Energy Florida violate the FCC's definition of just and reasonable rates because they are not based on the new telecom rate formula, and they are not competitively neutral. For instance, for the 2019 rental year, Duke Energy Florida charged AT&T [REDACTED] per pole.<sup>40</sup> This rate is [REDACTED] times the \$4.54 per pole rate that AT&T calculated for the 2019 rental year under the new telecom rate formula.<sup>41</sup> Thus, the rate is [REDACTED] times higher than the rate afforded to AT&T's competitors and the rate that the FCC deemed fully compensatory.<sup>42</sup>

28. Duke Energy Florida also offers no cost or other justification as to why it has failed and refused to charge AT&T the far lower rate it must charge CLECs and cable providers. To justify charging AT&T a rate higher than the \$4.54 per pole rate AT&T calculated using the new telecom rate formula, Duke Energy Florida would need to (1) provide "clear and convincing evidence" that AT&T receives net material benefits under the JUA and (2) establish a value for the net material benefits annually per pole, up to the preexisting telecom rate, which is about 1.5

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<sup>40</sup> 2019 Invoice.

<sup>41</sup> Rhinehart Aff, ¶ 12.

<sup>42</sup> *Pole Attachment Order* ¶ 183 & n.568, n.569.

times the new telecom rate.<sup>43</sup> As I discuss in Section III, Duke Energy Florida provided no economic evidence that the JUA gives AT&T a material benefit, much less a net material benefit, as compared to its competitors.

29. The unreasonableness of the rates charged by Duke Energy Florida is also evident by comparing them to the rates resulting from the FCC's preexisting telecom rate formula. This rental rate formula, which applied prior to the 2011 *Pole Attachment Order* to set the maximum rate that could be charged to AT&T's CLEC competitors, is now the maximum rate that may be charged to an ILEC under the *Third Report and Order*.<sup>44</sup> In 2011, the FCC explained that this rate was an appropriate high-end reference point because it "helps account for particular arrangements that provide net advantages to [ILECs] relative to cable operators or telecommunications carriers."<sup>45</sup> AT&T calculates the rate under the preexisting telecom rate formula at \$6.89 per pole for the 2019 rental year, which is less than [REDACTED] of the [REDACTED] per pole rate Duke Energy Florida charged AT&T for that rental year.<sup>46</sup>

**B. Duke Energy Florida's Rates and Conduct Are Indicative of Unequal Bargaining Power**

30. Duke Energy Florida has been able to impose and retain unjust and unreasonably high rental rates on AT&T because of the bargaining power it enjoys by virtue of the significant and increased disparity in pole ownership as well as by the lack of competition it faces. In 1990, when the current rate provision was adopted, Duke Energy Florida owned 89.5 percent of 48,278

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<sup>43</sup> The new telecom rate in Duke Energy Florida's operating area is 0.66 times the preexisting telecom rate. See 47 C.F.R. § 1.1406(d)(2)(i). Conversely, the preexisting telecom rate is 1.52 times the new telecom rate ( $1/0.66 = 1.52$ ).

<sup>44</sup> *Third Report and Order*, ¶ 129.

<sup>45</sup> *Pole Attachment Order*, ¶ 218.

<sup>46</sup> Rhinehart Aff., ¶¶ 17, 18.

joint use poles.<sup>47</sup> Since that time, the pole ownership disparity has increased. As of Duke Energy Florida’s 2019 invoice, issued in December 2019, Duke Energy Florida estimated that it owns 92.3 percent of 67,596 joint use poles.<sup>48</sup> The unequal bargaining power reflected by this almost 12:1 ratio is not only manifested by the rental rates but in other provisions of the JUA as well.<sup>49</sup>

31. First, the JUA allocates 3 feet of space to AT&T and 8.5 feet of space to Duke Energy Florida on a 40-foot pole (and 4 feet on 35-foot pole). AT&T uses far less space than what it pays for and Duke Energy Florida uses far more, including 40 inches of power separation space required by its facilities.<sup>50</sup> In contrast, the FCC’s new telecom rate formula, through the space factor, assigns to each attacher the usable space it actually *occupies* and divides the cost of the unusable space among *all attaching entities*, ensuring that communications attachers *do not pay for the electric utility’s power separation space*:

$$SpaceFactor(FCC) = \left[ \frac{(SpaceOccupied) + \frac{2}{3} \left( \frac{UnusableSpace}{No.ofAttachingEntities} \right)}{PoleHeight} \right]$$

This FCC formula is more closely aligned with the outcome of a negotiation among equals because it requires all attaching entities to share the costs of the unusable space and presumes

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<sup>47</sup> Miller Aff., ¶ 7.

<sup>48</sup> See 2019 Invoice.

<sup>49</sup> See the exclusion of rental or other charges paid by third parties from the cost calculation. (JUA, Art. X, Section 10.6.)

<sup>50</sup> See JUA, Art. I, Sections 1.1.6(a) and 1.1.6(b) (designating “standard space” for use by “each party”); Peters Aff., ¶¶ 12 n.5, 25; see also *BellSouth Telecommunications, LLC v. Fla. Power and Light Co.*, Proceeding No. 19-187, 2020 WL 2568977, at \*7 (¶ 16) (EB 2020) (hereinafter “*FPL 2020 Order*”) (“[T]he Commission has long held that the communication safety space is for the benefit of the electric utility, not communications attachers.”); *Amendment of Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12176 (2001) (hereinafter *Consolidated Partial Order*), ¶ 51 (“the 40-inch safety space ... is usable and used by the electric utility”).



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that communications attachers occupy one foot of space that does not include the electric utility's power separation space.<sup>51</sup>

32. The two approaches yield significantly different rates. For instance, consider the 40-foot pole referenced in the JUA. The JUA charges AT&T for [REDACTED] of pole costs, irrespective of the number of attaching entities. The new telecom formula, in contrast, produces a 6.9% value using a 40-foot pole and assuming five attaching entities (the percentage is 7.4% if the FCC's default pole height of 37.5 feet is used).

33. Second, AT&T pays much more than Duke Energy Florida on a per-foot basis as compared to the space allocated by the JUA (though the space is not used by AT&T and cannot be reserved for or sublet by AT&T).<sup>52</sup> For 2019 rent, AT&T paid [REDACTED] per pole for 3 feet of allocated space on poles (either 40 or 35 feet), whereas Duke Energy Florida paid [REDACTED] per pole for 8.5 feet of allocated space on AT&T's 40-foot poles and 4 feet on 35-foot poles.<sup>53</sup> Duke Energy Florida was thus allocated over 185 percent more usable space than AT&T on a 40-foot pole (and 33 percent more on a 35-foot pole). However, it paid a rental rate that was only [REDACTED] percent higher than the rate paid by AT&T. Put differently; Duke Energy Florida was allocated 2.9 times the space on a 40-foot pole but paid [REDACTED] times the rate.

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<sup>51</sup> See *Consolidated Partial Order*, ¶ 51; see also 47 C.F.R. § 1.1410.

<sup>52</sup> See *Peters Aff.*, ¶ 25; see also *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (¶ 1170) (1996) (*Implementation Order*) ("Permitting an incumbent LEC, for example, to reserve space for local exchange service ... would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.").

<sup>53</sup> See 2019 Invoice; JUA, Art. I, Sections 1.1.6(a) and 1.1.6(b).



34. Third, the rate formula unreasonably divides the pole cost between Duke Energy Florida (█ percent) and AT&T (█ percent) and does not account for additional rent from any of the third parties with which AT&T competes.<sup>54</sup> AT&T's pole cost allocation (i.e., █ percent) does not decrease when a third party attaches to a Duke Energy Florida pole. Instead, Duke Energy Florida continues to collect the full █ percent of pole cost from AT&T along with additional rents from third parties, which reduces Duke Energy Florida's cost-sharing responsibility. The additional entities typically attach in the 3 feet of space allocated to AT&T,<sup>55</sup> which means that AT&T bears the cost of 3 feet of allocated space and receives no offset from the revenues that Duke Energy Florida receives when portions of that space are rented to others.

35. To illustrate how Duke Energy Florida's pole ownership advantage allows Duke Energy Florida to overrecover, consider a 37.5-foot pole with five attaching entities consistent with the FCC's presumptions for pole height and urbanized areas.<sup>56</sup> Under the JUA, AT&T must pay █ percent of pole costs (█ for 2019) for the effective use of one foot of space.<sup>57</sup> In this scenario, Duke Energy Florida also receives 7.4 percent of the pole cost from each of the three additional attaching communications entities whether it is a cable, CLEC, or wireless entity.<sup>58</sup> These revenue streams cover over █ percent of Duke Energy Florida's pole costs (█ percent + (3 x 7.4 percent) = █ percent), leaving Duke Energy Florida with the responsibility for less than █ percent of its pole costs (100 percent - █ percent = █ percent). Meanwhile, Duke

<sup>54</sup> See JUA, Art. X, Section 10.6.

<sup>55</sup> See Peters Aff., ¶ 25.

<sup>56</sup> 47 C.F.R. § 1.1409(c).

<sup>57</sup> 1990 Amendment, Section 1 at Section 10.4(b); Miller Aff. ¶ 8.

<sup>58</sup> *Pole Attachment Order* ¶ 131, n.399; *Cost Allocator Order* ¶¶ 1, 13.

Energy Florida requires almost triple the space on the pole because all four communications attachers presumptively attach within 3 feet of usable space, which leaves 10.5 feet of usable space for the electric utility.<sup>59</sup> Duke Energy Florida thus pays [REDACTED] as much ([REDACTED] percent vs. [REDACTED] percent) for three times more space compared to the communications attachers in this example. Such an outcome cannot be the result of just and reasonable rates because a just and reasonable rate would imply that all parties attaching to the pole pay a proportionate share of the pole costs.

36. In contrast, if Duke Energy Florida charged AT&T the new telecom rate, Duke Energy Florida would receive about 30 percent of pole costs ( $4 \times 7.4 \text{ percent} = 29.6 \text{ percent}$ ) from communications attachers requiring a combined 22 percent of the usable space ( $3 \text{ ft} / 13.5 \text{ ft} = 22.2 \text{ percent}$ ). Duke Energy Florida would be responsible for about 70 percent of pole costs ( $100 \text{ percent} - 29.6 \text{ percent} = 70.4 \text{ percent}$ ) for the use of about 78 percent of the usable space on the pole ( $10.5 \text{ ft} / 13.5 \text{ ft} = 77.8 \text{ percent}$ ) under the FCC's presumptions – a more equitable outcome.

37. Fourth, the current negotiations demonstrate that Duke Energy Florida is attempting to charge AT&T supracompetitive prices for attaching to its poles. Absent a showing of net material benefits, the prevailing attachment rate is the amount that results from the new telecom rate. It is the rate that AT&T's competitors are paying and a rate that the FCC has deemed, and the courts have found, fully compensatory.<sup>60</sup> Thus, it is a rate at which Duke Energy Florida does not lose money (i.e., it is not a subsidy) and a rate that the utility already extends to other attachers. AT&T, on the other hand, is facing a competitive market; therefore, it seeks

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<sup>59</sup> 47 C.F.R. § 1.1410; Peters Aff. ¶ 12, fn. 5.

<sup>60</sup> *Pole Attachment Order* ¶ 183 & n.568, n.569.

attachment costs that are no higher or lower than its competitors pay. However, Duke Energy Florida insists AT&T pay a rate that is higher than this prevailing rate without documenting, let alone quantifying, any benefits to AT&T from the JUA, let alone a net material advantage, as compared to its competitors. This is direct evidence of the exercise of market power. It reveals that Duke Energy Florida is ready and willing to capitalize on the fact that AT&T is dependent on Duke Energy Florida's poles and financially stands to lose far more than Duke Energy Florida would without the JUA.

38. In summary, the JUA rate formula is the type of rate formula that one would expect to result from negotiations between unequal bargaining partners. It assigns a disproportionate share of pole costs to AT&T as compared to Duke Energy Florida, fails to credit AT&T for rent from third parties, and has been relied upon by Duke Energy Florida for years to perpetuate the far higher rental rates imposed on AT&T when compared to the regulated rates that apply to AT&T's competitors.

### **III. AT&T DOES NOT ENJOY MATERIAL NET BENEFITS**

39. The preceding discussion establishes that the pole attachment rates charged by Duke Energy Florida are unjust and unreasonable and have imposed inflated costs on AT&T that are inconsistent with competitive market conditions. Under the principle of competitive neutrality, Duke Energy Florida must charge AT&T the new telecom rate that applies to its competitors *unless* Duke Energy Florida can prove that AT&T receives net benefits under the JUA that materially advantage AT&T over its competitors sufficient to justify a higher rate.

40. Duke Energy Florida has not shown that the JUA provides AT&T any net competitive benefits over its competitors. I understand that at the parties' executive-level meetings, representatives for Duke Energy Florida and Duke Energy Progress (an affiliate in North and South Carolina), merely indicated that benefits may exist under the JUA in Florida

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and a JUA between affiliated entities in North Carolina and South Carolina.<sup>61</sup> In my review of potential net benefits to AT&T, I considered these benefits as well as alleged benefits that electric utilities have cited in the past.<sup>62</sup> I conclude that the generalized assertions do not justify charging AT&T a rate higher than the new telecom rate under the principle of competitive neutrality. Consequently, the proper pole attachment rate for AT&T is the new telecom rate with no further adjustments.

41. I arrived at my finding based on several considerations. First, AT&T is not advantaged by having a JUA (instead of a license agreement) with Duke Energy Florida. Even if the JUA were to provide AT&T benefits, the JUA also disadvantages AT&T due to the responsibilities and obligations the JUA imposes on AT&T. Considering both rights *and* responsibilities is an indispensable requirement of competitive neutrality. In fact, as the FCC previously acknowledged, “A failure to weigh, and account for, the different rights and responsibilities in joint use agreement could lead to marketplace distortions.”<sup>63</sup> To set an ILEC on an equal footing with its competitors, any costs avoided by the ILEC under a JUA – but not avoided by its competitors under a license agreement – must offset any costs incurred by the ILEC under the JUA – but not incurred by its competitors under a license agreement. Thus, accounting only for any avoided costs in a new rental rate will leave the ILEC worse off than its competitors because the ILEC will be required to pay not only the rental rate but also the additional unique costs associated with the obligations under the JUA. The most obvious of the unique costs imposed on AT&T under the JUA that are not imposed on its competitors under the

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<sup>61</sup> See Peters Aff., ¶ 8.

<sup>62</sup> See Peters Aff., ¶¶ 13, 16, 18, 20; *Third Report and Order*, ¶ 128.

<sup>63</sup> *Pole Attachment Order*, ¶ 216, n. 654.

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license agreements are those associated with pole ownership. Representatives of Duke Energy Florida and Duke Energy Progress (collectively, Duke Energy), for example, noted that the utility sometimes replaces damaged AT&T poles following an accident or storm, which it does not need to do for AT&T's competitors because they do not have a similar pole ownership obligation.<sup>64</sup> This, however, is not a competitive benefit, since AT&T pays Duke Energy Florida for its services.<sup>65</sup> In fact, it is a competitive disadvantage as AT&T's competitors do not bear any pole ownership costs, including these costs to replace damaged poles.

42. Another example involves engineering and survey work required before placing an attachment on a pole. AT&T conducts many of these services itself, whereas its competitors under some license agreements pay the electric entity to conduct the same services at cost.<sup>66</sup> When that occurs, the labor and material costs to complete comparable work in the same location should be similar. Therefore, AT&T would double pay if it were required to incur the cost to perform the services and pay a higher rental rate because it does so.

43. Second, proper application of a standard of competitive neutrality must consider only those benefits provided to AT&T under the JUA that are *not* also provided to AT&T's competitors. Where a benefit is also provided to AT&T's competitors, it cannot justify charging AT&T a rate higher than the new telecom rate because AT&T's competitors receive the same benefit when paying the new telecom rate. Omitting the existence of mutual benefits is a flaw with several of the alleged benefits Duke Energy voiced. For example, I understand that it claimed that Duke Energy Florida installed a pole network that is tall enough to accommodate

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<sup>64</sup> See Peters Aff., ¶ 18.

<sup>65</sup> JUA, Art. IV, Section 4.7.

<sup>66</sup> See Peters Aff., ¶ 17.

not just electric facilities but also AT&T's attachments. Duke Energy provided no evidence to substantiate the claim of the installation of taller poles. Notwithstanding, even if assumed to be true, the taller poles also benefit AT&T's competitors.<sup>67</sup> Similarly incorrect is the utility's claim that AT&T benefits from any initial tree trimming Duke Energy Florida completes when deploying new pole lines to which AT&T may attach, or any ongoing pole reliability inspections, as such benefits (even assuming their existence) also benefit all other attachers.<sup>68</sup>

44. Third, a proper analysis of benefits must also consider the reciprocal benefits that Duke Energy Florida receives from AT&T as part of the JUA. These benefits are a necessary consideration in measuring net competitive benefits because they are costs that cable and CLEC competitors do not incur. For instance, Duke Energy said AT&T may enjoy some intangible benefit in the form of predictability of costs that other attachers might not enjoy if it pays for make-ready based on a cost schedule that contains pre-set cost estimates by category instead of paying based on costs estimated for a specific project.<sup>69</sup> I understand that this difference does not exist under the JUA because AT&T pays for make-ready based on Duke Energy Florida's per-project cost estimate, just as its competitors do.<sup>70</sup> However, even assuming the existence of such a difference does not mean that AT&T enjoys a net advantage over its competitors. Costs could be comparable under both approaches or higher under the pre-set cost estimates. And in any event, AT&T would need to extend the same cost "predictability" to Duke Energy Florida in return. Similarly, Duke Energy said AT&T may benefit if it follows a different permitting

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<sup>67</sup> See Peters Aff., ¶ 12; see also *FPL 2020 Order*, 2020 WL 2568977, at \*7 (¶ 15) ("FPL did not build its poles just to accommodate AT&T.").

<sup>68</sup> See Peters Aff., ¶ 12.

<sup>69</sup> See Peters Aff., ¶ 16.

<sup>70</sup> See Peters Aff., ¶ 16.



process than its competitors when making attachments to Duke Energy Florida's poles.<sup>71</sup> This also does not appear to be a difference under the JUA because AT&T completes and submits a permit application form [REDACTED]

[REDACTED].<sup>72</sup> But even if it were a difference, it does not result in net benefits because AT&T extends the same permitting benefit to Duke Energy Florida, therefore resulting in no *net* benefits.

45. Fourth, Duke Energy provided AT&T a draft license agreement that Duke Energy Progress (not Duke Energy Florida) may use in negotiations with attachers in North Carolina and South Carolina.<sup>73</sup> A draft license agreement does not establish any net competitive benefits with respect to poles covered by the JUA. Competitive neutrality must instead consider an ILEC's comparability as against the *actual* terms and conditions applicable to its competitors that pay the new telecom rate.

46. Fifth, competitive neutrality must necessarily look to the actual conditions in the competitive communications marketplace. As a result, a higher rate is not warranted simply because the JUA allocates three feet of space to AT&T.<sup>74</sup> This JUA provision from 1969 JUA predates 1996, when the Commission found such space allocations unlawful and

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<sup>71</sup> See Peters Aff., ¶ 16.

<sup>72</sup> See Peters Aff., ¶ 16.

<sup>73</sup> See Peters Aff., ¶ 9. Duke Energy also provided documents it thought relevant to the rates charged by other Duke operating companies after stating it was going to make an "enterprise-wide" offer that would include their rates. The offer was not made, and the rates charged by those other Duke entities are not at issue in this proceeding. Miller Aff., ¶¶ 15-17; Peters Aff., ¶ 9 n.3.

<sup>74</sup> JUA, Art. I, Section 1.1.6; Art. XIV, Section 14.5.

unenforceable.<sup>75</sup> And, as stated by AT&T personnel, AT&T does not use three feet of space across Duke Energy Florida's poles, and Duke Energy Florida has not reserved the space for AT&T's exclusive use.<sup>76</sup> A higher rate is also not justified because AT&T typically occupies the lowest position on the pole. The evidence confirms that AT&T's typical position on the pole as compared to the positions of its competitors has subjected its facilities to increased damage, higher transfer costs, and more requests to temporarily raise its facilities to accommodate oversized loads.<sup>77</sup> Thus, AT&T's location on the pole is not a competitive advantage for AT&T. Moreover, AT&T's location on the poles is the result of historical conditions that continue today so that the facilities of different providers do not crisscross midspan.<sup>78</sup> There is no good reason to charge AT&T a higher rate for something that it cannot change and that operates to the benefit of all attachers.<sup>79</sup>

47. Sixth, even if a benefit did exist for some poles or if some benefit existed temporarily, this should not allow Duke Energy Florida to charge a higher rate for *all* poles or to do so *indefinitely*. Rather, all benefits must be distributed over all of Duke Energy Florida poles to which AT&T attaches and only be reflected in the rate for the year in which AT&T receives any such benefit. Given the considerations above, if a benefit were to be found, it would likely

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<sup>75</sup> See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (¶ 1170) (1996) ("Permitting an incumbent LEC, for example, to reserve space for local exchange service ... would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.").

<sup>76</sup> See Peters Aff., ¶ 25.

<sup>77</sup> See Peters Aff., ¶¶ 22-23.

<sup>78</sup> See Peters Aff., ¶ 21.

<sup>79</sup> AT&T has, however, encouraged pole owners to allow other communications attachers to locate their facilities below AT&T's. See Peters Aff., ¶ 20.



apply to only a small number of poles and/or be a temporary benefit. This, in turn, would not provide AT&T with a material competitive benefit that justifies a higher rate during that rental year, much less in future years.

48. Finally, and related to the preceding point, the mere existence of net benefits does not entitle Duke Energy Florida to charge a pole attachment rate that is randomly higher than the rate under the new telecom rate formula. The value of any alleged benefits must be quantified and, if present and material, added to the rate based on the new telecom rate up to the preexisting telecom rate. As there is no evidence of specific benefits to AT&T, Duke Energy Florida cannot justify a rate higher than the new telecom rate, let alone the current contract rates, which are [REDACTED] times the preexisting telecom rate (using the 2019 rate as an example).

49. These considerations confirm that no objective or quantitative basis exists for concluding that AT&T enjoys competitive benefits, let alone net material competitive benefits that could justify an upward departure from the new telecom rate applicable to AT&T's competitors. It is therefore my opinion that the new telecom rate is the competitively neutral rate, thus it is the rate that Duke Energy Florida should charge AT&T.

#### **IV. CONCLUSION**

50. Based on these considerations, I find that the pole attachment rates that Duke Energy Florida charged AT&T for all time periods at issue in AT&T's complaint (since 2015) were not and cannot be considered just and reasonable or competitively neutral rates. I recommend that the FCC set the just and reasonable rate for AT&T's use of Duke Energy Florida's poles as the properly calculated per-pole new telecom rate because AT&T does not receive net benefits under the JUA that provide it a material advantage over its CLEC and cable competitors.

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Washington, District of Columbia

The foregoing instrument was subscribed and sworn before  
me this 21<sup>st</sup> day of August, 2020

by Darlene Francesca Rogers

[Signature] Notary Public

My commission expires 08/11/2024

[Signature]

Christian M. Dippon, Ph.D.

Sworn to before me on  
this 24th day of August 2020

Notary Public



**EXHIBIT A: CURRICULUM VITAE OF CHRISTIAN M. DIPPON, PH.D.**

Dr. Dippon is a Managing Director at NERA and a leading authority in complex litigation disputes and competition matters in the communications, Internet, and high-tech sectors. He is also the Chair of NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice, where he leads over 100 experts in the areas of energy, communications, media, Internet, environment, auctions, transport, and water. *Global Arbitration Review* (2019, 2020) ranks Dr. Dippon among the world's leading commercial arbitration experts (see <https://whoswholegal.com/christian-dippon>).

Dr. Dippon advises his clients in economic damages assessments, class certifications and damages, false advertising, antitrust matters, and regulatory and competition issues. He has extensive testimonial and litigation experience, including depositions, jury and bench trials in state and federal courts, domestic (AAA) and international arbitrations (UNCITRAL, ICC, ICSID), and submissions before international courts. He assists clients with a broad range of litigation disputes related to wireline, wireless, cable, media, Internet, Internet of Things (IoT), consumer electronics, and the high-tech sector. Dr. Dippon also routinely testifies before US and international regulatory authorities, including the Federal Communications Commission, the Federal Aviation Administration, the International Trade Commission, the Canadian Radio-television and Telecommunications Commission, and the Competition Bureau Canada.

Dr. Dippon has authored and edited several books as well as book chapters in anthologies and has written numerous articles on telecommunications competition and strategies. He also frequently lectures in these areas at industry conferences, continuing education programs for lawyers, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Financial Post*, have cited his work.

Dr. Dippon serves on NERA's Board of Directors, the Board of Directors of the International Telecommunications Society (ITS), and on the Editorial Board of *Telecommunications Policy*. He is a member of the Economic Club of Washington, DC, the American Economic Association (AEA), the American Bar Association (ABA), and the Federal Communications Bar Association (FCBA).

## Education

**Curtin University, Perth, Australia**  
PhD in Economics, 2011

**University of California, Santa Barbara, CA, USA**  
MA in Economics, 1995

**California State University, Hayward, CA, USA**  
BS *cum laude* in Business Administration, 1993

## THESIS

“Consumer Preferences for Mobile Phone Service in the U.S.: An Application of Efficient Design on Conjoint Analysis,” Curtin University, 2011.

Committee: Dr. Gary Madden, Curtin University; Dr. Kenneth Train, University of California at Berkeley; Dr. Ruhul Salim; Curtin University.

Blind reviews by Dr. Jerry Hausman, Massachusetts Institute of Technology and Dr. Glenn Woroch, University of California at Berkeley.

## PROFESSIONAL EXPERIENCE

### **NERA Economic Consulting**

2017–present Chair, NERA’s Global Energy, Environment, Communications & Infrastructure (EECI) Practice

2017–present Member, Board of Directors, NERA Economic Consulting

2014–present Senior Vice President / Managing Director

2014–2017 Co-Chair, Communications, Media & Internet Practice

2015–2017 Head, NERA Washington, DC

2014–2015 Co-Head, NERA Washington, DC

2012–2014 Chair, Communications, Media & Internet Practice

2004–2014 Vice President

2000–2004 Senior Consultant

1998–2000 Consultant

1997–1998 Senior Analyst

1996–1997 Analyst

### **BMW Thailand**

1993–1994 Business Analyst

## **HONORS AND PROFESSIONAL ACTIVITIES**

Member, International Bar Association (IBA)  
Member, The Economic Club, Washington, DC  
Editorial Board, Telecommunications Policy  
Board of Directors, International Telecommunications Society (ITS)  
Assistant Treasurer, International Telecommunications Society (ITS)  
Member, American Economic Association (AEA)  
Member, Federal Communications Bar Association (FCBA)  
Associate, American Bar Association (ABA)  
Who's Who Legal Arbitration 2019, Expert Witness

## **TESTIMONIAL EXPERIENCE**

### *Testimony Formats*

Bench trials  
Depositions  
Domestic arbitrations  
International arbitrations (UNCITRAL, ICSID, ICC)  
Jury trials  
Regulatory hearings

### *Appearances Before*

American Arbitration Association  
Arbitration of the International Centre for Settlement of Investment Disputes (ICSID)  
Arbitration of the International Chamber of Commerce (ICC)  
Arbitration Under the North American Free Trade Agreement (NAFTA)  
Arbitration Under the Rules of the United Nations Commission on International Trade Law (UNCITRAL)  
Canadian Radio-Television and Telecommunications Commission (CRTC)  
Central Jakarta District Court, Indonesia  
Circuit Court of Cook County, Illinois County Department, Chancery Division  
Commerce Commission New Zealand  
Competition Bureau Canada

## PUBLIC VERSION

District Court for the Eastern District of Pennsylvania  
District Court Northern District of California San Francisco Division  
District Court of Tangerang, Indonesia  
Federal Aviation Administration  
Federal Communication Commission  
Info-communications Development Authority of Singapore (IDA)  
Innovation, Science and Economic Development Canada (ISED)  
International Trade Commission (ITC)  
Israel Ministry of Communications  
Ontario Superior Court of Justice  
Superior Court of California, County of Santa Clara  
Superior Court of the State of California, County of Alameda  
Superior Court, Province of Quebec, District of Montreal  
Supreme Court of British Columbia  
United States Bankruptcy Court Southern District of New York

### **TESTIMONY IN REGULATORY AND JUDICIAL PROCEEDINGS**

ON BEHALF OF [CONFIDENTIAL MOBILE WIRELESS INDUSTRY]

In the Matter of an Arbitration und the Rules of Arbitration of the International Centre for Settlement of Investment Disputes, ICSID Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], (Expert Report on Behalf of Respondent], November 22, 2019 (Economic Damages / Industry expertise).

ON BEHALF OF [CONFIDENTIAL SATELLITE INDUSTRY]

In the Matter of an Arbitration und the Rules of Arbitration of the International Centre for Settlement of Investment Disputes, ICSID Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], Expert Report on Behalf of [Claimant], January 9, 2019; Response Expert Report on Behalf of [Claimant], February 3, 2020 (Economic Damages / Industry expertise).

ON BEHALF OF [CONFIDENTIAL CONSUMER ELECTRONICS]

In the Matter of an Arbitration under the Rules of Arbitration of the International Chamber of Commerce, ICC Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], Counterclaim-Respondent, July 6, 2018 (Expert Report on Behalf of Respondent], November 16, 2018 [Second Expert Report on Behalf of Respondent], December 20 – 21, 2018 [Oral Testimony on Behalf of Respondent] (Economic Damages / Industry expertise).

## PUBLIC VERSION

ON BEHALF OF ALCATEL-LUCENT USA INC.

In the Superior Court of California, County of Santa Clara, *In re: Alcatel-Lucent USA Inc. v. Brilliant Telecommunications, Inc., Juniper Networks, Inc., et al.*, December 7, 2012, December 13, 2012, February 21 and 25, 2013. (Economic Damages / Industry expertise)

ON BEHALF OF AT&T ALABAMA

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T Alabama, Complainant v. Alabama Power Company, Defendant, Proceeding No. 19 - 119, Bureau ID No. EB-19-MD-002, Affidavit of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, April 16, 2019, Reply Declaration of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, July 19, 2019 (Regulatory Rate Dispute / Industry Expertise)

ON BEHALF OF AT&T FLORIDA

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T Florida, Complainant v. Florida Power and Light Company, Defendant, Proceeding No. 19 - 187, Bureau ID No. EB-19-MD-006, Affidavit of Christian M. Dippon, Ph.D., In Support of Pole Attachment Complaint, June 28, 2019, Reply Affidavit, November 6, 2019. (Regulatory Rate Dispute / Industry Expertise)

ON BEHALF OF BELL MOBILITY

Before the Superior Court, Province of Quebec, District of Montreal, In the Matter of *Gagnon vs. Bell Mobility*, No: 500-06-000496-105, October 25, 2013, March 14, 2014 (updated version from October 25, 2013, and April 2-3, 2014. (Economic damages)

ON BEHALF OF CALINNOVATES

Before the Federal Communications Commission, Washington, DC, In the Matter of Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80, April 22, 2016 (Public policy), October 11, 2016. (Economic damages)

Before the Federal Communications Commission, Washington, DC, In the Matter of Protecting and Promoting the Open Internet, GN Docket 14-28, "Economic Repercussions of Applying Title II to Internet Services," White Paper, by Christian Dippon, PhD and Jonathan Falk, filed as attachment to the Reply Comments of CALinnovates, September 11, 2014. (Public policy)

ON BEHALF OF CELLCOM ISRAEL, LTD.

Before the Israel Ministry of Communications, Expert Report of NERA Economic Consulting, "Reply to Frontier's Responses, Estimating the Cost of Wholesale Access Service on Bezeq's Network," Christian Dippon with Marta Petrucci, Leen Dickx, and Howard Cobb (Finite State Systems), September 29, 2014. (Regulatory policy and cost modeling)

Before the Israel Ministry of Communications, Expert Report of NERA Economic Consulting, "Estimating the Cost of Wholesale Access Services on Bezeq's Network, A Cost Modeling Review," Christian Dippon with Nigel Attenborough, Marta Petrucci, Sally Tam, Anthony Schmitz, and Howard Cobb, March 10, 2014. (Regulatory policy and cost modeling)

PUBLIC VERSION

ON BEHALF OF COMCAST CORPORATION

Before the Federal Communications Commission, Washington, DC, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Notice of Proposed Rulemaking, White Paper, “Public Interest Benefits of Repealing Utility-Style Title II Regulation and Reapplying Light-Touch Regulation to Broadband Internet Services, July 17 and August 28, 2017. (Competition analysis)

ON BEHALF OF THE COMMERCE COMMISSION NEW ZEALAND

“Review of Covec’s ‘Economic Analysis of 700MHz Allocation,’” Christian Dippon with James Mellsop, Richard Marsden, and Kevin Counsell, February 14, 2014. (Regulatory policy and competition analysis)

ON BEHALF OF THE COMPETITION BUREAU CANADA

*The Commissioner of Competition, Applicant and Chatr Wireless Inc, and Rogers Communications Inc., Respondents*, Ontario Superior Court of Justice, June 13, 2012, July 25, 2012, August 15–16, 2012. (Economic damages / Industry expertise)

ON BEHALF OF DJI TECHNOLOGY INC

Before the Federal Aviation Administration, Remote Identification of Unmanned Aircraft Systems, 14 CRF Parts 1, 47, 48, 89, 91, and 107, Docket No.: FAA-2019-1100; Notice No. 20-01, RIN 2120-AL31, Expert Report of Christian M. Dippon, Ph.D., On Behalf of DJI Technology Inc., February 28, 2020.

ON BEHALF OF FPL GROUP INC.

In reference to *Adelphia Communications Corp., et al., Adelphia Recovery Trust, v. FPL Group Inc.*, United States Bankruptcy Court Southern District of New York, July 8, 2011, July 26, 2011, April 17, 2012, and May 2–3, 2012. (Competition analysis)

ON BEHALF OF MICROSOFT MOBILE OY AND NOKIA INC.

Before the United States International Trade Commission, In the Matter of Certain 3G Mobile Handsets and Components, Investigation No. 337-TA-613, September 12, 2014, October 3, 2014, October 15, 2014, November 21, 2014, December 12, 2014, and January 28, 2015. (Competition analysis)

Before the United States International Trade Commission, In the Matter of Certain Wireless Devices including Mobile Phones and Tablets II, Investigation No. 337-TA-905, June 26, 2014. (Competition analysis)

ON BEHALF OF MONSTER, INC.

Circuit Court of Cook County, Illinois County Department, Chancery Division, *Amy Joseph, individually and on behalf of all others similarly situated, Plaintiff, Benjamin Perez, individually and on behalf of all others similarly situated, Intervening Plaintiff vs. Monster, Inc., a Delaware Corporation and Best Buy Co, Inc., a Minnesota Corporation, Defendants*, Case No. 2015 CH 13991, September 9, 2016 and February 8, 2018. (Economic damages)



## PUBLIC VERSION

### ON BEHALF OF NETLINK TRUST

Before the Info-communications Development Authority of Singapore (IDA), “The Appropriate Cost Methodology for Price Regulation of Interconnection Wholesale Fiber Services,” Christian Dippon with Dr. Bruno Soria, December 15, 2015. (Regulatory policy)

### ON BEHALF OF NOKIA CORPORATION AND NOKIA INC.

Before the United States International Trade Commission, In the Matter of Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof, Investigation No. 337-TA-868, August 23, 2013, September 5, 2013, September 20, 2013, October 8, 2013, November 19, 2013, December 6, 2013, January 6, 2014, and February 18, 2014. (Competition analysis)

Before the United States International Trade Commission, In the Matter of Certain Integrated Circuit Devices and Products Containing the Same, Investigation No. 337-TA-873, August 30, 2013, September 16, 2013, and March 6, 2014. (Competition analysis)

### ON BEHALF OF NOKIA SOLUTIONS AND NETWORKS US LLC

In the Matter of the Arbitration between *MTPCS, LLC d/b/a Cellular One vs. Nokia Solutions and Networks US LLC d/b/a Nokia Networks*, Before the American Arbitration Association, RE: 01-15-0003-5349, December 5–6, 2016 (Economic damages and competition analysis) and May 4, 2016. (Economic damages)

Before the American Arbitration Association, *Nokia Siemens Networks US LLC n/k/a Nokia Solutions Networks US, Plaintiff vs. Viaero Wireless a/k/a NE Colorado Cellular, Inc., Defendant*, Case No. 50 494 T 00510 13, May 27, 2014 and June 2, 2014. (Economic damages)

### ON BEHALF OF QATAR TELECOM (QTEL)

In Connection with *Vodafone Qatar Q.S.C v. Qatar Telecom (Qtel) Q.S.C*, Pursuant to Dispute Resolution Agreement Dated 11 November 2010, January 20, 2011 and February 21, 2011. (Economic damages)

### ON BEHALF OF SINGAPORE TELECOMMUNICATIONS LIMITED AND SINGAPORE TELECOM MOBILE PTE. LTD.

Before the District Court of Tangerang, “Economic Assessment and Examination of Alleged Anticompetitive Behavior in the Indonesian Mobile Market,” Expert Report by Christian Dippon, Nigel Attenborough, and William Taylor, April 21, 2010. (Economic damages)

Before the Central Jakarta District Court, “Economic Assessment and Examination of Alleged Anticompetitive Behavior in the Indonesian Mobile Market,” Expert Report by Christian Dippon, Nigel Attenborough, and William Taylor, Prepared for Singapore Telecommunications Limited and Singapore Telecom Mobile Pte. Ltd., January 15, 2010. (Economic damages and competition analysis)

### ON BEHALF OF SONY COMPUTER ENTERTAINMENT AMERICA LLC

Before the United States District Court Northern District of California San Francisco Division, In Re Sony PS3 “Other OS” Litigation, Case No. CV-10-1811 SC, April 4, 2017 and June 7, 2017. (Economic damages)

PUBLIC VERSION

ON BEHALF OF SPRINT COMMUNICATION COMPANY L.P., SPRINT SPECTRUM L.P., AND NEXTEL OPERATIONS, INC.

Before the United States District Court for the Eastern District of Pennsylvania, *Comcast Cable Communications, LLC; TVWorks, LLC, and Comcast Mo Group Inc. v. of Sprint Communication Company L.P., Sprint Spectrum L.P., and Nextel Operations, Inc.*, Civil Action No. 2:12-cv-00859-JD, July 15, 2015. (Economic damages), March 18, 2016 (Economic damages), February 14, 2017 (Economic damages and incremental cost modeling)

ON BEHALF OF SPRINT SPECTRUM LP AND WIRELESS CO. LP, NEXTEL COMMUNICATIONS INC., AND NEXTEL CALIFORNIA INC.

Superior Court of the State of California, County of Alameda, JCCP No. 4332, Case No. RG03114147, *Ayyad, et al. v. Sprint Spectrum Limited Partnership, et. al.*, Cellphone Termination Fee Cases, September 13, 2011, April 26, 2013, May 29, 2013, July 16, 2013, July 30, 2013, April 1, 2016, and January 29, 2016. (Economic damages)

ON BEHALF OF TELE FÁCIL MEXICO, S.A. DE C.V.

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# **Exhibit 1**

**ATT00088**

PUBLIC VERSION

JOINT USE AGREEMENT  
BETWEEN  
FLORIDA POWER CORPORATION  
AND  
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Section 0.1 THIS AGREEMENT, made and entered into this first day of June, 1969, by and between FLORIDA POWER CORPORATION, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "Electric Company", and SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a corporation organized and existing under the laws of the State of New York, herein referred to as the "Telephone Company".

WITNESSETH

Section 0.2 WHEREAS, the parties hereto desire to cooperate in accordance with terms and provisions set forth in the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded; and

Section 0.3 WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

Section 0.4 NOW, THEREFORE, in consideration of the foregoing premises and of mutual benefits to be obtained from covenants herein set forth, the parties hereto, for themselves and for their successors and assigns, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 For the purpose of this Agreement, the following terms when used herein, shall have the following meanings:

1.1.1 CODE means the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded.

1.1.2 ATTACHMENTS mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant attached to poles.

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1.1.3 JOINT USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

1.1.4 JOINT USE POLE is a pole upon which space is provided under this Agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefore upon specific request.

1.1.5 NORMAL JOINT USE POLE under this Agreement shall be a pole which meets the requirements set forth in the CODE for support and clearance of supply and communication conductors under conditions existing at the time joint use is established or is to be created under known plans of either party. It is not intended to preclude the use of joint poles shorter or of less strength in locations where such structures will meet the requirements of both parties and the said specifications in Article VI. A normal joint pole for billing purposes shall be:

- (A) In and along public streets, alleys, or roads, a 40 foot class 5 wood pole.
- (B) In all other areas, a 35 foot class 5 wood pole.
- (C) In locations where the Electric Company, at its option, sets a pole of special material such as steel, laminated wood or prestressed concrete in an existing joint use wood pole line, the Telephone Company may attach to these special poles at the rental rate specified in Article X, unless excluded under Section 2.2. The Electric Company will keep the Telephone Company advised of those areas where such special poles are not placed at their option, and in each such event, the Telephone Company may attach by mutual agreement between the parties.

1.1.6 STANDARD SPACE on a joint use pole for the use of each party shall be not less than that required by the CODE and shall be for the exclusive use of the parties except as set forth in the CODE whereby certain attachments of one party may be made in the space reserved for the other party. This standard space is specifically described as follows:

- (A) For the Electric Company, the uppermost 8½ feet on 40 foot poles, and the uppermost 4 feet on 35 foot poles.
- (B) For the Telephone Company a space of 3.0 feet extending upward from a sufficient height above the ground to provide the proper vertical clearance for the lowest line wires or cables attached (in such space) and to provide at all times the minimum clearances required by the specifications outlined in Article VI.
- (C) It is the intention of the parties that any pole space in excess of the aforementioned reservations and clearance requirements shall be between the standard space allocations of the parties. This excess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachments of the other party.

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1.1.7 OWNER means the party hereto owning the pole to which attachments are made.

1.1.8 LICENSEE is the party having the right under this Agreement to make attachments to a joint use pole of which the other party is the Owner.

1.1.9 INSTALLED COST is the cost incurred in setting a new pole (either as a new installation or replacement) and includes the cost of material, direct labor, construction and equipment charges, engineering and supervision, and standard overhead charges of the Owner as commonly and reasonably incurred in the joint usage of poles. The installed cost does not include the cost of attaching or transfer costs but does include the cost of ground wires.

1.1.10 COST OF ATTACHING is the cost of making attachments to a new pole and includes the charge for hardware necessary to make the attachment.

1.1.11 TRANSFER COST is the cost of transferring attachments from the replaced pole to the replacement pole and does not include the material cost of replacing hardware.

1.1.12 VERTICAL GROUND WIRE means a suitable conductor, conforming to the requirements of the CODE, attached vertically to the pole and extending through the Telephone Company space to the base of the pole, where it may be either butt wrapped on the pole or attached to a ground electrode.

1.1.13 MULTI-GROUNDED NEUTRAL means an Electric Company conductor, located in the Electric Company space, which is bonded to all Electric Company vertical ground wires.

1.1.14 BONDING WIRE shall mean a suitable conductor conforming to the requirements of the CODE, connecting equipment of the Telephone Company and the Electric Company to the vertical ground wire or to the multi-grounded neutral.

1.1.15 OBJECTIVE PERCENTAGE shall be based on the total combined number of joint use poles in the common operating area and shall mean 45% of the total joint use poles for the Telephone Company and 55% of the total joint use poles for the Electric Company.

1.1.16 REMOVAL COST is the cost incurred in removing an existing pole and includes the cost of direct labor, construction and equipment charges, engineering and supervision and standard overhead charges of the Owner as commonly and reasonably incurred in the joint usage of poles.

ARTICLE II

SCOPE OF AGREEMENT

Section 2.1 This Agreement shall be in effect in those parts of the State of Florida now or hereafter served by both the Telephone Company and the Electric Company, and shall cover all poles of each of the parties now existing in such service areas, or hereafter erected or acquired therein, when said poles are brought hereunder in accordance with the procedure hereafter provided.

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Section 2.2 Each party reserves the right to exclude from joint use poles which have been installed for purposes other than or in addition to normal distribution of electric or telephone service including, among others, poles which, in the judgement of the Owner (a) are required for the sole use of the Owner, (b) would not readily lend themselves to joint use because of interference, hazards or similar impediments, present or future, or (c) have been installed primarily for the use of a third party. In the event one of the parties deem it desirable to attach to any such excluded poles, the party wishing to attach will proceed in the manner provided in Article III. Where a third party use is involved, approval must be obtained from such third party as a prerequisite to processing under Article III.

Section 2.3 With the exception of Telephone Company service drops on public right of way, the Telephone Company may not make initial or additional attachments to Electric Company transmission line poles (above 35,000 volts phase to phase nominal rating) without the written approval of the Electric Company as provided in Article III of this Agreement.

ARTICLE III

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS  
AND  
BONDING SAID ATTACHMENTS

Section 3.1 Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon not then specifically reserved by application hereunder for its use, it shall make written application to the other party specifying in such application the location of the pole in question. Within ten (10) days after the receipt of such application, the Owner shall notify the applicant in writing, whether or not said pole is one of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not one of those excluded, and after the Owner completes any transferring or rearranging which may then be required in respect to attachments on said poles, including any necessary pole replacements as provided in Article IV, the applicant shall have the right as Licensee hereunder to use said space in accordance with the terms of this Agreement.

Section 3.2 The provisions of Section 3.1 do not apply to the poles of either party being used jointly by the other party as of the effective date of this Agreement; therefore, the Licensee shall have the right to use space on these poles for attachments in accordance with the terms of this Agreement.

Section 3.3 Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense, and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

Section 3.4 Each party, regardless of pole ownership, shall be responsible for determining the proper pole strength and arranging for any necessary guying of a joint pole where a requirement therefore is created by the addition or alteration of attachments thereon by such party.

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Section 3.5 The Electric Company shall give sixty (60) days written notice to the Telephone Company, advising the Telephone Company of any initial attachments or conversion of any existing attachments that will result in joint use with any of the following conditions:

(A) The absence of a multiple grounded Electric Company neutral line conductor.

(B) Voltage in excess of 15,000 volts phase to ground.

If the Telephone Company agrees to joint use with any such change then the joint use of such poles shall be continued with such changes in construction as may be required to meet the requirements of the CODE. If, however, the Telephone Company fails within thirty (30) days from receipt of such written notice to agree in writing to such change then both parties shall cooperate and determine the most practical and economical method of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

Section 3.6 The ownership of any new line constructed in a new location under the foregoing provision shall be vested in the party for whose use it is constructed, unless otherwise agreed by the parties.

Section 3.7 On joint use poles the Telephone Company may, at its own expense, bond its attachments in the Telephone Company space together and to the vertical ground wire where the same exists.

Section 3.8 Under no condition will the Electric Company's vertical ground wire be broken, cut, severed or otherwise damaged by the Telephone Company.

Section 3.9 On joint use poles the Electric Company shall, at its own expense, bond its street light brackets, conduit and other attachments in the Telephone Company space together and to the vertical ground wire where the same exists.

#### ARTICLE IV

##### ERECTING, REPLACING OR RELOCATING POLES

Section 4.1 Whenever, for whatever reason, the Owner shall deem it necessary to change the location of a jointly used pole, the Owner shall, before making such change in location, give timely notice thereof to the Licensee in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing), specifying in such notice the time of such proposed relocation, and the Licensee shall, at a time mutually agreed upon, transfer its attachments to the pole at the new location.

Section 4.2 Whenever either party hereto is about to erect new poles within the territory covered by this Agreement, either as a new pole line, an

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extension of an existing pole line, or as the reconstruction of an existing pole line being jointly used hereunder, such party shall immediately notify the other party hereto prior to completion of engineering plans for such erection in order that any necessary joint planning may be coordinated and so that compliance may be had with the provisions of Section 4.3 and 4.4 of this Article IV.

Section 4.3 Where the parties conclude arrangements for joint use and unless it is mutually agreed otherwise, the party owning less than its objective percentage of joint use poles under this Agreement shall erect or replace within a reasonable time any joint use pole, or any pole about to be so used, that is required by either of the parties and be the Owner thereof. This obligation shall include wood poles only. The costs associated with such new and replacement poles and such other changes in the existing pole line as the new conditions may require are to be as outlined in Section 4.4.

Section 4.4 The costs of erecting joint use poles coming under this Agreement shall be borne as provided in one or more of the following Sub-sections:

4.4.1 For a new pole to which no existing facilities of either party are to be attached (e.g., new pole lines) a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required the obligation of the parties for such extra cost shall be in accordance with Section 4.4.5.

4.4.2 For a new pole to which existing facilities of either party must be attached (e.g. adding pole in existing line) and:

- (A) The pole is of benefit to both parties, a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required the obligation of the parties for such extra cost shall be in accordance with Section 4.4.5. Each party shall bear its own cost of attaching.
- (B) The pole is of benefit only to the Licensee, the Licensee shall pay the Owner a sum equal to the installed cost of the required pole plus the cost of attaching the Owner's facilities to said pole.
- (C) The pole is of benefit only to the Owner, the Owner shall pay the Licensee a sum equal to the cost of attaching the Licensee's facilities to said pole.

4.4.3 Where an existing joint use pole is inadequate and said pole is replaced, the party requiring such replacement shall be obligated for the cost as follows:

- (A) If such party is the Owner of both the existing and replacing pole that party shall bear the cost of the pole and the cost of transferring the Licensee's attachments.

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- (B) If such party is the Licensee of both the existing and replacing pole that party shall pay the Owner a sum equal to (A) the difference between the installed cost of the required pole and the installed cost of the removed pole, plus (B) the then value in place of the removed pole, plus (C) the removal cost of the pole removed, plus (D) the Owner's transfer cost, less (E) the salvage value of the removed pole.
- (C) If such party is the Owner of the existing pole and the Licensee of the replacing pole such party shall pay the new Owner's transfer cost plus any cost for a pole taller and/or stronger than a normal joint use pole in accordance with Section 4.4.5.
- (D) If such party is the Licensee of the existing pole and the Owner of the replacing pole such party shall bear the cost of the pole and pay the former Owner a sum equal to (A) the then value in place of the removed pole, plus (B) the removal cost of the pole removed, plus (C) the transfer cost, less (D) the salvage value of the removed pole.

4.4.4 Where an existing joint use pole is replaced due to deterioration or damage, each party shall pay its own transfer costs. If a pole taller and/or stronger than a normal joint use pole and the existing pole is required, the provisions of Section 4.4.5 apply.

4.4.5 For any new pole that is taller and/or stronger than a normal joint use pole, the cost of the extra height and/or strength shall be as follows:

- (A) If the extra height and/or strength is due wholly to the Owner's requirements, the entire cost of the pole shall be borne by the Owner.
- (B) If the extra height and/or strength is due wholly to the Licensee's requirements the Licensee shall pay the Owner a sum equal to the difference between the installed cost of the required pole and the installed cost of a normal joint use pole. Notwithstanding the foregoing, where pole line economy resulting from the use of fewer poles can be effected by the Owner increasing the strength of poles, billing would be based only on the extra height.
- (C) Where the extra height and/or strength is due to the requirements of both parties herein to provide CODE clearances or meet the requirements of public authority or property owners, the Licensee shall pay the Owner a sum equal to one-half ( $\frac{1}{2}$ ) the difference between the installed cost of the required pole and the installed cost of a normal joint use pole.

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Section 4.5 Any payments made by the Licensee under the foregoing provisions of this Article shall not in any way affect the ownership of said poles.

Section 4.6 When replacing a joint use pole carrying terminals of aerial cable, underground connections or transformer equipment, the replacement pole shall be set in such a location that existing facilities may be transferred at a minimum of cost and inconvenience.

Section 4.7 Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all reasonable costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

ARTICLE V

PERMISSION OF JOINT USE

Section 5.1 Each party hereto hereby permits joint use by the other party of any of its poles when brought under this Agreement as herein provided subject to the terms and conditions herein set forth.

ARTICLE VI

SPECIFICATIONS

Section 6.1 Joint use of poles covered by this Agreement shall at all times be in conformity with the terms and provisions of the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded. Said CODE, by this reference is hereby incorporated herein and made a part of this Agreement.

ARTICLE VII

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

Section 7.1 From and after the date of this Agreement, the Owner will, insofar as practicable, obtain suitable right of way easements or permits for both parties on joint poles brought hereunder.

Section 7.2 While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties on joint poles, no guarantee is given by the Owner of permission from property owners, municipalities or others for use of poles and right of way easements by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at

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any time upon thirty (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved and its appurtenances from the right of way easement involved and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from said poles and its appurtenances from said right of way easement at its sole expense. Should the Licensee fail to remove its attachments and appurtenances, as herein provided, the Owner may remove them and the Licensee shall reimburse the Owner for the expense incurred.

Section 7.3 Each party shall be responsible for its own circuits where tree trimming or cutting (e.g., shade trees, side clearances, etc.) is required. Where benefits are mutual and the need for the work is agreed upon beforehand, costs shall be apportioned on an equitable basis.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

Section 8.1 The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with Article VI of this Agreement, and shall replace, subject to the provisions of Article IV, such of said poles as become defective. Each party shall, at its own expense and at all times, maintain all of its attachments in accordance with the specifications contained in the CODE and keep said attachments in safe condition and in thorough repair.

Section 8.2 Both parties shall, in writing, report to each other all hazardous conditions found to exist in any joint use construction hereunder, immediately upon discovery, and the responsible party shall proceed forthwith to alter such construction so as to remove the hazard. Any existing joint use construction hereunder which does not conform to the specifications set forth in Article VI shall be brought into conformity with said specifications at the earliest possible date.

Section 8.3 The cost of removing hazards and of bringing existing joint use construction into conformity with said specifications, as provided in Section 8.2, shall be borne by the parties hereto in the manner provided in Section 3.3 and Article IV.

ARTICLE IX

ABANDONMENT OF JOINTLY USED POLES

Section 9.1 If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole thereupon becomes the property of the Licensee, and the Licensee (a) shall indemnify and save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter and arising out of the presence or condition of such pole

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or of any attachments thereon; and (b) shall pay said former Owner a sum equal to the then value in place of such abandoned pole, less credit on a depreciated basis for any payments which the Licensee furnishes proof he has made under the provisions of Article IV when the pole was originally set, or shall pay such other equitable sum as may be agreed upon between the parties.

Section 9.2 The Licensee may at any time abandon the joint use of a pole by giving due notice thereof in writing to the Owner and by removing from said pole any and all attachments the Licensee may have thereon.

ARTICLE X

RENTAL AND PROCEDURE FOR PAYMENTS

Section 10.1 The parties contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this Agreement, shall be based on the equitable sharing of the costs and economies of joint use.

Section 10.2 Each party, acting in cooperation with the other and subject to the provisions of Section 10.3 of this Article, shall ascertain and tabulate the total number of poles in use by each party as Licensee as of December 31, which tabulation shall indicate the number of poles in use by each party as Licensee for which an adjustment payment by one of the parties to the other is to be determined as hereinafter provided.

Section 10.3 The parties hereto agree that an attachment count also includes any pole on which it is mutually agreed that space was reserved for the Licensee at the Licensee's request and on which the Licensee has not attached. The Licensee is only liable for billing under this Section until the Licensee makes an initial attachment or an interval of five (5) unattached years elapses from the date of the space reservation, whichever condition occurs first.

Section 10.4 At the end of each calendar year, the party having less than its objective percentage ownership of jointly used poles shall pay an equity settlement to the other party for that calendar year an amount equal to the number of poles it is deficient from its objective percentage ownership times the appropriate adjustment rate given below, which sum shall be due and payable upon the first day of February following each year end determination of the number of jointly used poles owned by each party.

Applicable Adjustment rate to be utilized for each calendar year

1969: \$10.00	1971: \$10.50	1973 and until revised: \$11.00
1970: \$10.25	1972: \$10.75	

Section 10.5 Upon the execution of this Agreement and every five (5) years thereafter, or as may be mutually agreed upon, the parties hereto shall make a joint field check to verify the accuracy of the joint use records hereunder. If the parties mutually agree to postpone the first joint field

check hereunder, the parties shall use their existing records as changed from time-to-time to determine the number of jointly used poles owned by each party until the first joint field check is made hereunder. The said joint inventory shall be a one hundred (100) percent field inventory unless the parties voluntarily and mutually agree to some other method. Upon completion of such inventories, the office records will be adjusted accordingly and subsequent billing will be based on the adjusted number of attachments. The corrections to the estimations made over the years elapsed since the preceding inventory shall be prorated equally (i.e., if the latest joint field check shows 100 more joint use poles owned by one party than office records indicate and if the interval since the last joint field check is 5 years, then each of the intervening annual pole inventory amounts would be adjusted upward by 20 poles). Unless otherwise agreed upon, retroactive billing for the prorated adjustment will be added to the normal billing for the year following completion of the field inventory.

Section 10.6 Rental or other charges paid to the Owner by a third party will in no way affect the rental or charges paid between the parties of this Agreement.

Section 10.7 Payment of all other amounts, provision for which is made in this Agreement, shall be made currently or as mutually agreed thereto.

#### ARTICLE XI

##### PERIODIC REVISION OF ADJUSTMENT PAYMENT RATE

Section 11.1 Article X of this Agreement covering Rental and Procedures for Payment shall remain in effect for a minimum term of five (5) years. The adjustment rate shall then become subject to renegotiation at the request of either party annually thereafter upon not less than six (6) months prior notice.

Section 11.2 In the event the parties cannot, within six (6) months after a request under Section 11.1 is made, agree upon rental payments, this Agreement shall terminate and be of no further force and effect insofar as the making of attachments to additional poles. All other terms and provisions of this Agreement shall remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties herein with respect to existing joint use poles; except that all pole replacements shall be the obligation of the party owning less than its objective percentage. In the event that the party owning less than its objective percentage fails to replace the pole within a reasonable period of time, the other party may replace the pole and the party owning less than its objective percentage shall pay the party owning greater than its objective percentage a sum equal to the installed cost of the new pole and assume ownership thereof.

ARTICLE XII

DEFAULTS

Section 12.1 If either party shall default in any of its obligations (other than to meet money payment obligations) under this Agreement and such default shall continue for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default hereunder, insofar as such rights may relate to the further granting of joint use of poles hereunder shall be suspended; and such suspension shall continue until the cause of such default is rectified by the party in default or the other party shall waive such default in writing.

Section/2.2 If either party shall default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the total cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days after presentation of bills therefore shall constitute a default under Section 12.3.

Section 12.3 If the default giving rise to a suspension of rights involves the failure to meet a money payment obligation hereunder, and such suspension shall continue for a period of sixty (60) days, then the party not in default may forthwith terminate the rights of the other party to attach to the poles involved in the default.

ARTICLE XIII

LIABILITY AND DAMAGES

Section 13.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this Agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this Agreement, the liability for such damages, as between the parties hereto, shall be as follows:

13.1.1 Each party shall be liable for all damages for such injuries, to all persons (including employees of either party) or property, caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided for in Article VIII hereof.

13.1.2 Each party shall be liable for all damages for such injuries, to its own employees or its own property, that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.3 Each party shall be liable for one half ( $\frac{1}{2}$ ) of all damages for such injuries to persons other than employees of either party, and for one half ( $\frac{1}{2}$ ) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.4 Where, on account of injuries of the character heretofore described in this Article, either party hereto shall make payments to injured employees or to their relatives or representatives in conformity with (a) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding Subsections 13.1.1 and 13.1.2 and shall be paid by the parties hereto accordingly.

13.1.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half ( $\frac{1}{2}$ ) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

13.1.6 In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses, including court costs, attorneys' fees, valid disbursements and other proper charges and expenditures, incurred by the parties in connection therewith.

#### ARTICLE XIV

##### ASSIGNMENT OF RIGHTS

##### AND

##### EXISTING RIGHTS OF OTHER PARTIES

Section 14.1 Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights of way covered by this Agreement, to any firm, corporation, or individual, without written notification to the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in the case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the lessee, transferee, merging or consolidating company, as the case may be.

Section 14.2 If either of the parties hereto has, as Owner, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing

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herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that, for the purpose of this Agreement, all attachments of any such third party shall be treated as attachments belonging to the Owner, and, except as modified by Section 14.3, the rights, obligations and liabilities hereunder of said Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

Section 14.3 In the event that attachments to be made by a third party require rearrangements or transfer of the Licensee's attachments to maintain STANDARD SPACE (as defined in Section 1.7), and STANDARD CLEARANCE (as outlined in the CODE), the Licensee shall have the right to collect from said third party, all costs to be incurred by the Licensee to make such required rearrangements or transfers prior to doing the work.

Section 14.4 Each Owner reserves the right to use, or permit to be used by other third parties, such attachments on poles owned by it which would not interfere with the rights of the Licensee with respect to use of such poles.

Section 14.5 Third party space requirements must be accommodated without permanent encroachment into the standard space allocation of the Licensee; therefore, neither party hereto shall, as Owner, lease to any third party, space on a joint use pole within the allotted standard space of the Licensee without adequate provision for subsequent use of such standard space by Licensee without cost to the Licensee.

Section 14.6 Where either party allows the use of its poles for fire alarm, police or other like signal systems, or where such systems are presently or hereafter permitted by the Owner to occupy its poles, such use shall be permitted under and in accordance with the terms of this Article.

ARTICLE XV

SERVICE OF NOTICES

Section 15.1 Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its principal office at St. Petersburg, Florida, or to the Telephone Company at its principal office at Jacksonville, Florida, as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE XVI

TERM OF AGREEMENT

SECTION 10.1 Subject to the provisions of Articles XI and XII herein, the provisions of this Agreement, insofar as the same may relate to the further granting of joint use of poles hereunder, may be terminated by

**ATT00102**

either party, after the first day of January, 1979, upon six (6) months notice in writing to the other party; provided, however, that, if such provisions shall not be so terminated, said Agreement in its entirety shall continue in force thereafter until partially terminated as above provided in this Section by either party at any time upon six (6) months notice in writing to the other party as aforesaid; and provided, further, that notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

Section 17.1 The failure of either party to enforce, or insist upon compliance with, any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

EXISTING CONTRACTS

Section 18.1 All existing Agreements between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement are, by mutual consent, hereby abrogated and annulled.

ARTICLE XIX

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto, by their respective officers thereunto duly authorized, on the day and year first above written.

(Seal)  
Attest

FLORIDA POWER CORPORATION

By *Richard E. Raymond*  
Senior Vice President

*Betty M. Clayton*  
Asst. Secretary

SOUTHERN BELL TELEPHONE  
AND TELEGRAPH COMPANY

Witness:

*Nathan H. Wilson*

By *J. Brown*  
Vice President and  
General Manager

NOTED AS TO  
SECURITY  
*N. H. Wilson*  
SECRETARY

PUBLIC VERSION

SUPPLEMENTAL ROUTINE AND PRACTICE AGREEMENT

JUNE 1, 1969

Pursuant to Article XIX "Supplemental Routines and Practices" of the joint use agreement between the Florida Power Corporation and Southern Bell Telephone and Telegraph Company dated June 1, 1969, the following terms and amounts will be applicable until revised in whole or in part by mutual agreement.

A reasonable period of time as used in Article IV shall be a period of ten (10) working days. At the end of this time if it becomes necessary for the party owning more than its objective percentage to set the pole, the other party shall pay the party owning greater than its objective percentage a sum equal to the installed cost of the new pole and assume the ownership thereof.

The following values will be used for flat rate billing under applicable sections of the aforementioned contract:

	<u>Pole Height (Ft) and Cost Data (\$)</u>			
	<u>30</u>	<u>35</u>	<u>40</u>	<u>45</u>
<u>Installed Cost</u>				
FPC	47.61	77.58	92.46	113.26
SB	56.28	73.01	80.56	96.03
<u>Inplace Value</u>				
FPC & SB	19.79	28.84	34.00	43.46
<u>Removal Cost</u>				
FPC	29.42	45.03	50.61	64.06
SB	23.31	28.38	30.06	36.84
<u>Salvage</u>				
FPC & SB	7.01	12.94	16.02	19.17
<u>Inplace Value + Removal Cost</u>				
<u>- Salvage</u>				
FPC	42.20	60.93	68.59	88.35
SB	36.09	44.28	48.04	61.13

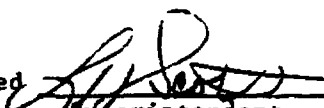
SOUTHERN BELL TELEPHONE  
AND TELEGRAPH COMPANY

FLORIDA POWER CORPORATION

Approved

  
Chief Engineer

Approved

  
Superintendent  
Transmission and  
Distribution

ATT00105

AMENDMENT TO JOINT USE AGREEMENT  
BETWEEN  
FLORIDA POWER CORPORATION  
AND  
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

This AMENDMENT TO JOINT USE AGREEMENT, made and entered into this 16 day of October, 1980, by and between Florida Power Corporation, a corporation of the state of Florida (hereinafter referred to as the "Electric Company") and Southern Bell Telephone and Telegraph Company, a corporation of the state of New York (hereinafter referred to as the "Telephone Company").

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company entered into a JOINT USE AGREEMENT, dated the 1st day of June, 1969, concerning the joint use of certain of their poles located in the state of Florida, and

WHEREAS, said Electric Company and Telephone Company now desire to amend said Agreement in the particulars set forth herein,

NOW, THEREFORE, in consideration of the mutual promises and benefits to be obtained from the amendments set forth hereunder, the parties hereto, for themselves and for their successors and assigns, do hereby agree to amend the JOINT USE AGREEMENT as follows:

1. Article X, Section 10.4 is deleted in its entirety and hereby revised as follows:

Article X, Section 10.4 At the end of each calendar year, the party having less than its objective percentage ownership of jointly used poles shall pay an equity settlement to the other party for that calendar year an amount equal to the number of poles it is deficient from its objective percentage ownership times the appropriate adjustment rate given below, which sum shall be due and payable upon the first day of February following each year end determination of the number of jointly used poles owned by each party.

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Applicable Adjustment Rate To Be Utilized For Each

Calendar Year -

1979:	\$15.85	1981:	\$16.85	1983 & until	
1980:	\$16.35	1982:	\$17.35	revised:	\$17.85

2. Except as modified herein, the JOINT USE AGREEMENT shall remain in full force and effect.

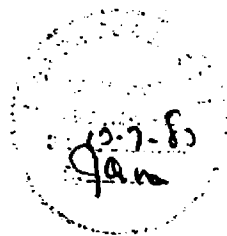
IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to be executed by their duly authorized officers on the day and year first above written.

FLORIDA POWER CORPORATION

Attest:

*James Walters*

By *A. J. Armstrong*  
Vice President

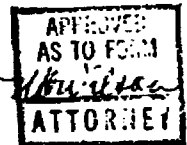


SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Attest:

*J. Clyde Johnson*

By *L. E. Cantler*  
Vice President  
No. Fla. Area



NOTE: Two originals of this document were signed, this one, and the one retained by F.P.C. This original sent to Florida Hqtrs. Miami, for transmitting to Co. Secty. in Atlanta.

*[Signature]*  
10-20-80

ATT00107

PUBLIC VERSION

AMENDMENT TO JOINT USE AGREEMENT  
BETWEEN  
FLORIDA POWER CORPORATION  
AND  
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

This AMENDMENT TO THE JOINT USE AGREEMENT, made and entered into between Florida Power Corporation, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "Electric Company" and Southern Bell Telephone and Telegraph Company, a corporation organized and existing under the laws of the State of Georgia, herein referred to as the "Telephone Company"

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company entered into a JOINT USE AGREEMENT, dated June 1, 1969, amended October 16, 1980, concerning the joint use of certain of their poles located in the State of Florida, and

WHEREAS, said Electric Company and Telephone Company now desire to amend said Agreement in the particulars set forth herein,

NOW, THEREFORE, in consideration of the mutual promises and benefits to be obtained from the amendments set forth hereunder, the parties hereto, for themselves and for their successors and assigns, do hereby agree to amend the JOINT USE AGREEMENT, dated June 1, 1969, amended October 16, 1980 as follows:

1. Section 10.4 is deleted in its entirety and hereby revised as follows:

Section 10.4(a) As of January 1 of each year, the yearly rental charges for each company will be calculated by the party owning the majority of poles. Rental charges will be based on that company's total number of joint use pole attachments, as specified in Section 10.2, times that company's annual rate, as defined in Section 10.4(b). Any equity settlement shall be due and payable within thirty (30) days upon receipt of invoice.

Section 10.4(b) It is mutually agreed by both parties that the annual rates for joint use pole attachments shall be determined as follows. The Electric Company as a Licensee, shall pay [REDACTED] of the majority pole owner's annual pole cost and the Telephone Company as a Licensee, shall pay [REDACTED] of the majority pole owner's annual pole cost. In order to determine the annual pole cost, the net investment per bare pole cost shall be multiplied by an annual carrying charge rate comprised of: return (cost of capital), depreciation, federal and state taxes, other taxes, maintenance expense and administrative expense. Distribution FERC accounts will be used for these calculations.

For the year 1989, Florida Power Corporation's (as the majority pole owner) annual pole cost of [REDACTED] shall apply which yields an annual rate of [REDACTED] for the Electric Company, as a Licensee; and [REDACTED] for the Telephone Company, as a Licensee.

2. Section 11.1 is deleted in its entirety and hereby revised as follows:

Section 11.1 Subsequent to 1989, rates shall be adjusted yearly by the party owning the majority of the jointly used poles who shall by June 30 of each year, send to the other party for their review and acceptance, its documentation establishing the latest annual pole cost with the resulting annual rates for each company to be effective January 1st, of the current year, and billed the subsequent January 1st, as defined in Section 10.4(a).

3. The JOINT USE AGREEMENT between the parties hereto dated June 1, 1969, amended October 19, 1980 shall remain in full force and effect according to its terms and this AMENDMENT TO THE JOINT USE AGREEMENT shall not be construed to make any changes in said Agreement except such changes as are specifically set forth herein.

PUBLIC VERSION

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to be executed by their respective representatives, being duly authorized, on the dates indicated below.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Patricia L. Phelps  
Witness

By L. C. Little

Title Vice President - Network/FL

Robert J. Munn  
Witness



Dated this 20<sup>th</sup> day of DECEMBER, 1989.

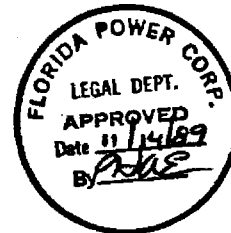
FLORIDA POWER CORPORATION

Diane Huszai  
Witness

By [Signature]  
Executive Vice President

Denise Bickel  
Witness

Dated this 2nd day of January, 1990.

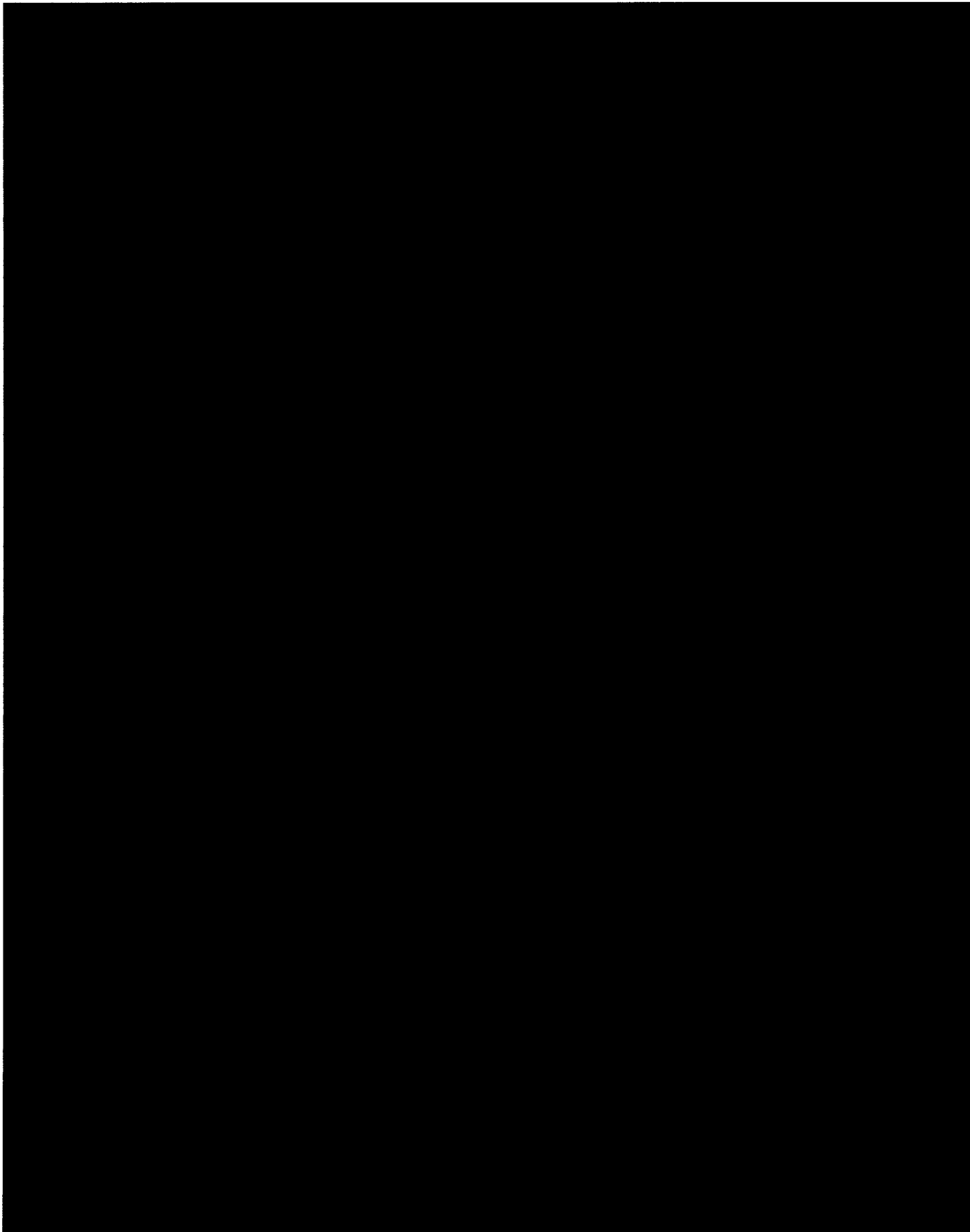


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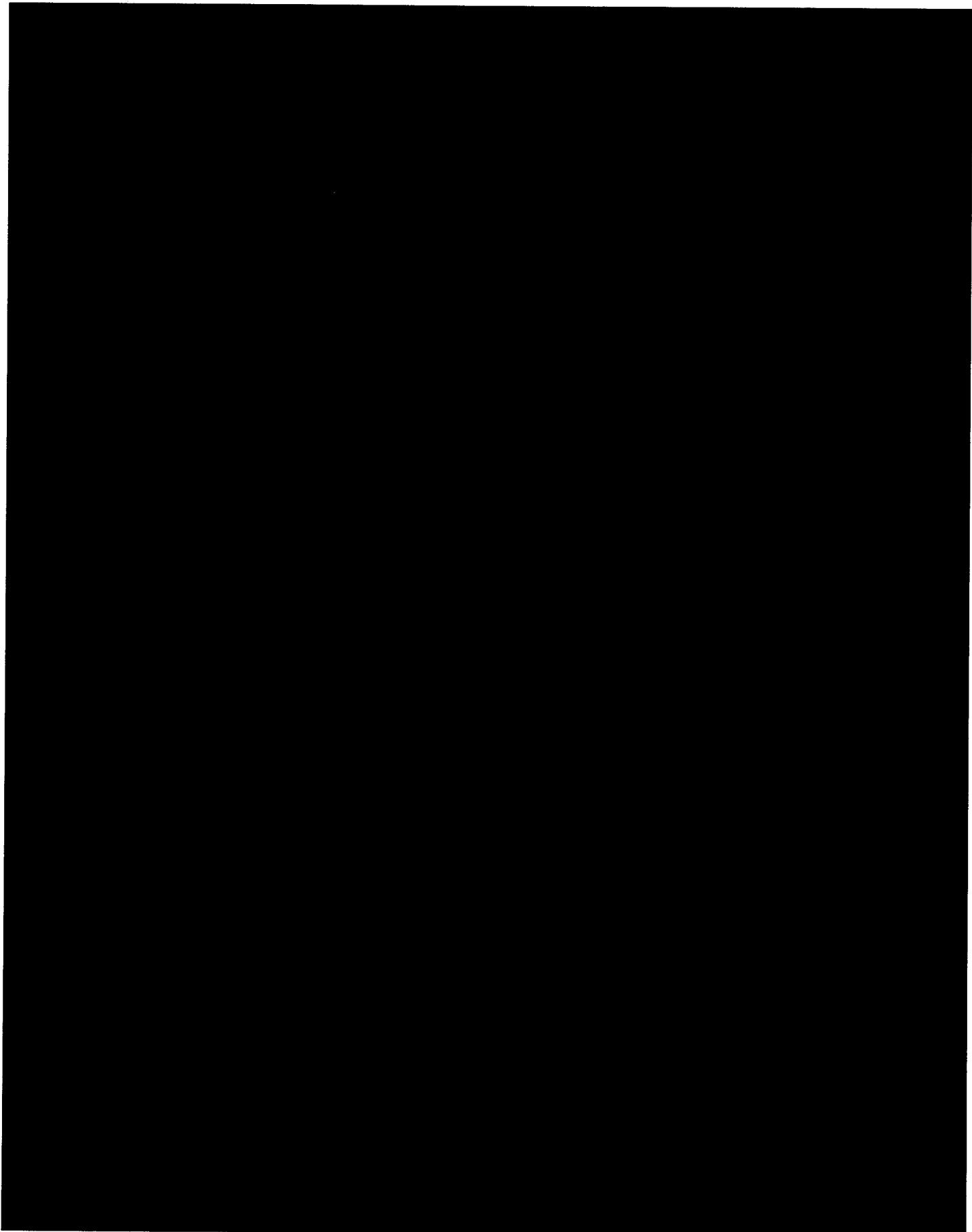
## **Exhibit 2**

**ATT00111**

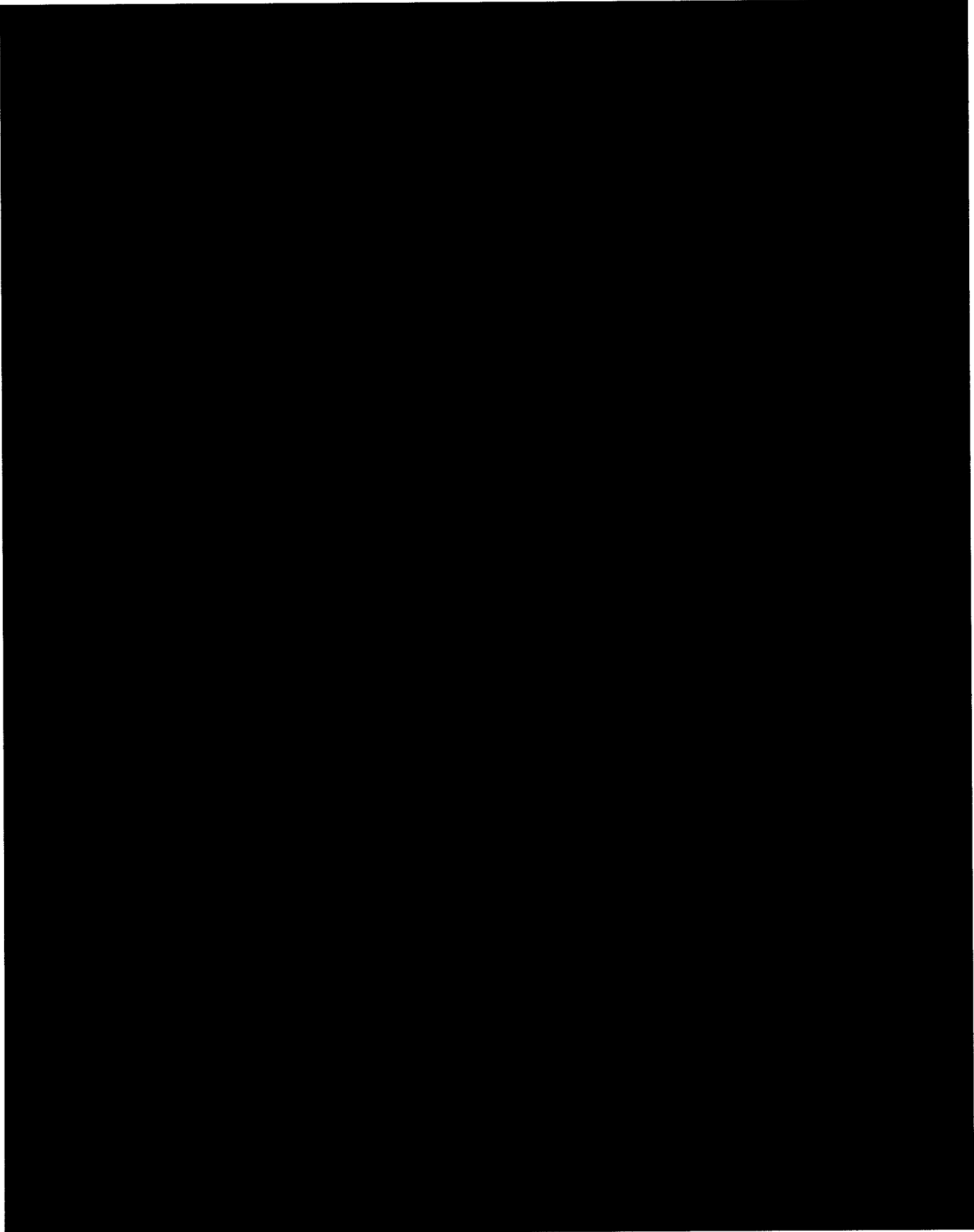


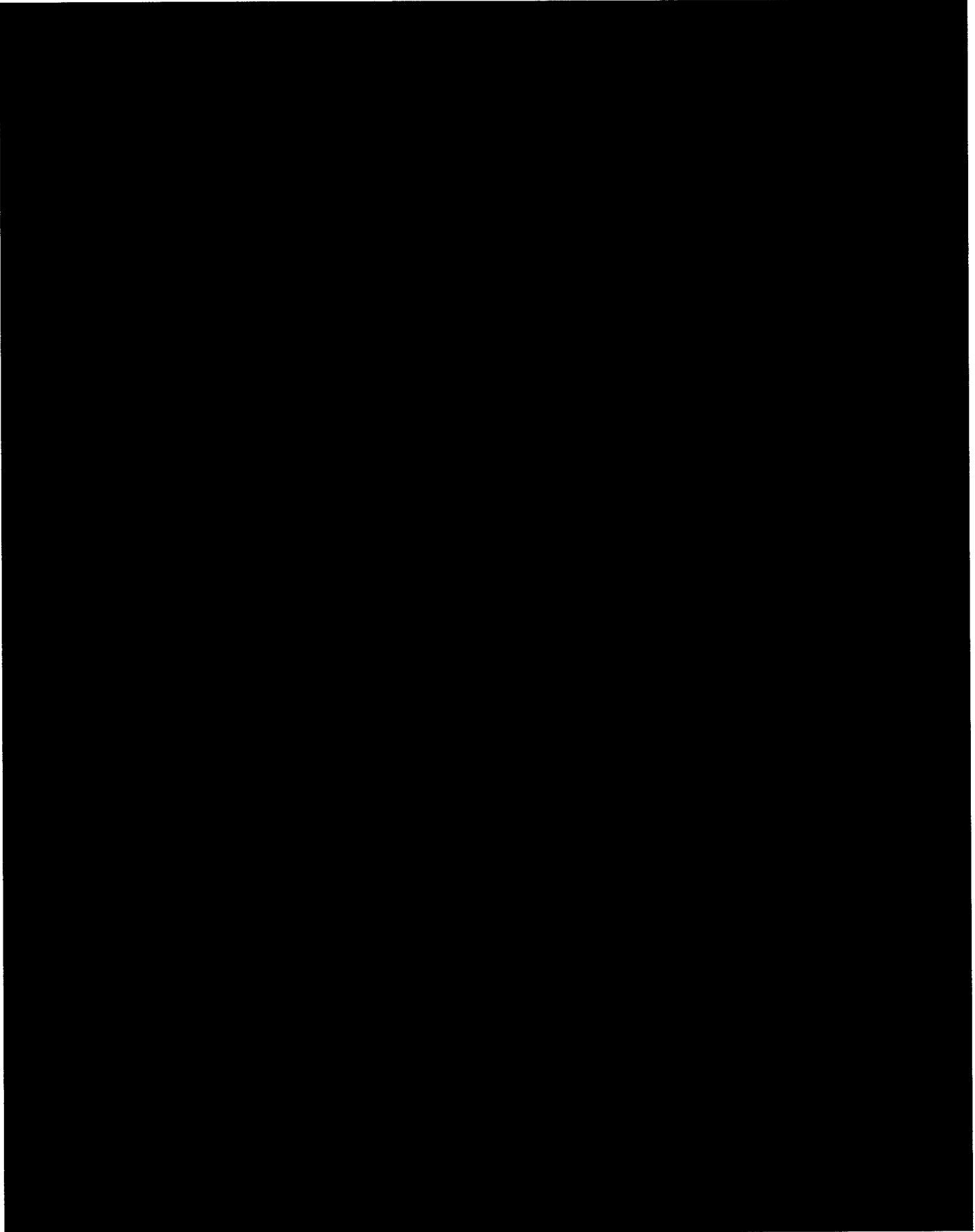


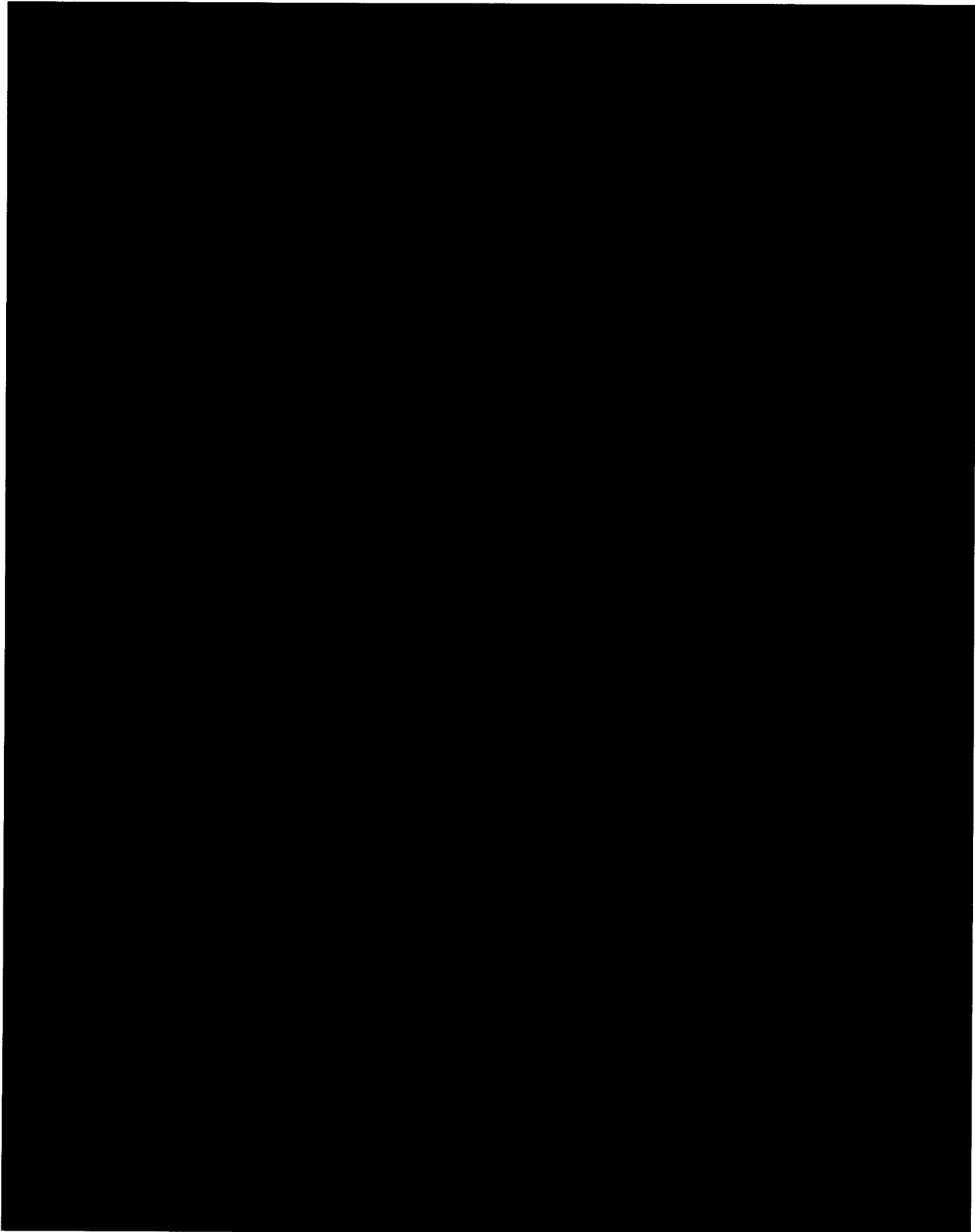
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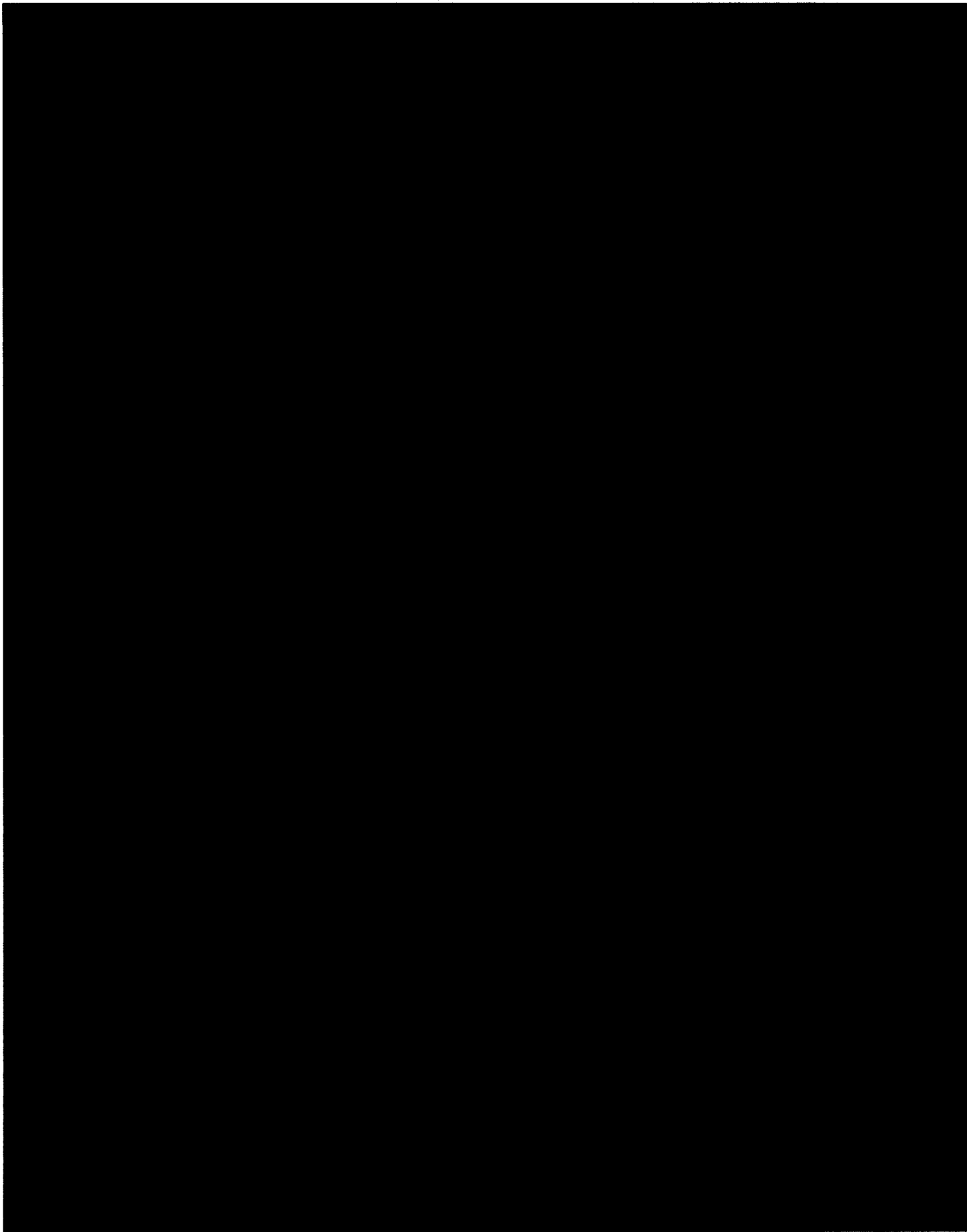


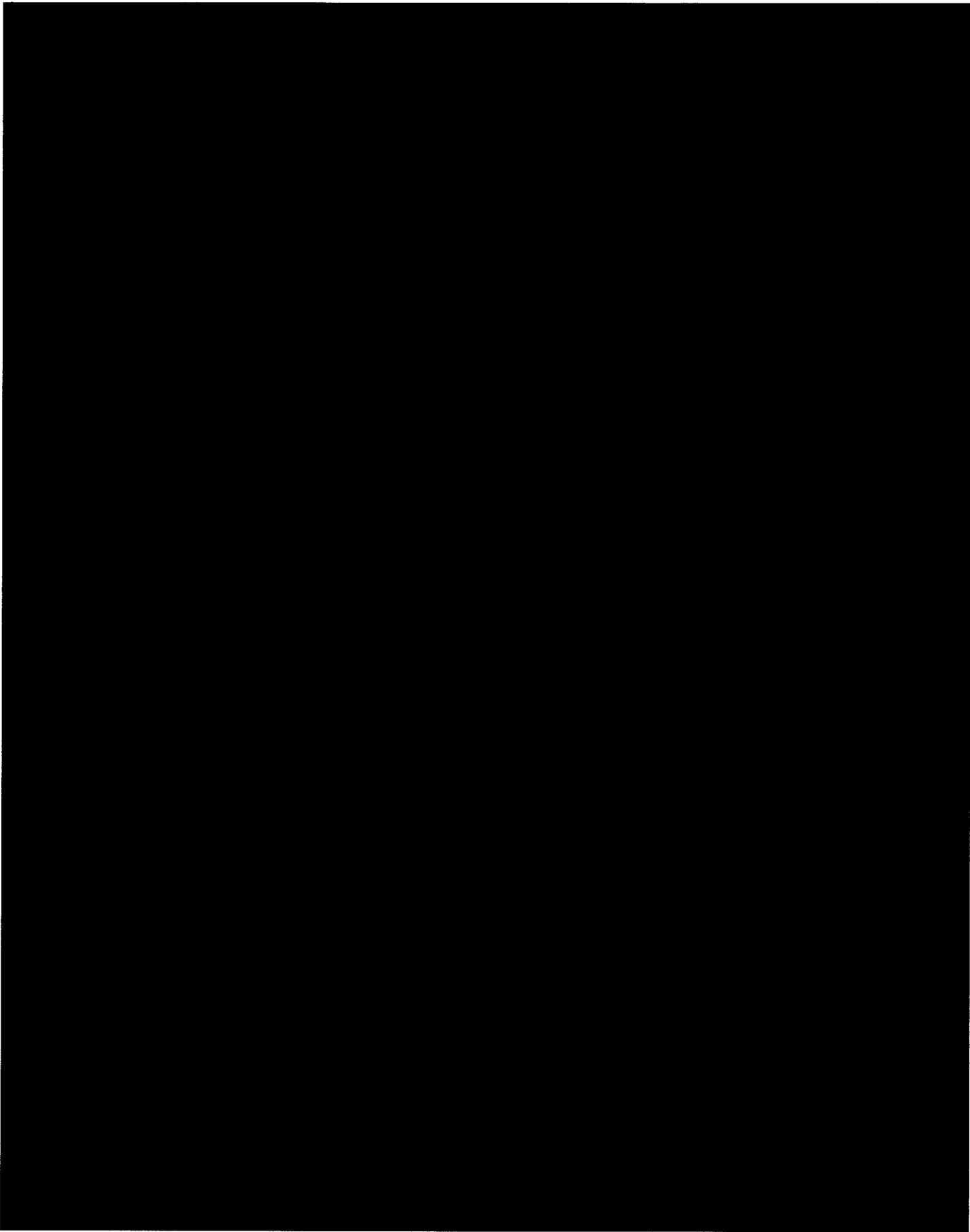
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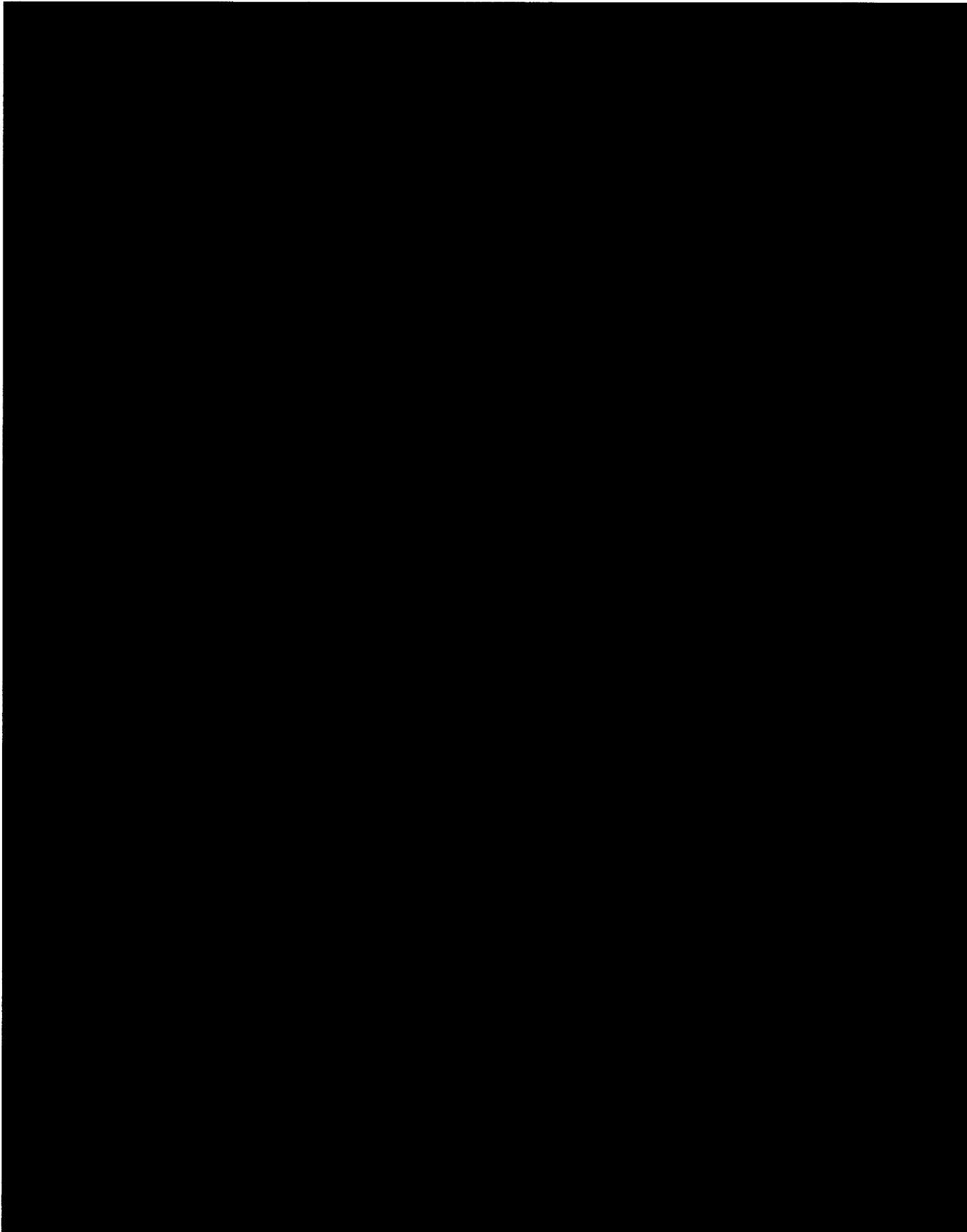




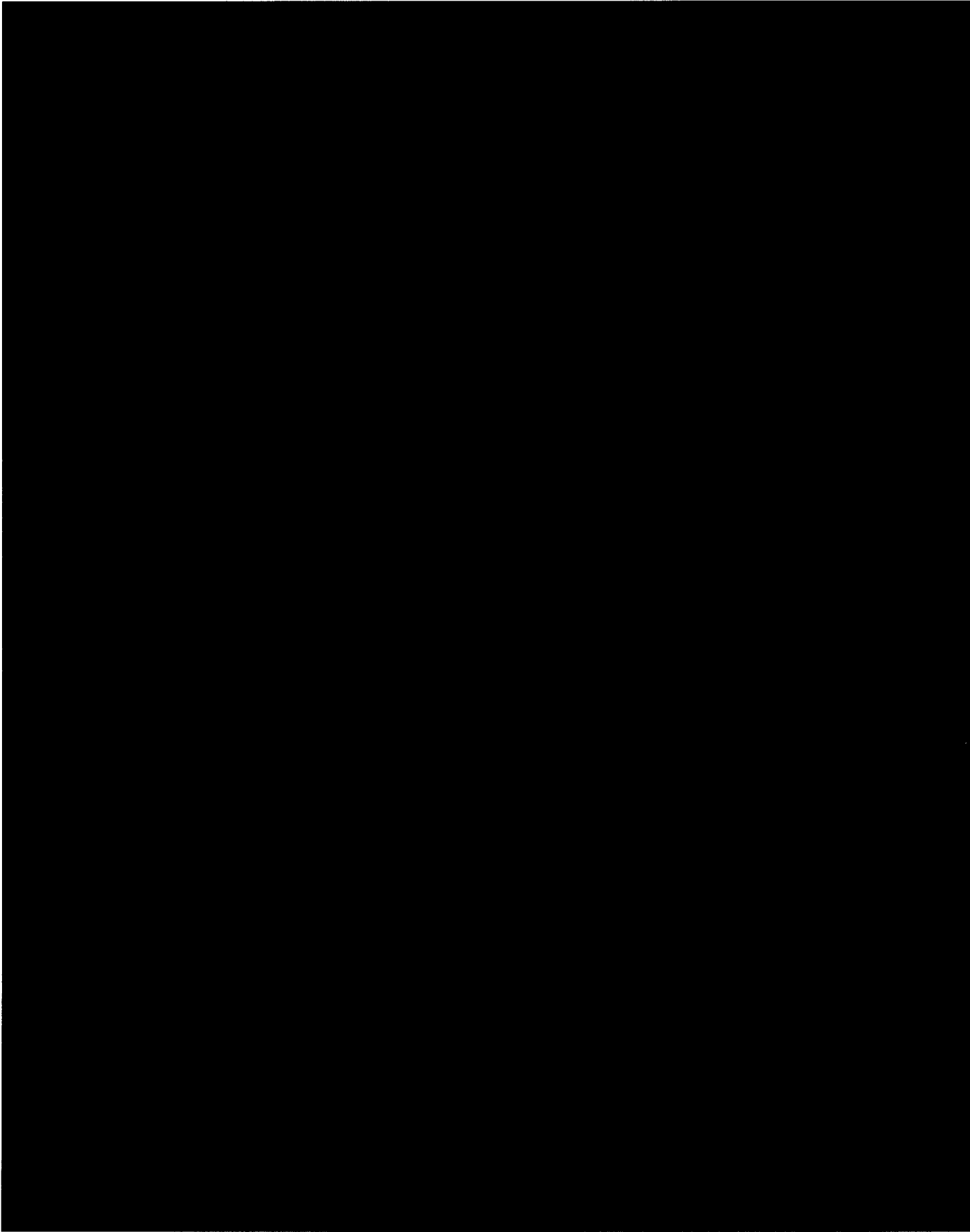




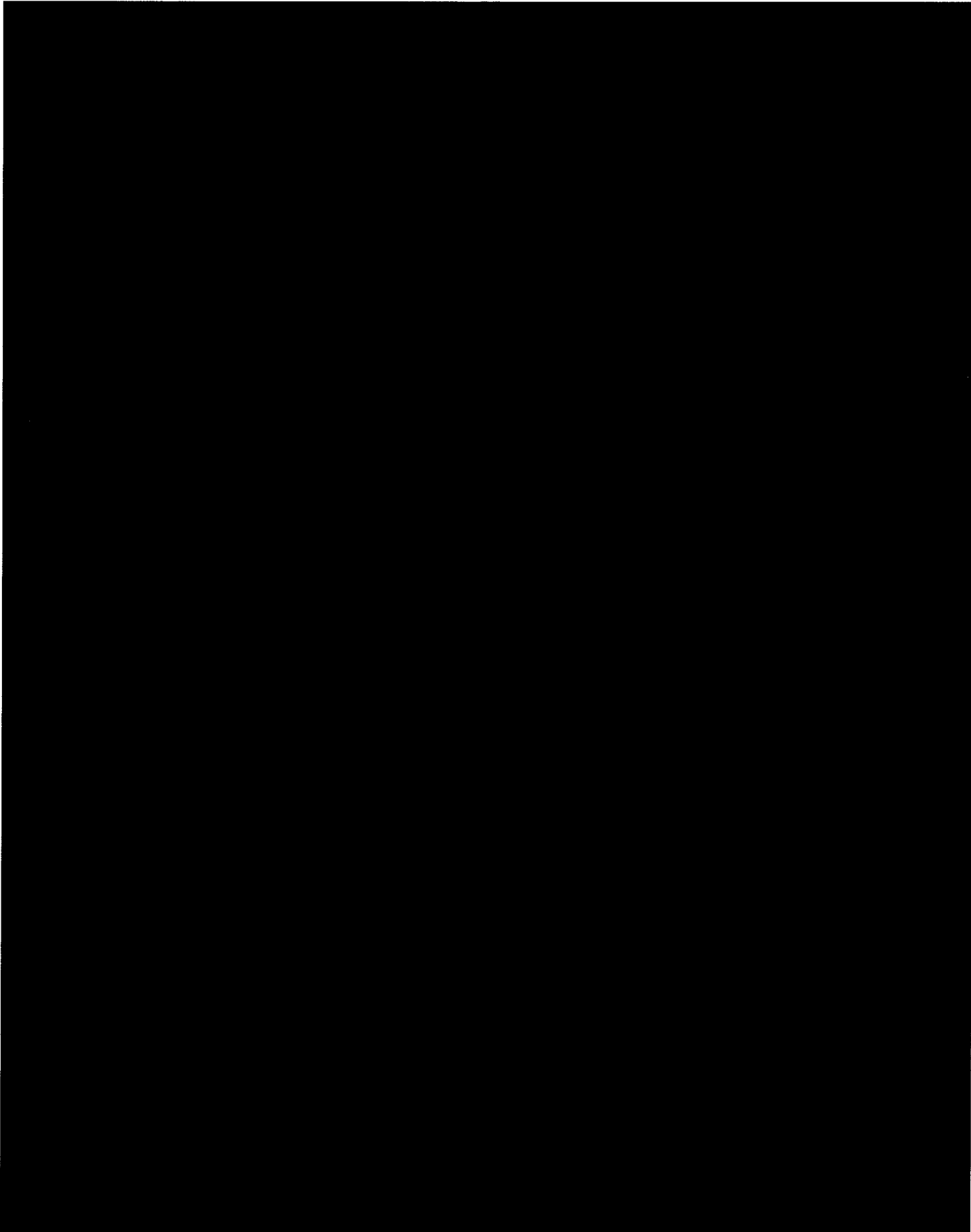




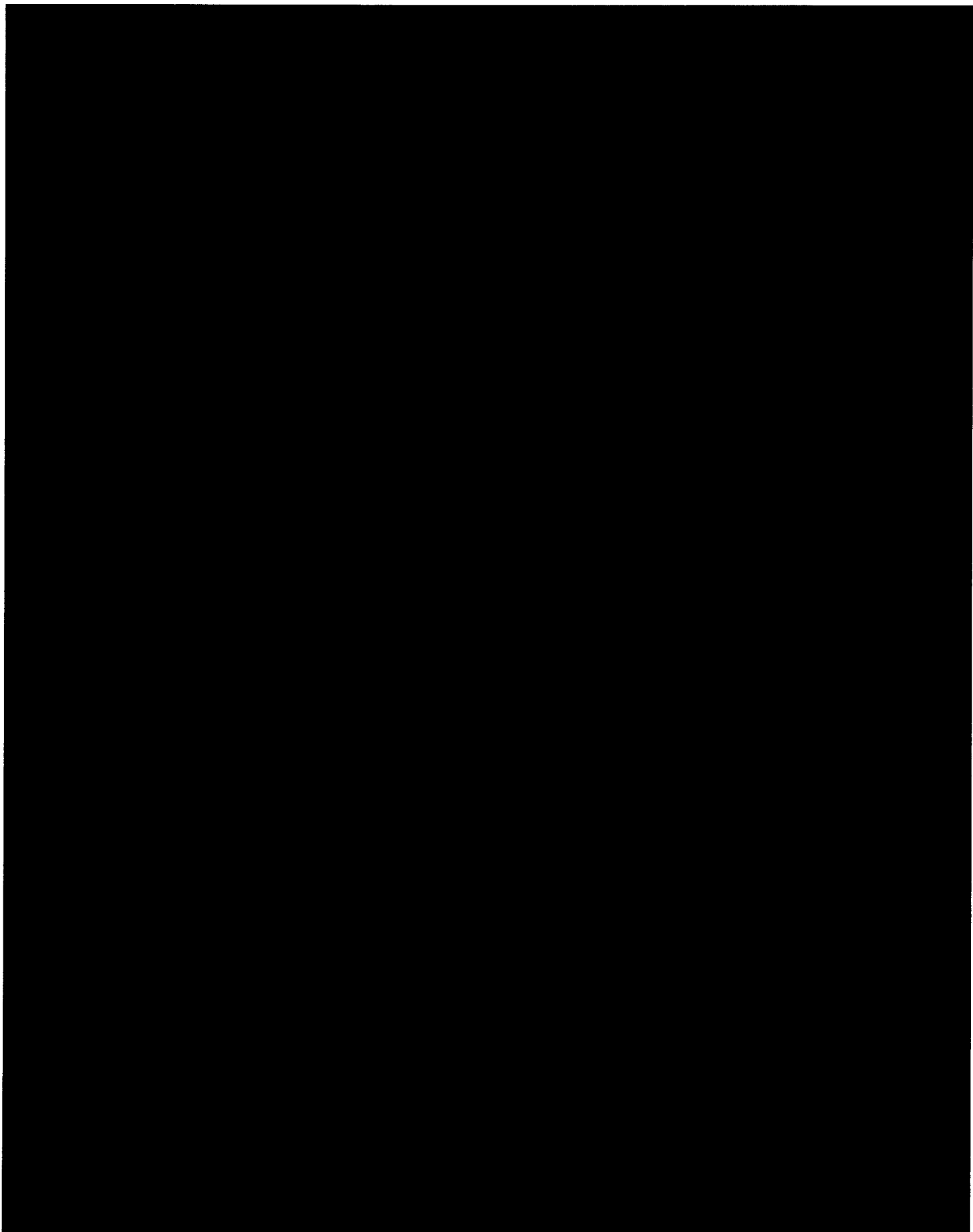




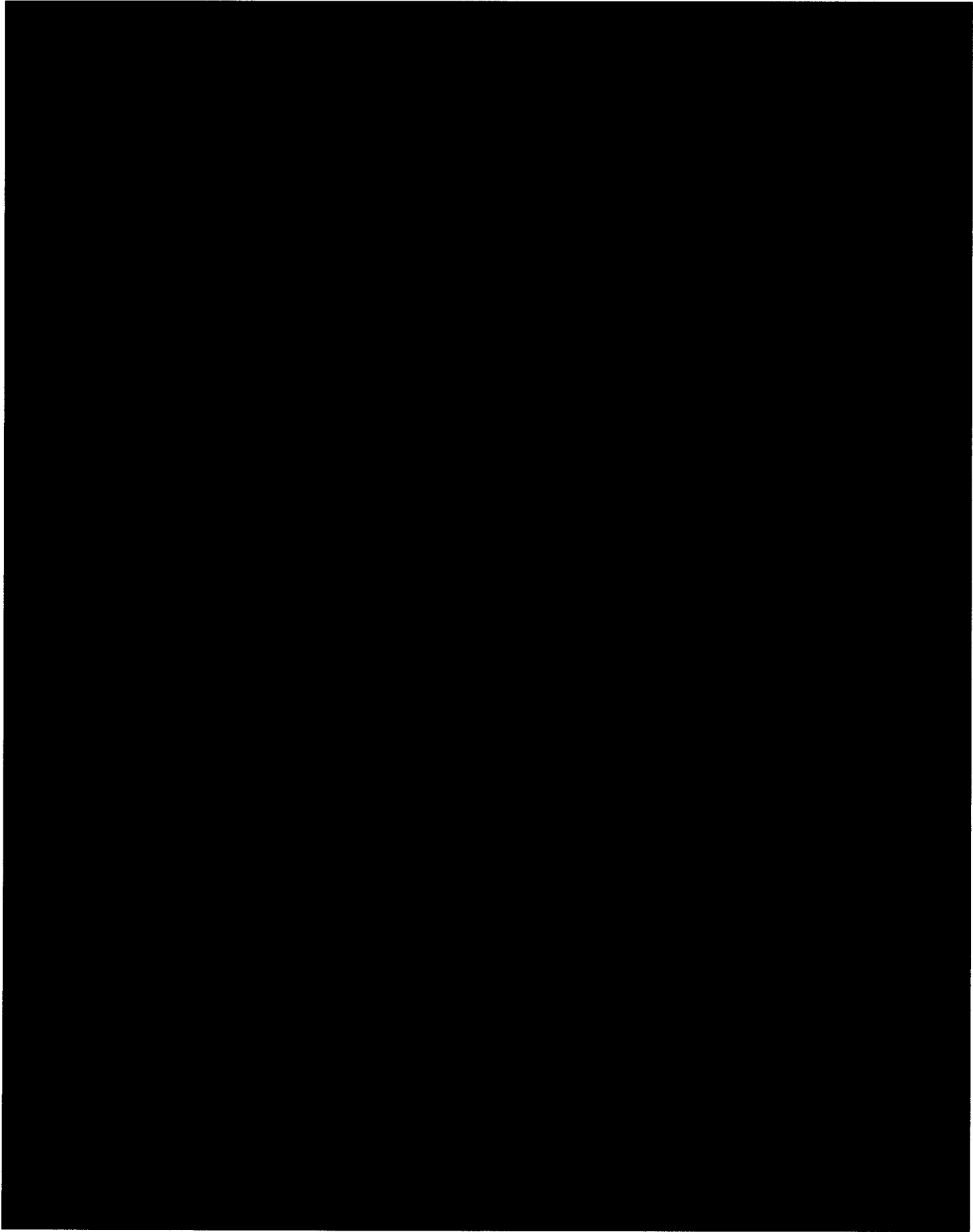






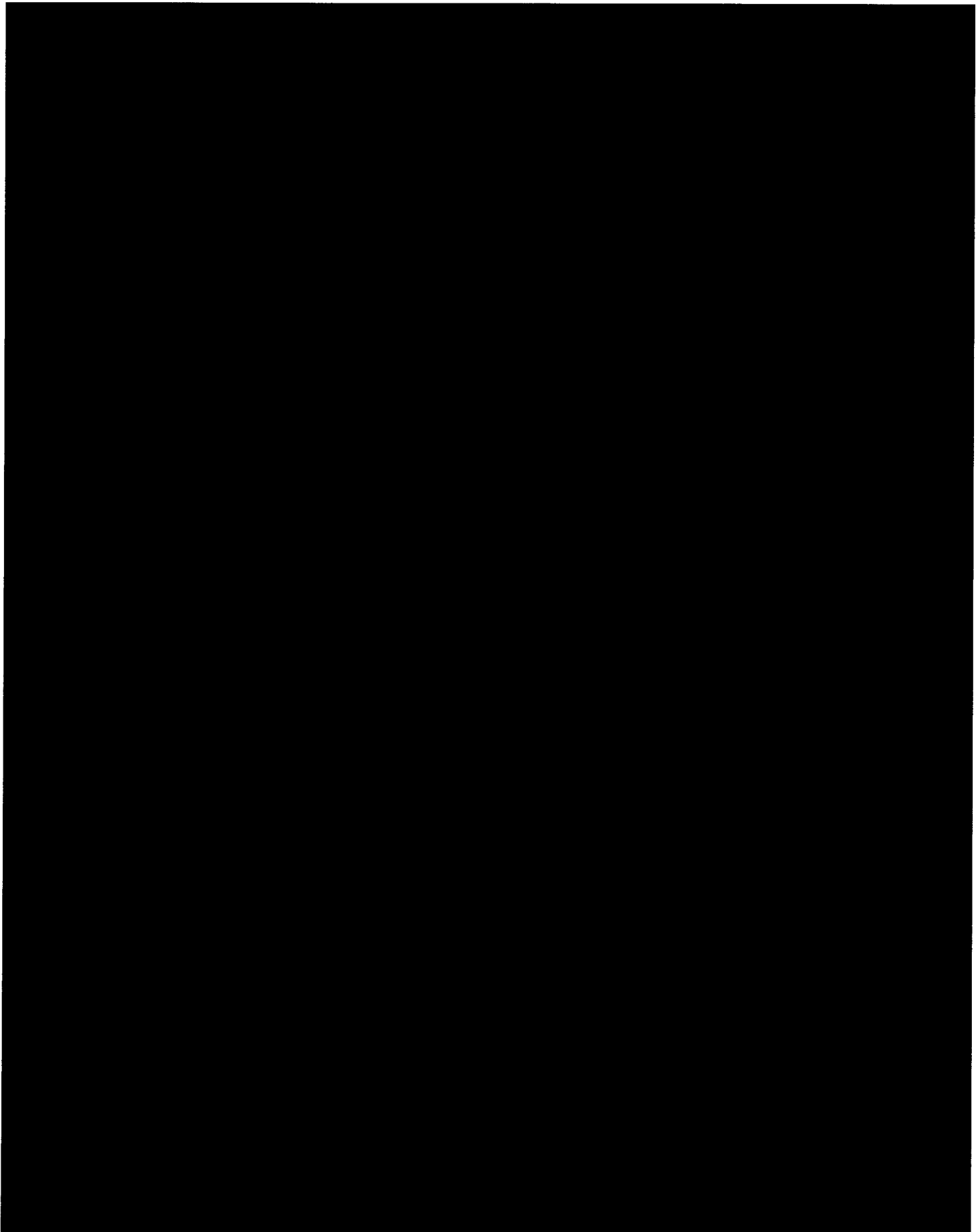




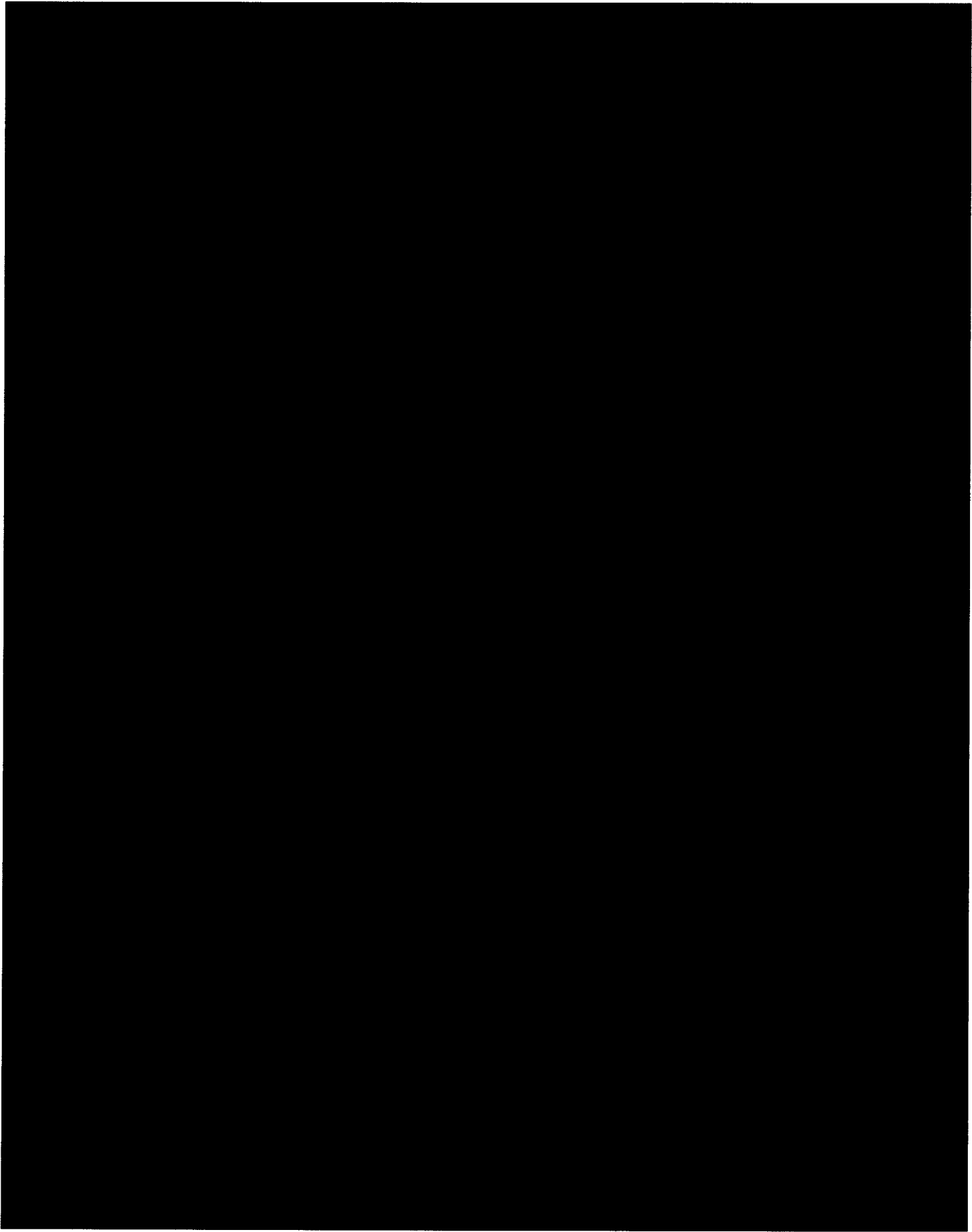




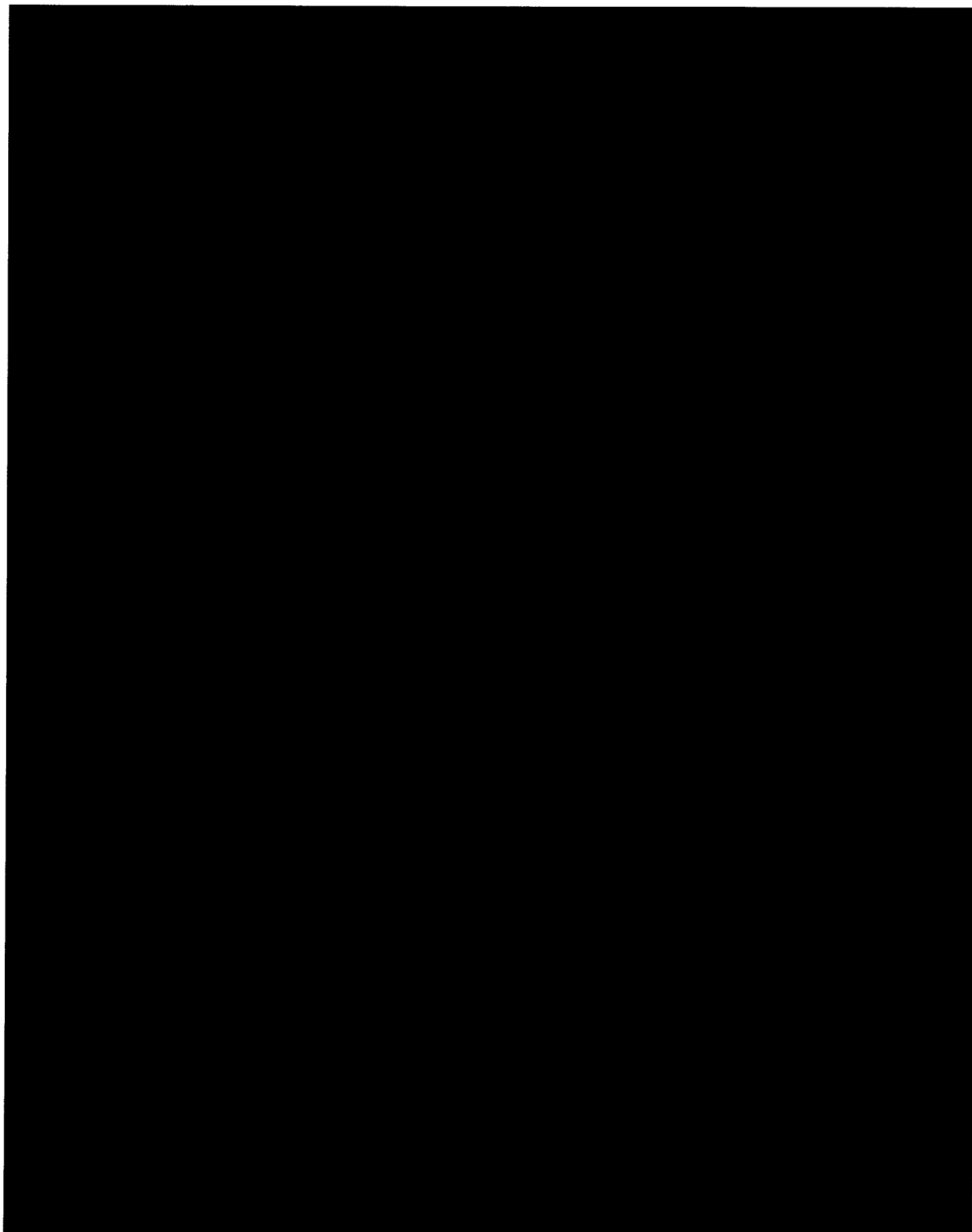




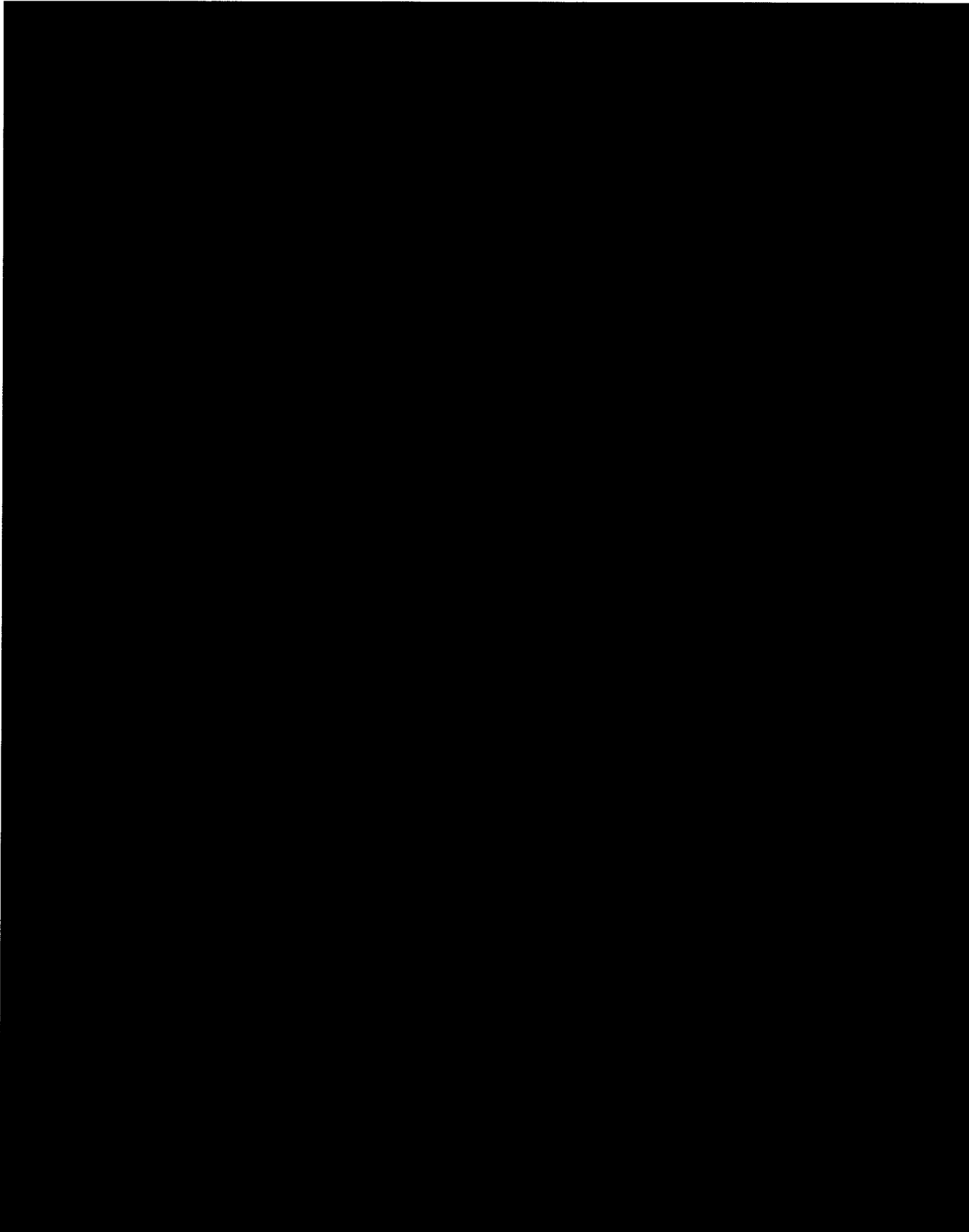






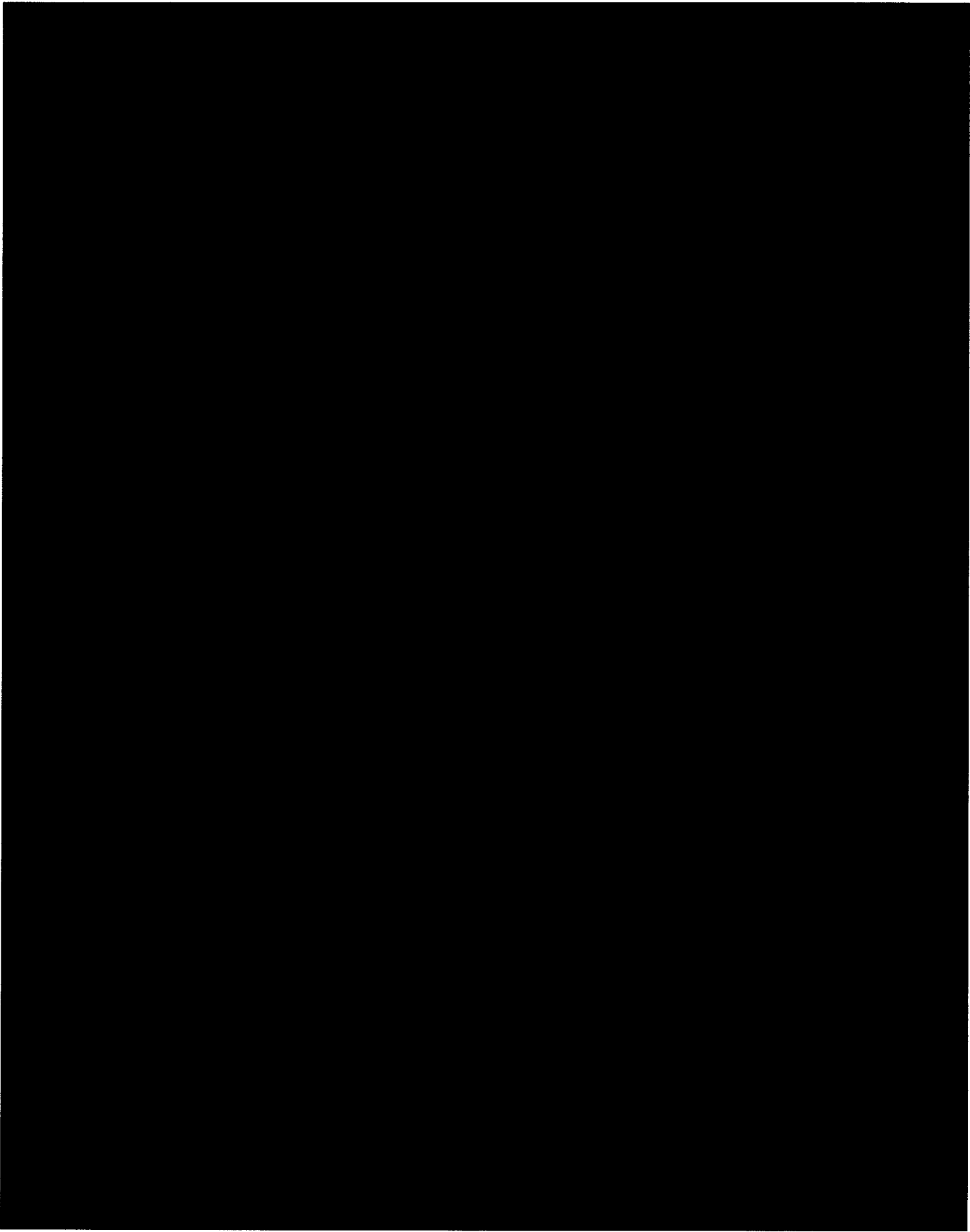




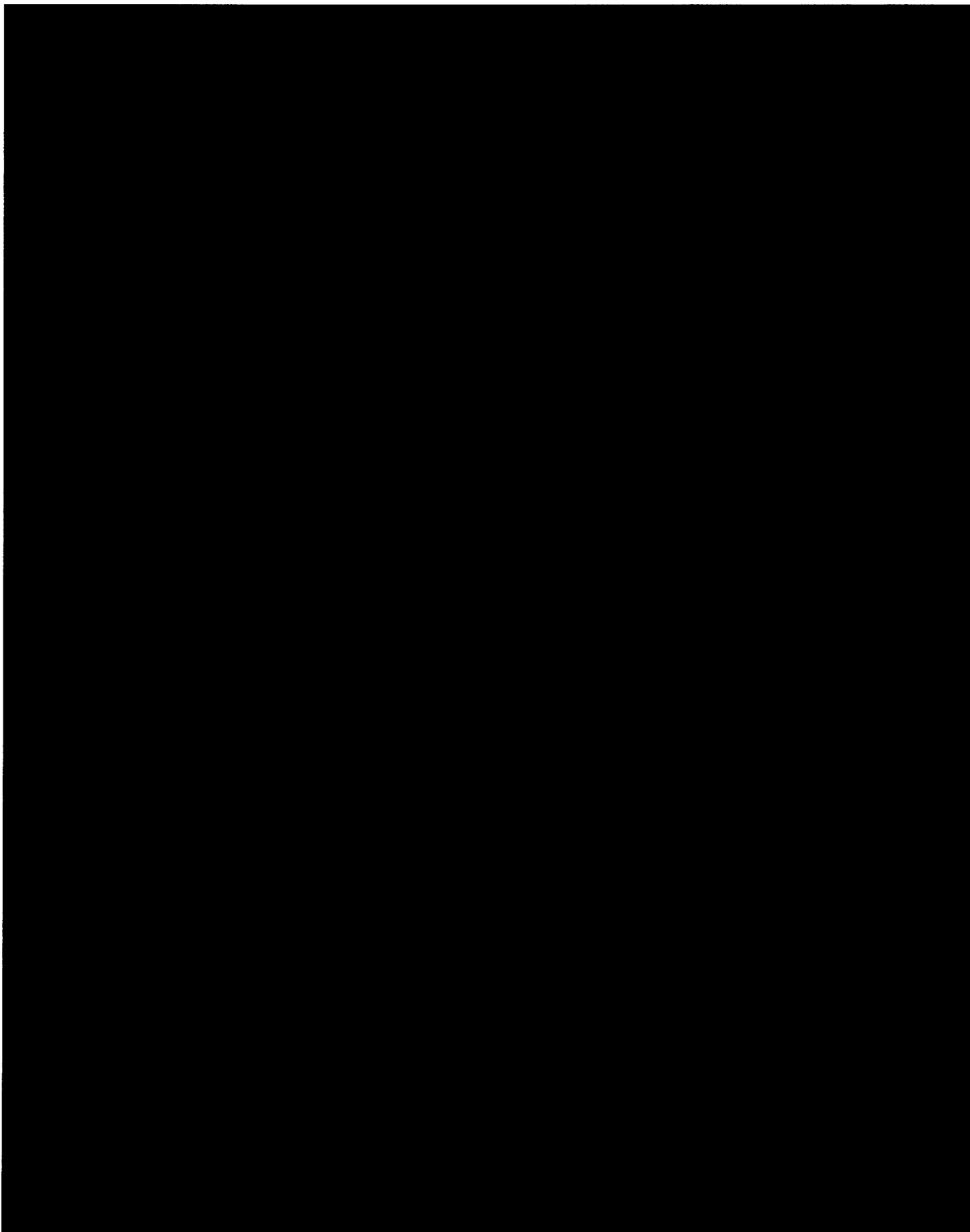




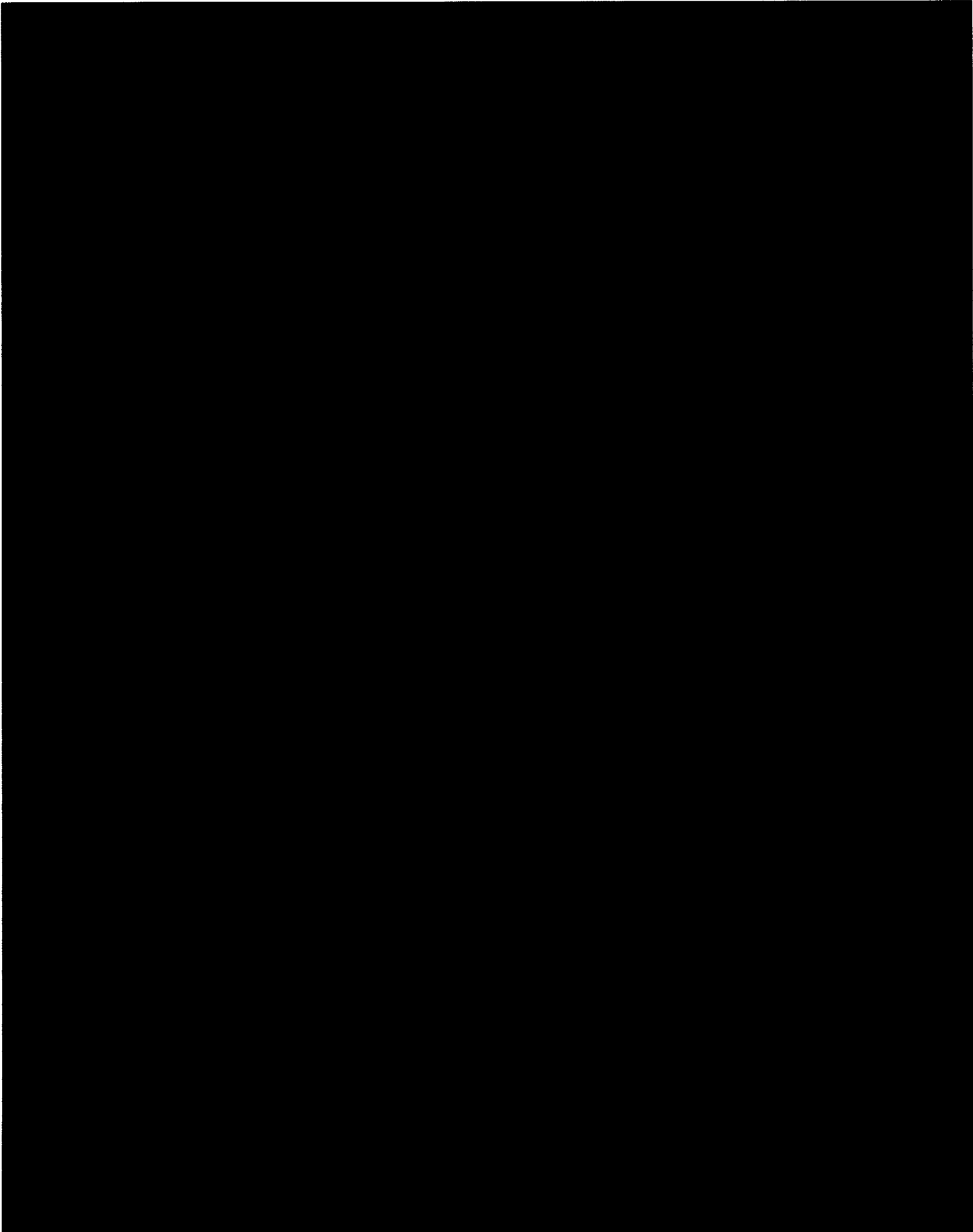




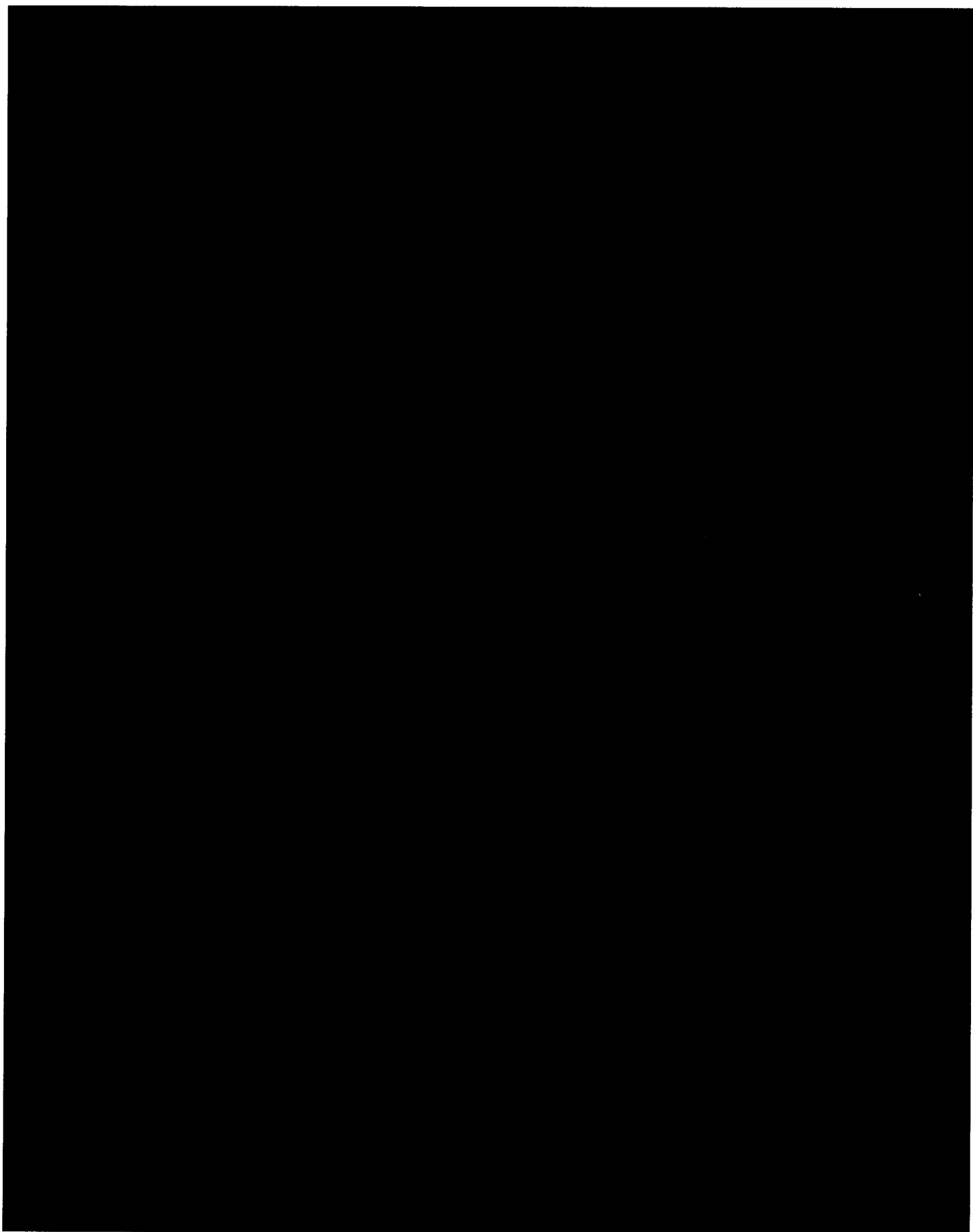


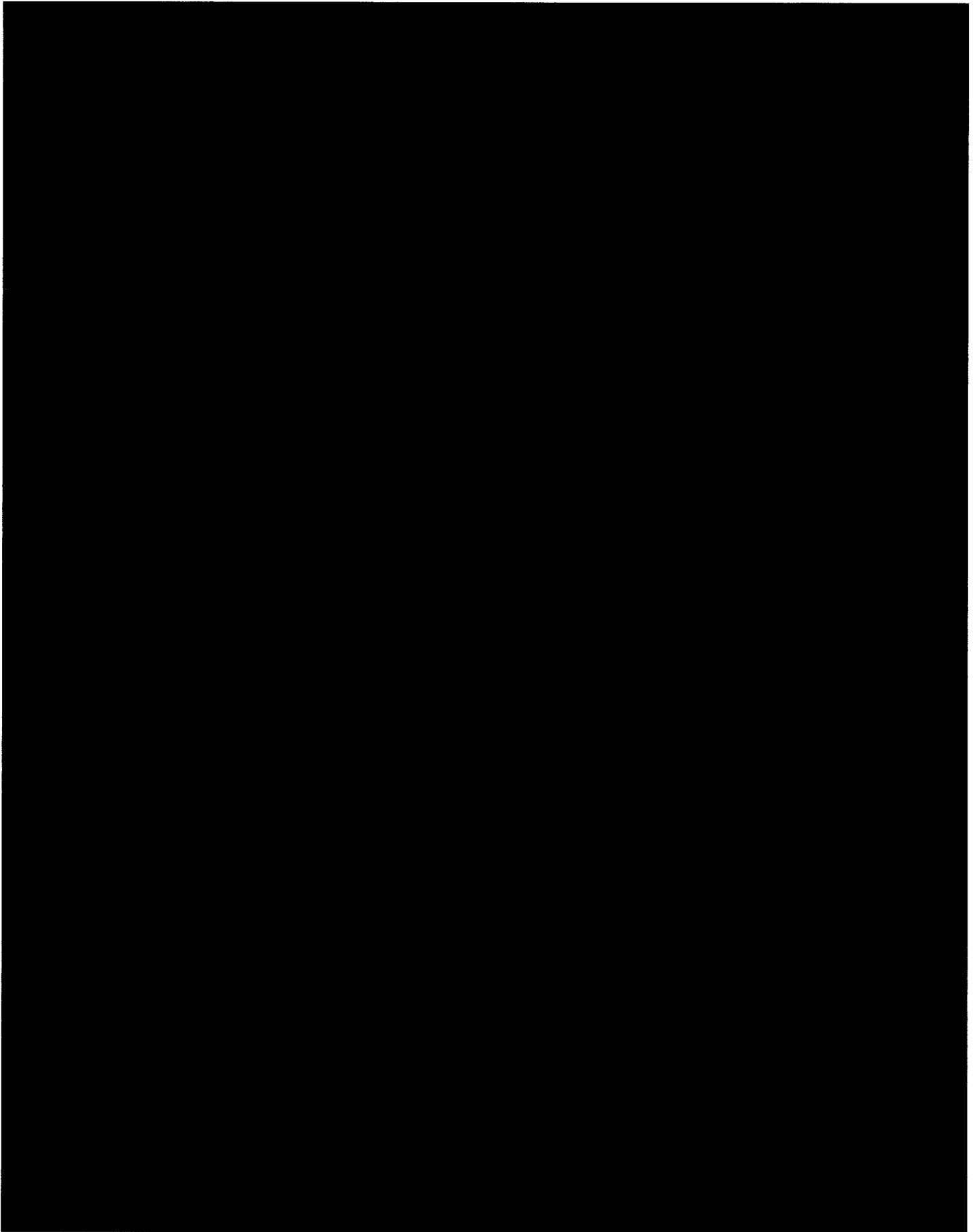




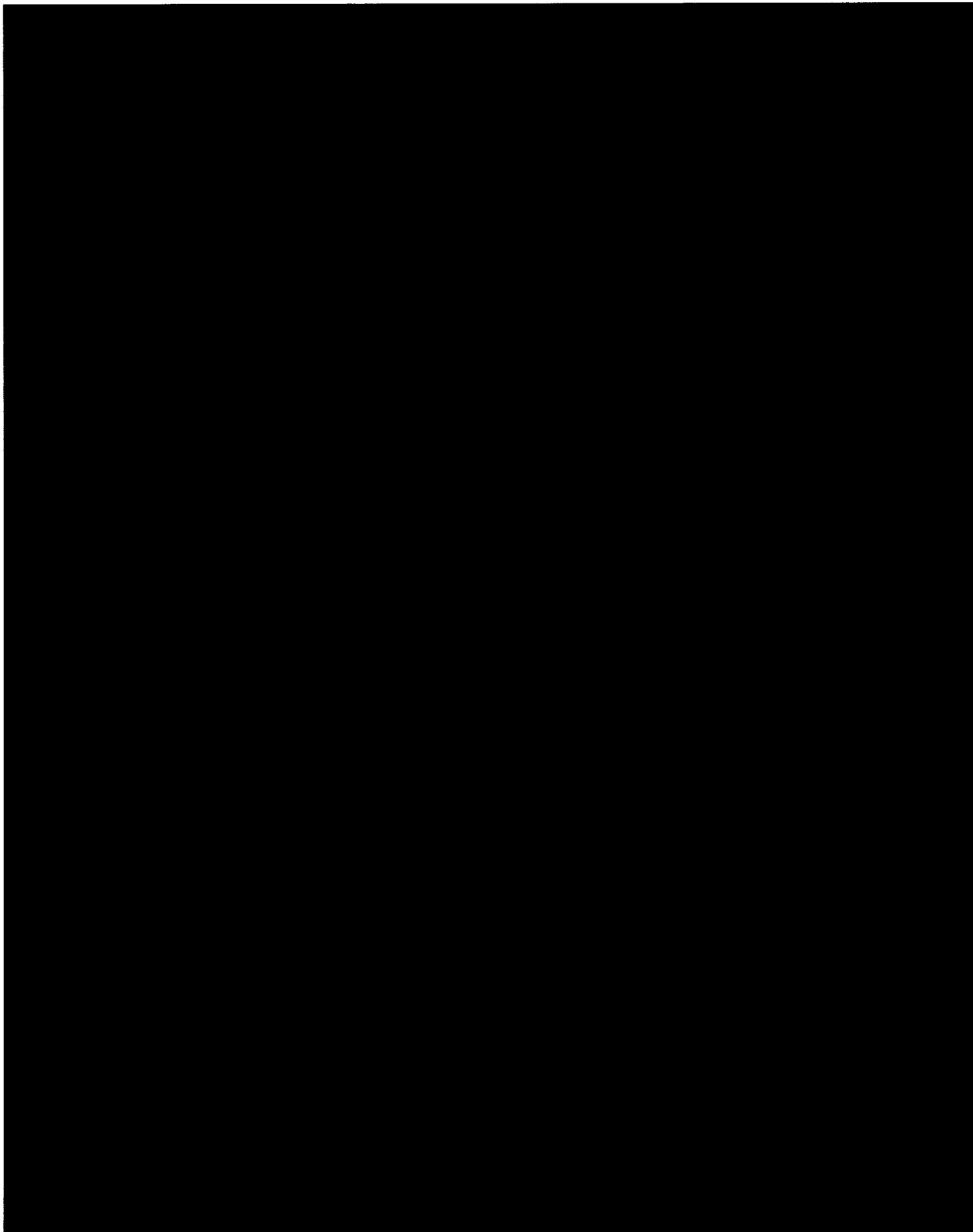


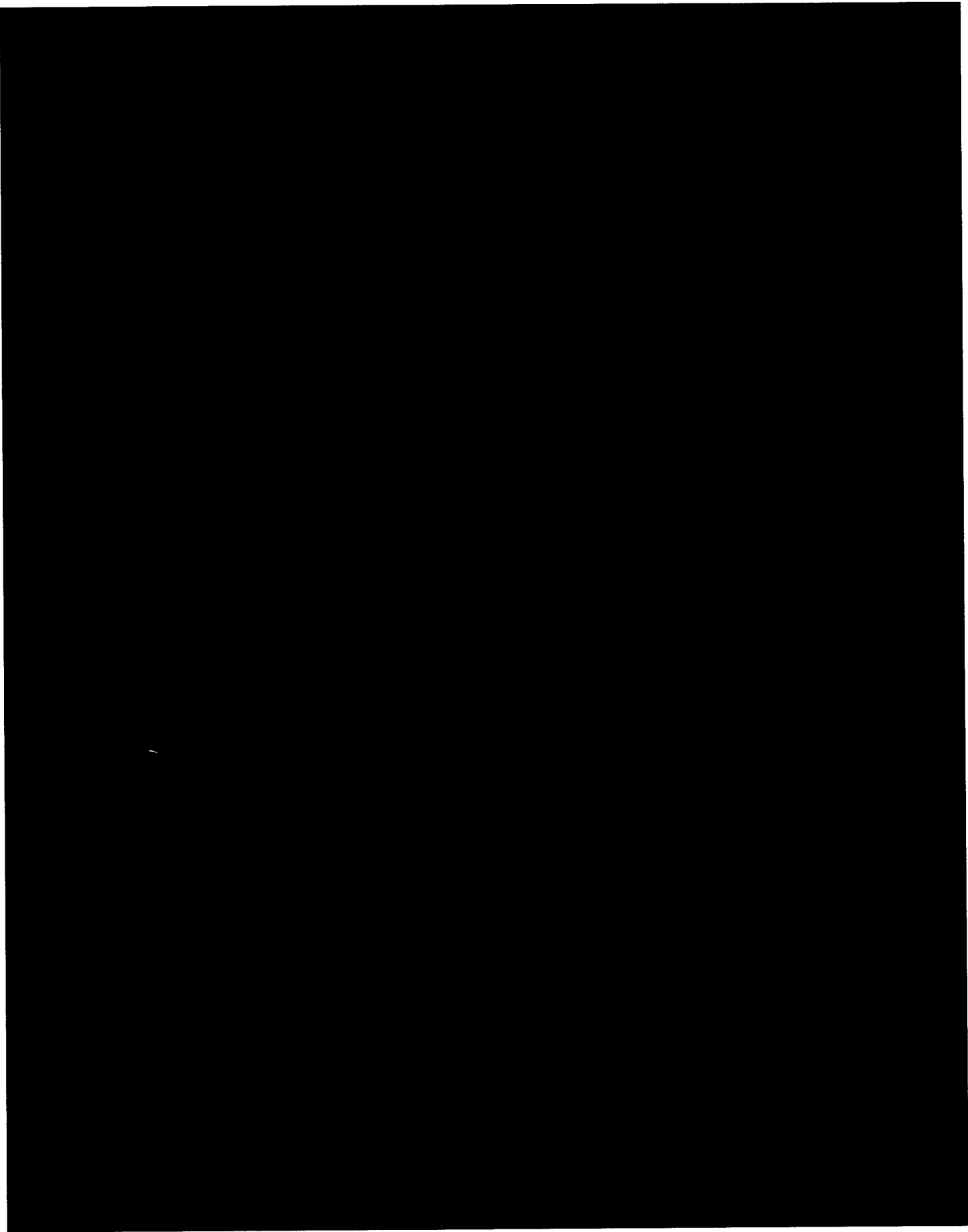


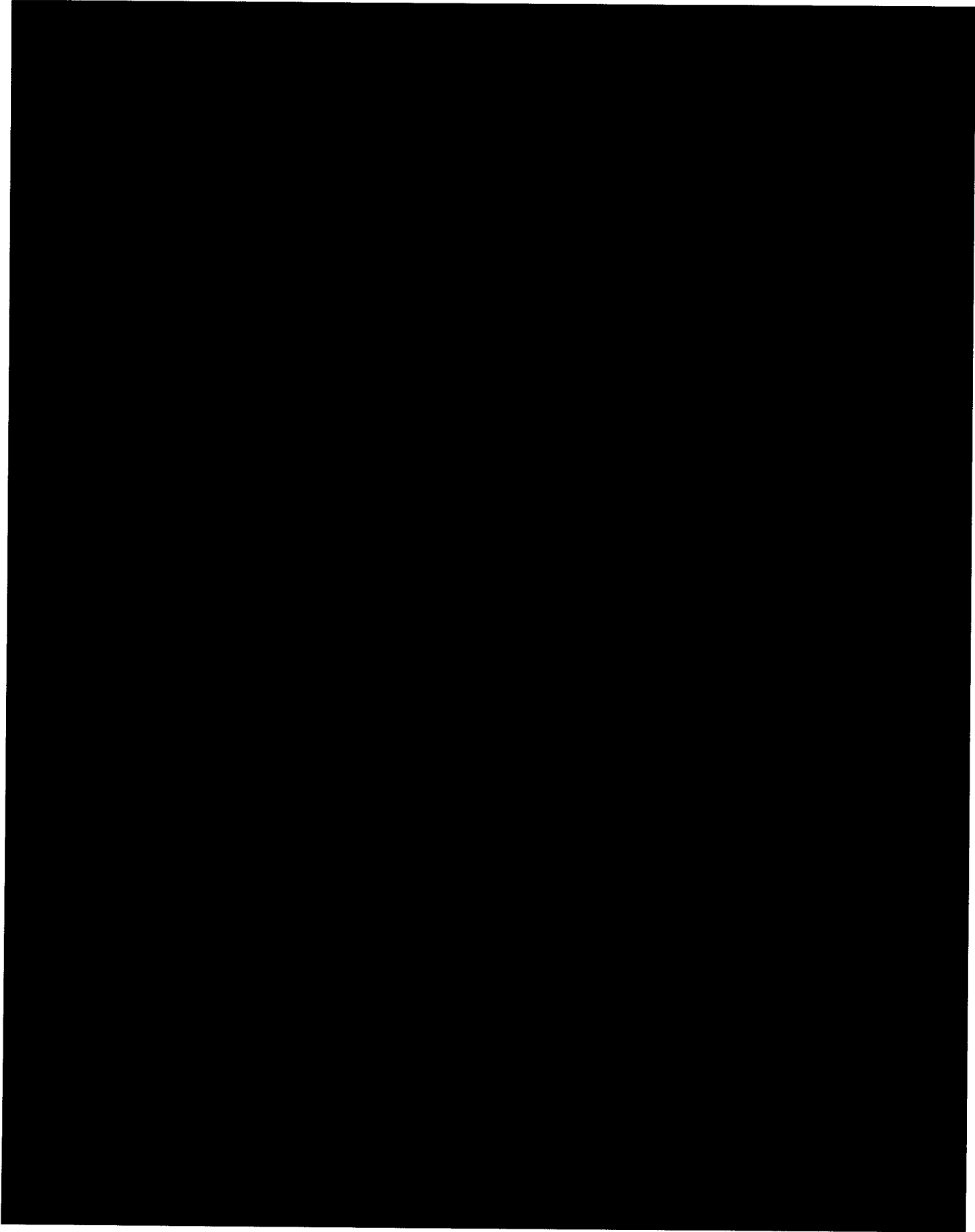


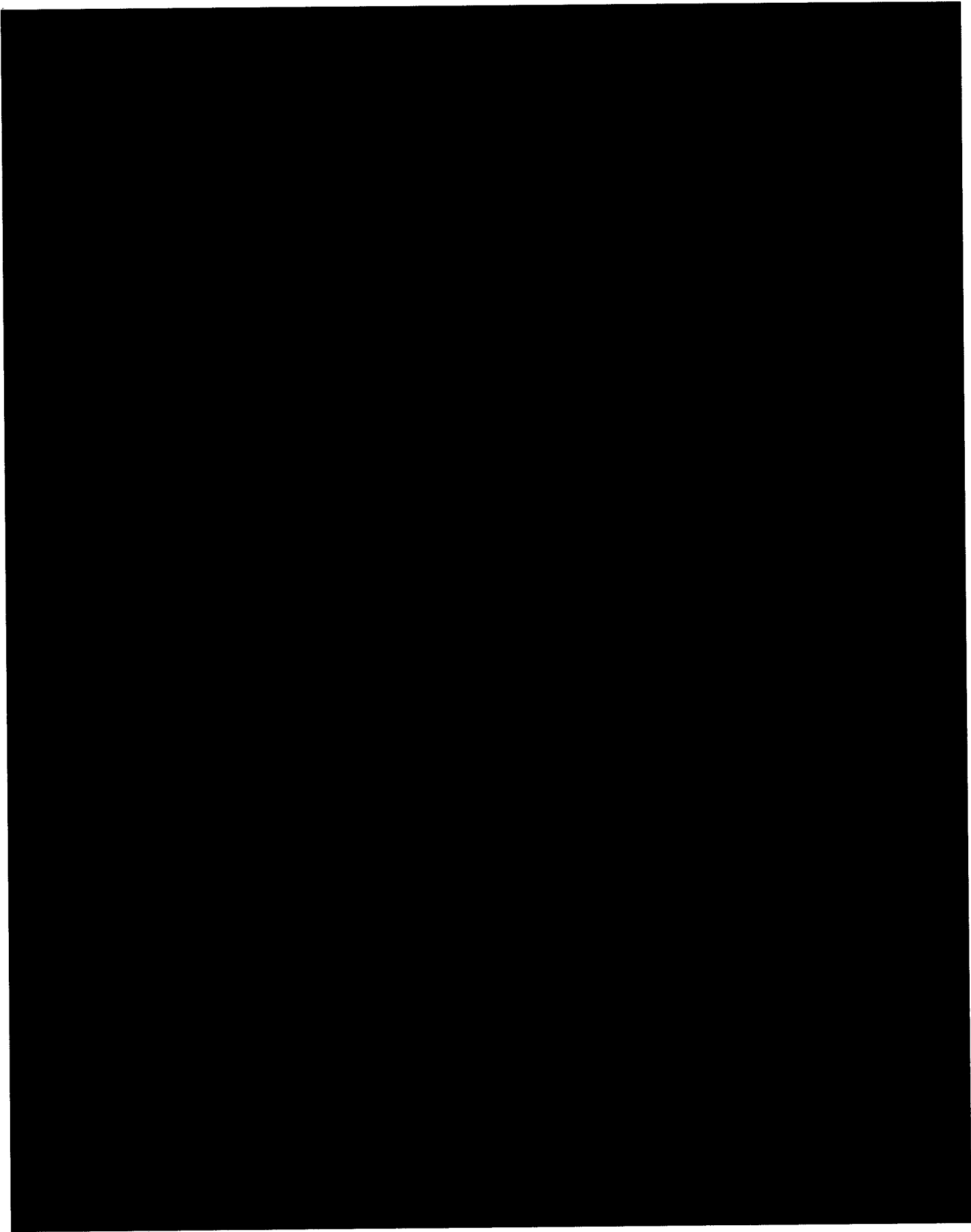


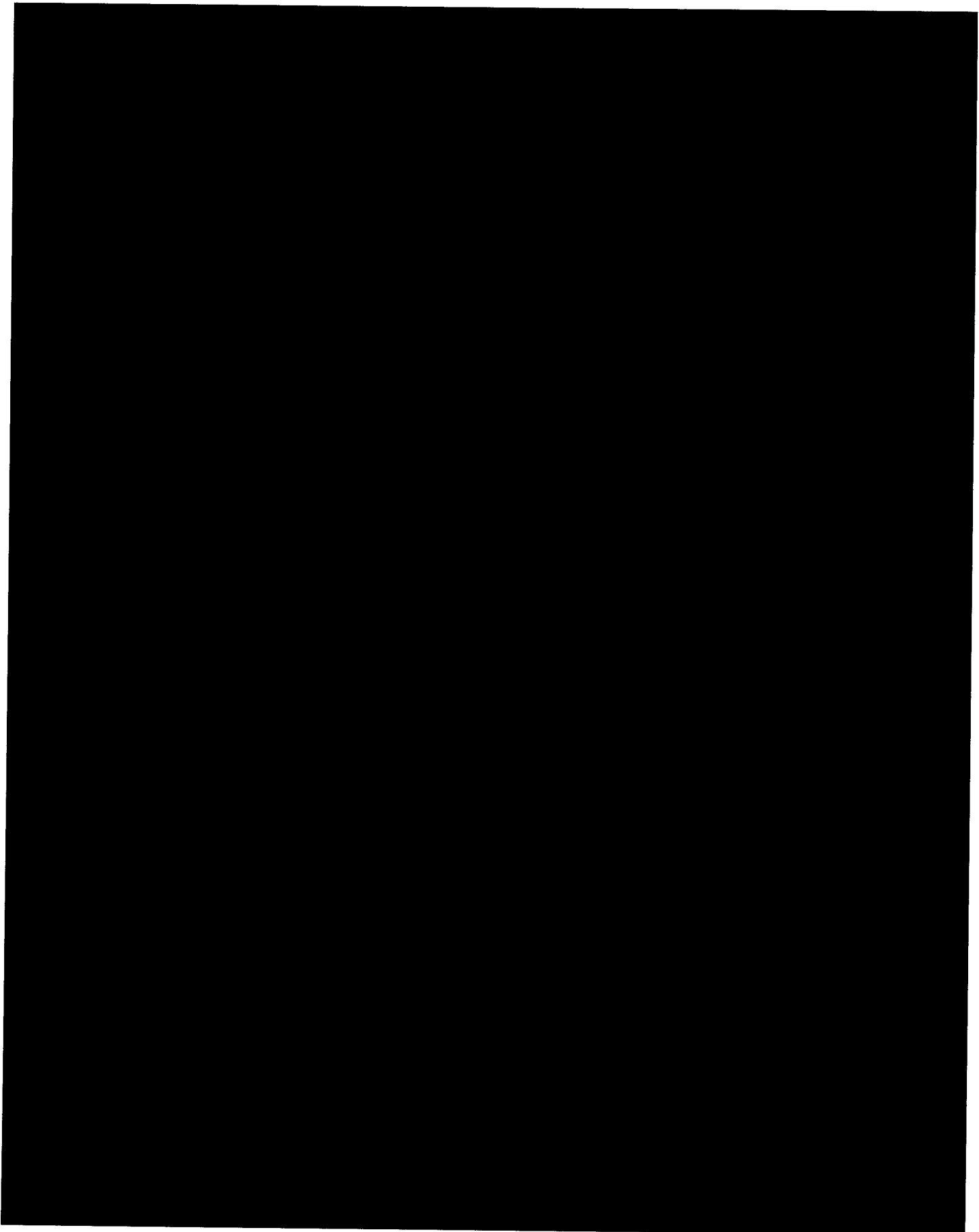


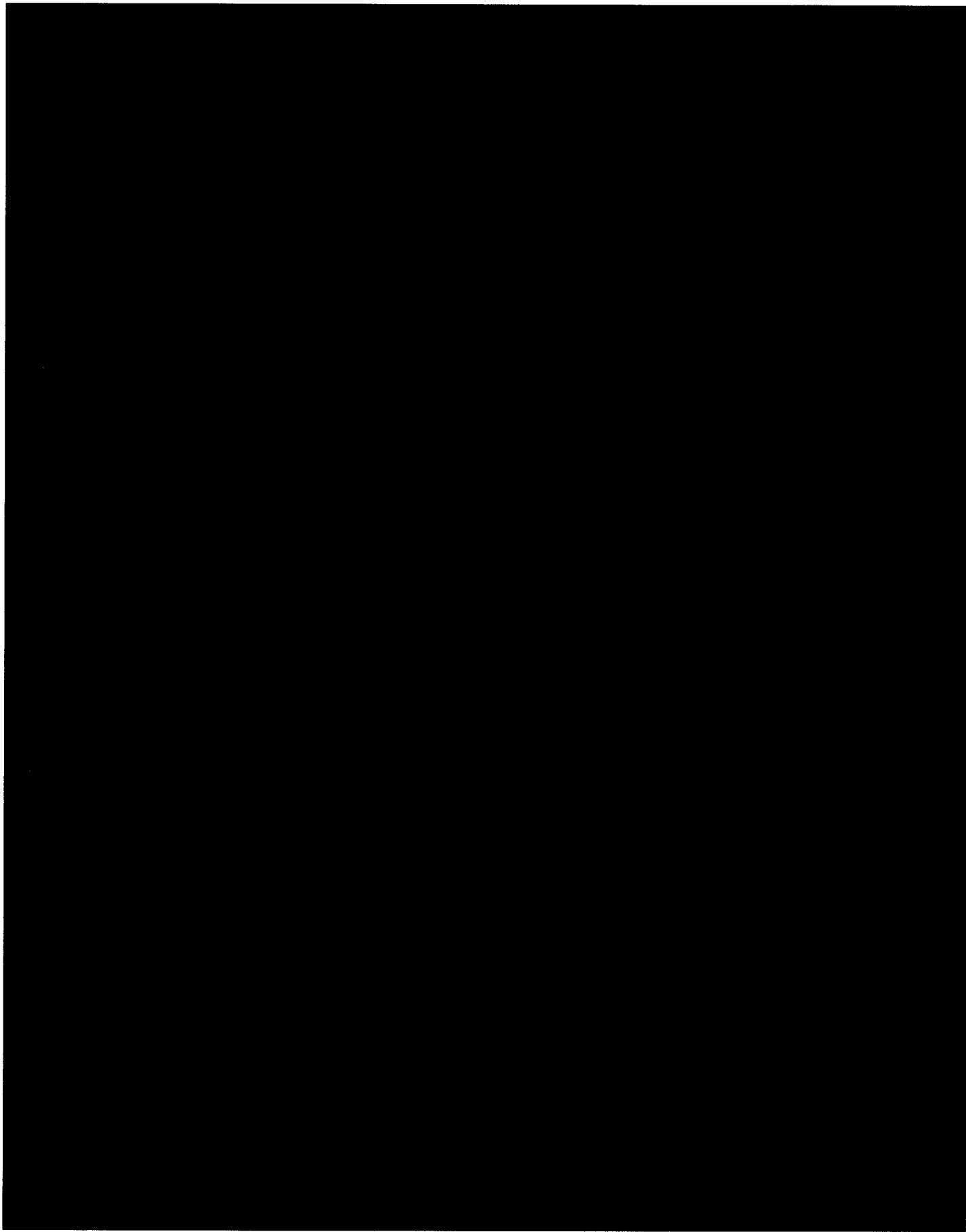


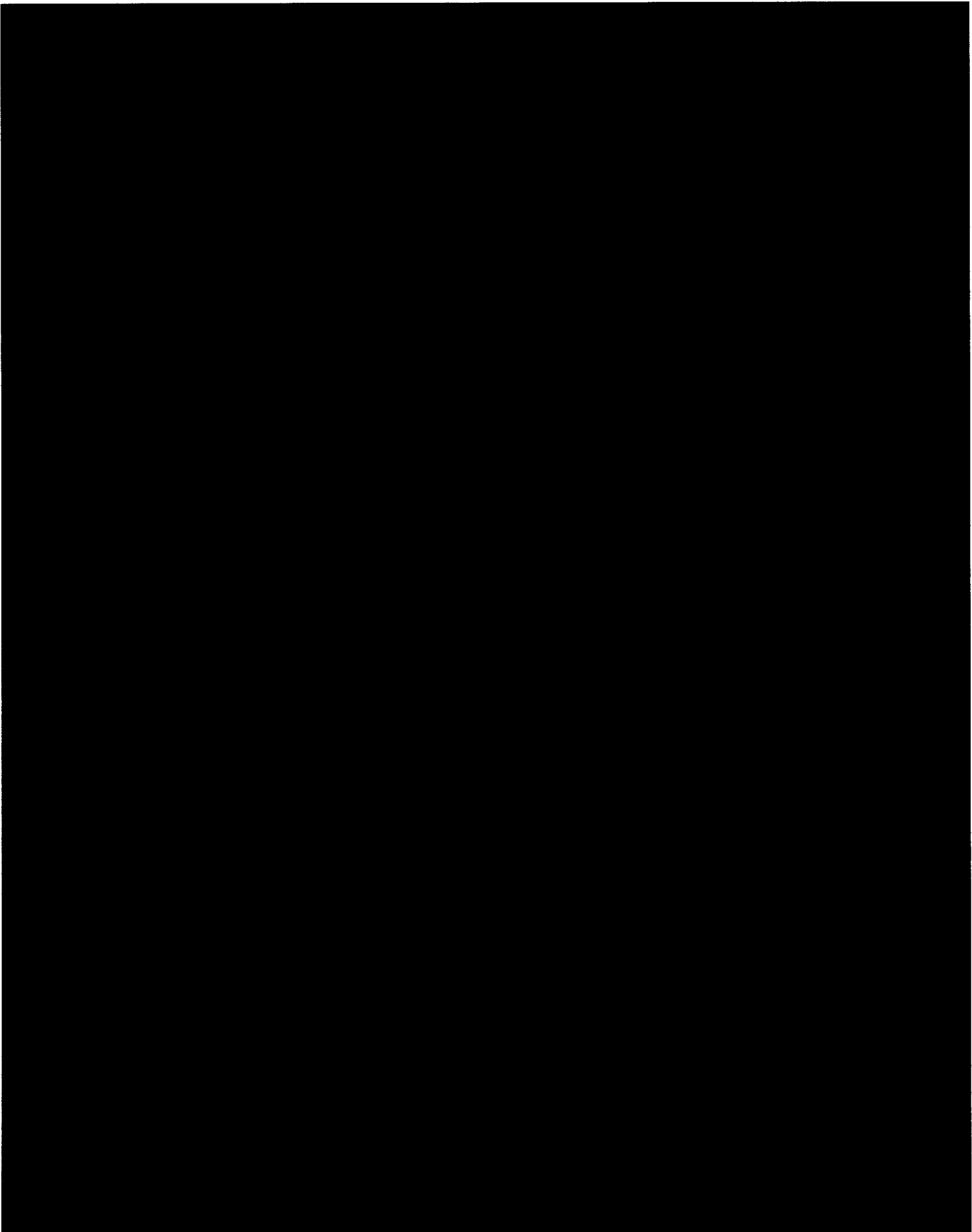


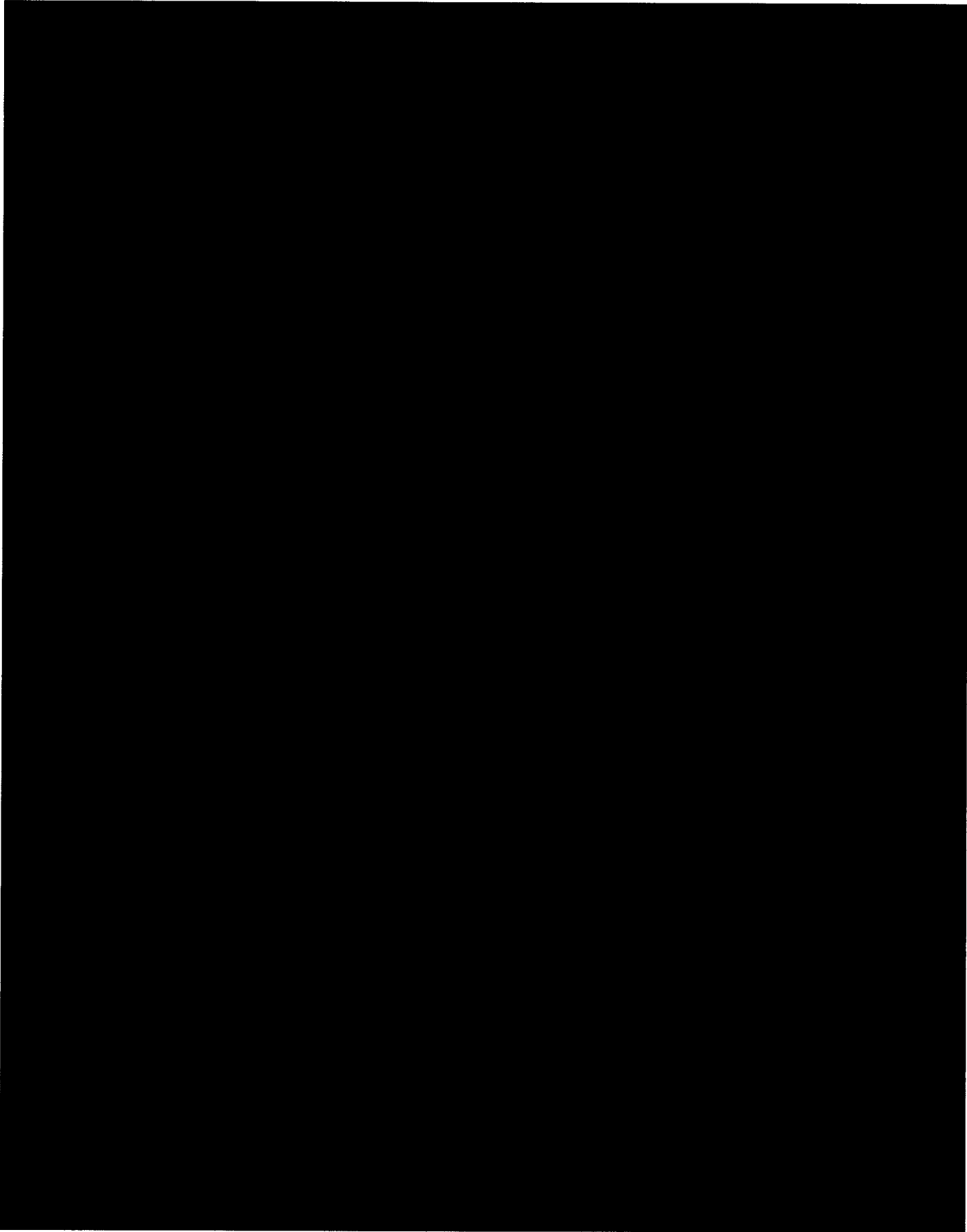




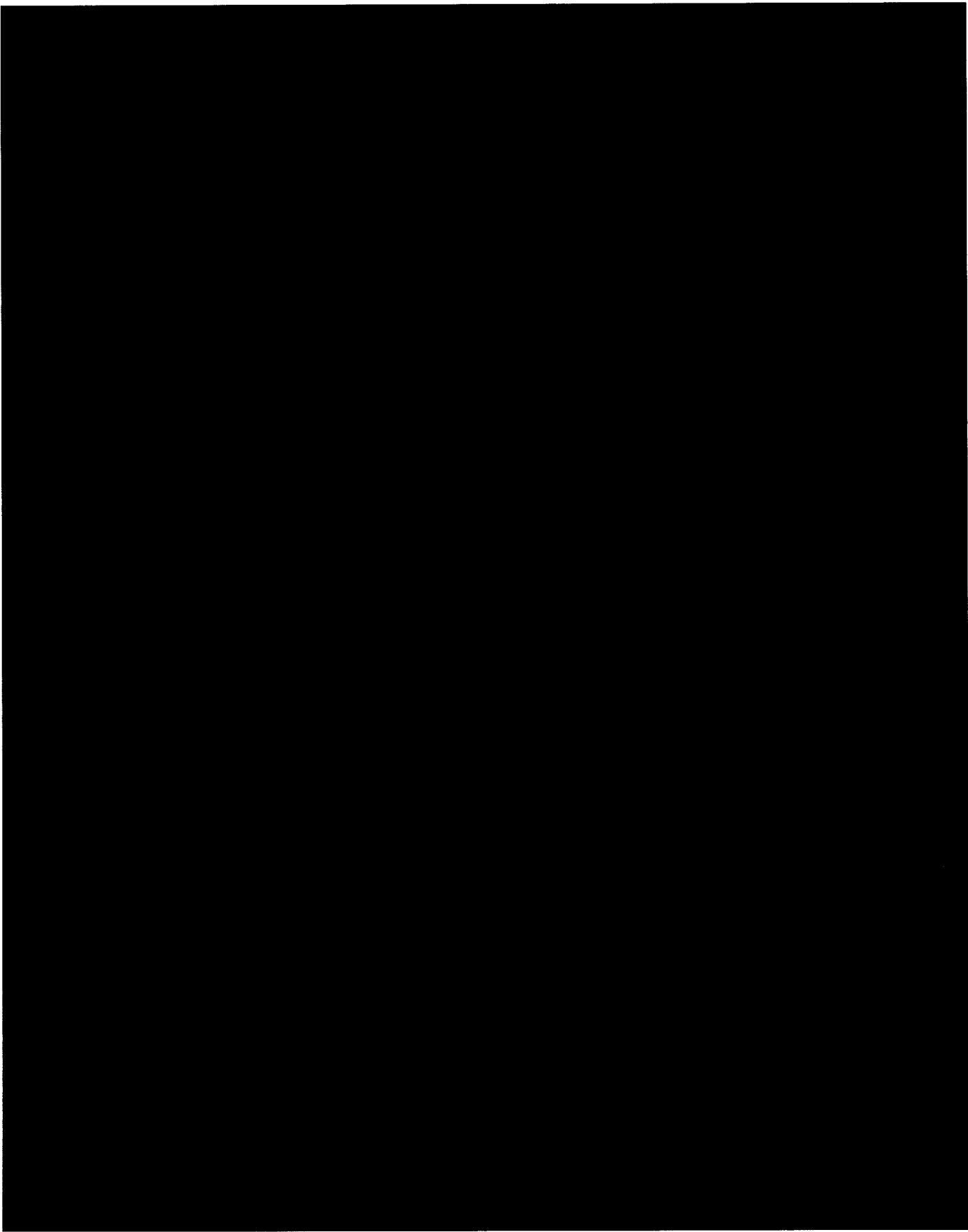


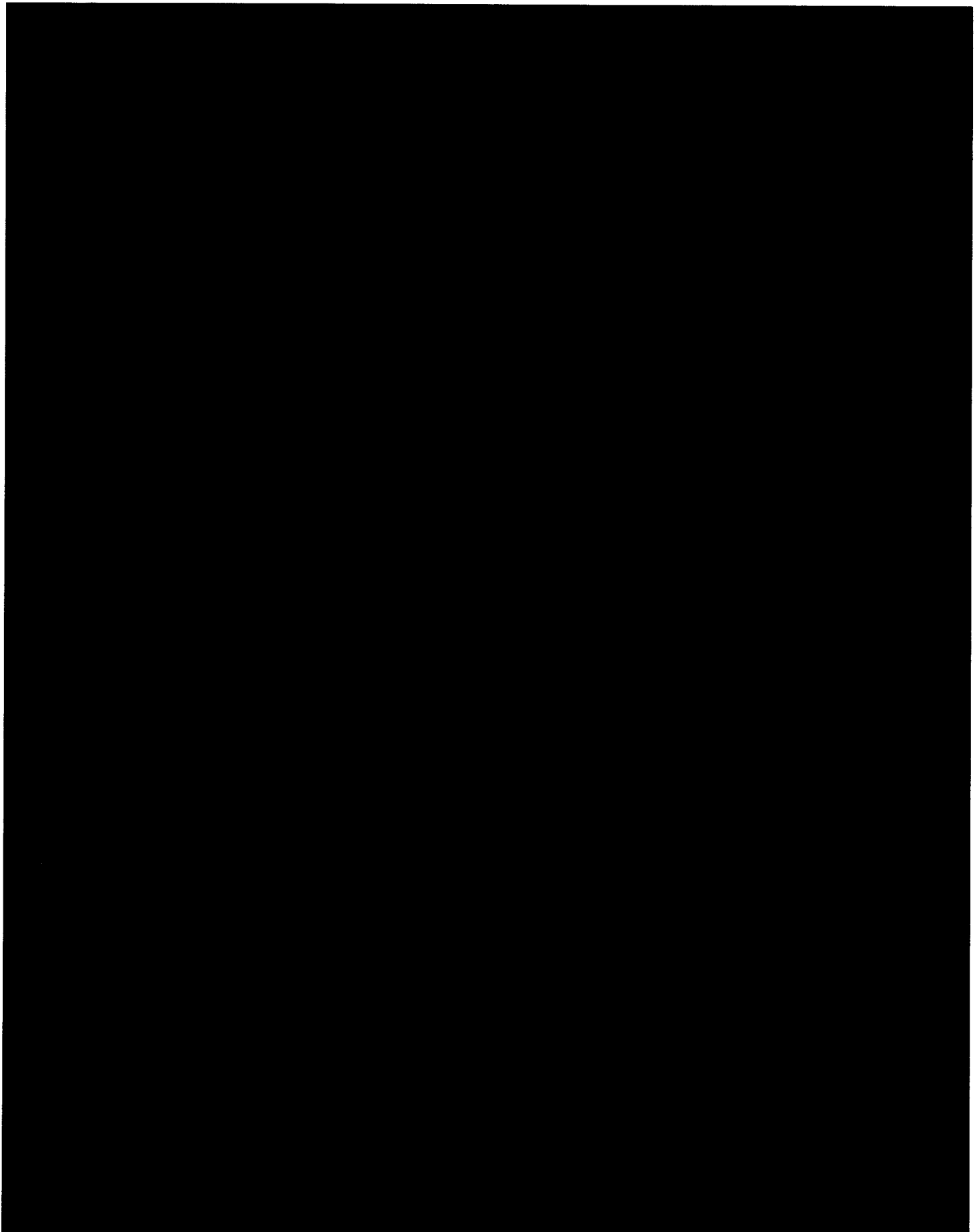












PUBLIC VERSION

# **Exhibit 3**

**ATT00154**



PUBLIC VERSION

**INVOICE**  
Joint Use

Duke Energy  
3300 Exchange Place (NP4B)  
Lake Mary, FL 32746

Duke Energy  
NP4B | 3300 Exchange Place  
Lake Mary, FL 32746

MARSHA PURCELL  
AT&T  
2221 INDUSTRIAL DR  
RM 111  
PANAMA CITY, FL 32405

Invoice No: F36166  
Invoice Date: 12/17/2015

For: AT&T  
POLE RENT

Description	For Period: 01/01/15 - 12/31/15	Count	Rate	Charges
ANNUAL CHARGE FOR TELEPHONE ATTACHMENTS ON P.E.		60807		
CREDIT FOR P.E. ATTACHMENTS ON TELEPHONE		3342		
Amount Due:				

**Total Amount Due within 30 Days of Receipt of this Invoice**  
For billing questions call: (407) 942-9592

Please remit the stub below with payment

From: AT&T  
2221 INDUSTRIAL DR  
RM 111  
PANAMA CITY, FL 32405

Invoice No: F36166  
Invoice Date: 12/17/2015

Mail to: Duke Energy  
Joint Use  
P.O. Box 1551 (NC 4)  
Raleigh, NC 27602

Amount Due: [REDACTED]

Treasury Credit to: 20104028 X X60D 99810 W220

Payment Amount: \$ \_\_\_\_\_



PUBLIC VERSION

**INVOICE**  
Joint Use

Duke Energy  
3300 Exchange Place (NP4B)  
Lake Mary, FL 32746

Duke Energy  
NP4B | 3300 Exchange Place  
Lake Mary, FL 32746

STEVE MASSIE  
AT&T  
8601 W. SUNRISE BLVD  
ROOM 2303  
PLANTATION, FL 33322

Invoice No: F39977  
Invoice Date: 12/22/2016

For: AT&T  
POLE RENT

Description	For Period: 01/01/16 - 12/31/16	Count	Rate	Charges
ANNUAL CHARGE FOR TELEPHONE ATTACHMENTS ON P.E.		60972		
CREDIT FOR P.E. ATTACHMENTS ON TELEPHONE		3342		

Amount Due: [REDACTED]

Total Amount Due within 30 Days of Receipt of this Invoice  
For billing questions call: (407) 942-9592

Please remit the stub below with payment

From: AT&T  
8601 W. SUNRISE BLVD  
ROOM 2303  
PLANTATION, FL 33322

Invoice No: F39977  
Invoice Date: 12/22/2016

Mail to: Duke Energy  
Joint Use  
P.O. Box 1551 (NC 4)  
Raleigh, NC 27602

Amount Due: [REDACTED]

Treasury Credit to: 20104028 X X60D 99810 W220

Payment Amount: \$ \_\_\_\_\_



Duke Energy  
3300 Exchange Place (NP4B)  
Lake Mary, FL 32746

**INVOICE**  
Joint Use  
Duke Energy  
3300 Exchange Place  
Lake Mary, FL 32746

STEVE MASSIE  
AT&T  
8601 W. SUNRISE BLVD  
ROOM 2303  
PLANTATION, FL 33322

Invoice No: F43528  
Invoice Date: 12/19/2017

For: AT&T  
POLE RENT

Description	For Period: 01/01/2017 - 12/31/2017	Count	Rate	Charges
ANNUAL CHARGE FOR TELEPHONE ATTACHMENTS ON P.E.		61098		
CREDIT FOR P.E. ATTACHMENTS ON TELEPHONE		3342		

Amount Due: [REDACTED]

Total Amount Due within 30 Days of Receipt of this Invoice  
For billing questions call (407) 942-9592

Please remit the stub below with payment

From: AT&T  
8601 W. SUNRISE BLVD  
ROOM 2303  
PLANTATION, FL 33322

Invoice No: F43528  
Invoice Date: 12/19/2017

Mail to: Duke Energy  
Joint Use  
P.O. Box 1551 (NC 4)  
Raleigh, NC 27602

Amount Due: [REDACTED]

Treasury Credit to: 20104028 X X60D 99810 W220

Payment Amount: \$ \_\_\_\_\_

Handwritten notes: 1/19/18



**INVOICE**

Duke Energy  
3300 Exchange Place (NP4B)  
Lake Mary, FL 32746

JONATHAN ELLZEY  
AT&T  
9101 SW 24TH ST  
  
MIAMI, FL 33165

Invoice No: F44426  
Invoice Date: 12/18/2018

For: AT&T  
POLE RENT

Description	For Period: 01/01/2018 - 12/31/2018	Count	Rate	Charges
ANNUAL CHARGE FOR TELEPHONE ATTACHMENTS ON P.E.		62336		
CREDIT FOR P.E. ATTACHMENTS ON TELEPHONE		5233		
			Amount Due:	

**Total Amount Due within 30 Days of Receipt of this Invoice**  
For billing questions call: (407) 942-9225

Please remit the stub below with payment

From: AT&T  
9101 SW 24TH ST  
  
MIAMI, FL 33165

Invoice No: F44426  
Invoice Date: 12/18/2018

Mail to: Duke Energy  
Joint Use  
P.O. Box 1551 (NC 4)  
Raleigh, NC 27602

Amount Due: [REDACTED]

Treasury Credit to: 20104028 X X60D 99810 W220

Payment Amount: \$ \_\_\_\_\_



**PUBLIC VERSION**  
 Duke Energy  
 3300 Exchange Place (NP4B)  
 Lake Mary, FL 32746

# INVOICE

Joint Use

Duke Energy  
 NP4B | 3300 Exchange Place  
 Lake Mary, FL 32746

**BRIDGET LAUER  
 AT&T  
 ONE AT&T WAY  
 ROOM 1B201  
 BEDMINSTER, NJ 07921**

**Invoice No: F44819  
 Invoice Date: 12/30/2019**

**For: AT&T  
 POLE RENT**

Description	For Period: 01/01/2019-12/31/2019	Count	Rate	Charges
ANNUAL CHARGE FOR TELEPHONE ATTACHMENTS ON P.E.		62363		
CREDIT FOR P.E. ATTACHMENTS ON TELEPHONE		5233		

**Amount Due:** [REDACTED]

**Total Amount Due within 30 Days of Receipt of this Invoice**  
 For billing questions call: (407) 942-9225

Please remit the stub below with payment

**From: AT&T  
 ONE AT&T WAY  
 ROOM 1B201  
 BEDMINSTER, NJ 07921**

**Invoice No: F44819  
 Invoice Date: 12/30/2019**

**Mail to: Duke Energy  
 Joint Use  
 P.O. Box 1551 (NC 4)  
 Raleigh, NC 27602**

**Amount Due:** [REDACTED]

**Treasury Credit to: 20104028 X X60D 99810 W220**

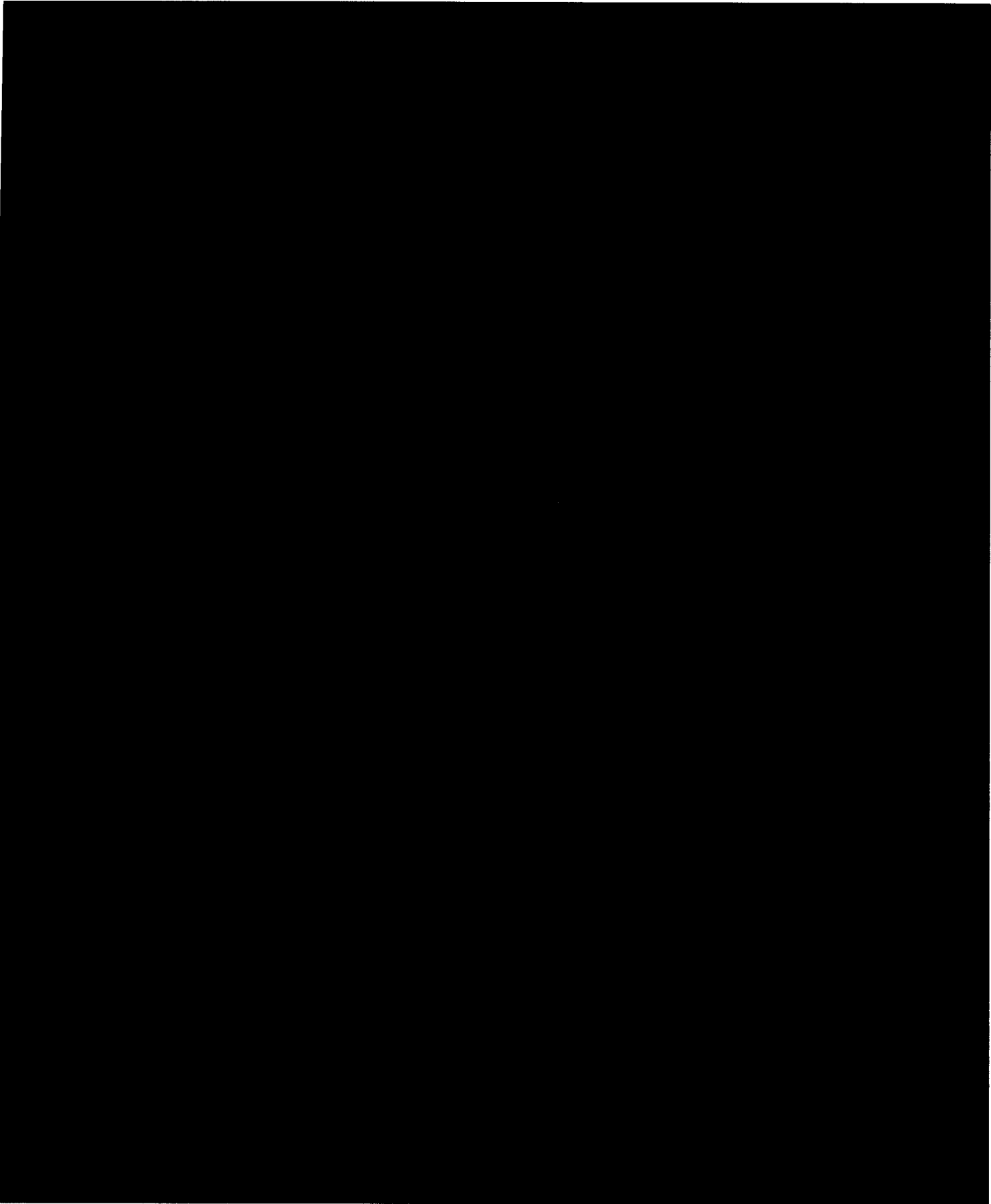
**Payment Amount: \$** \_\_\_\_\_

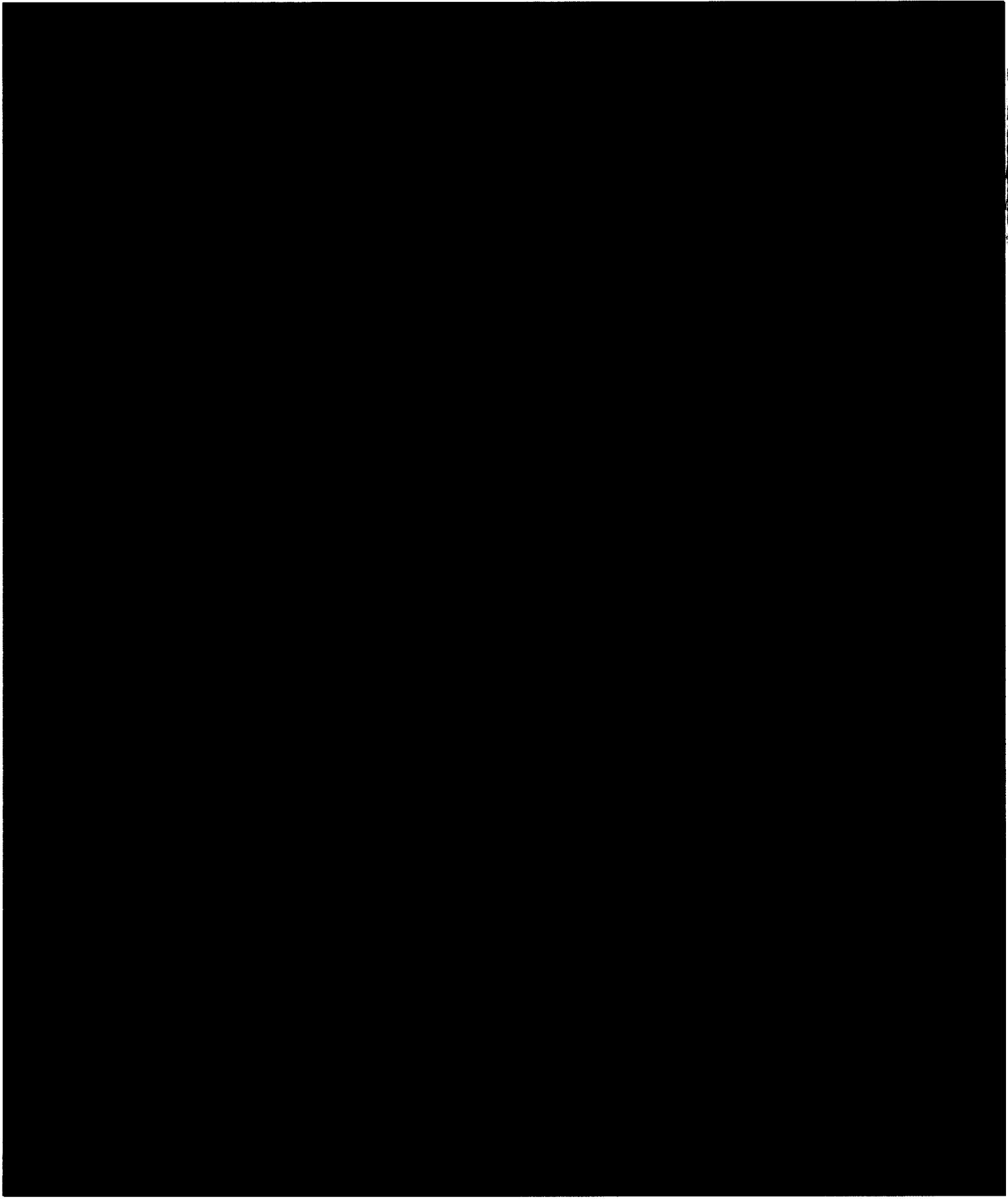


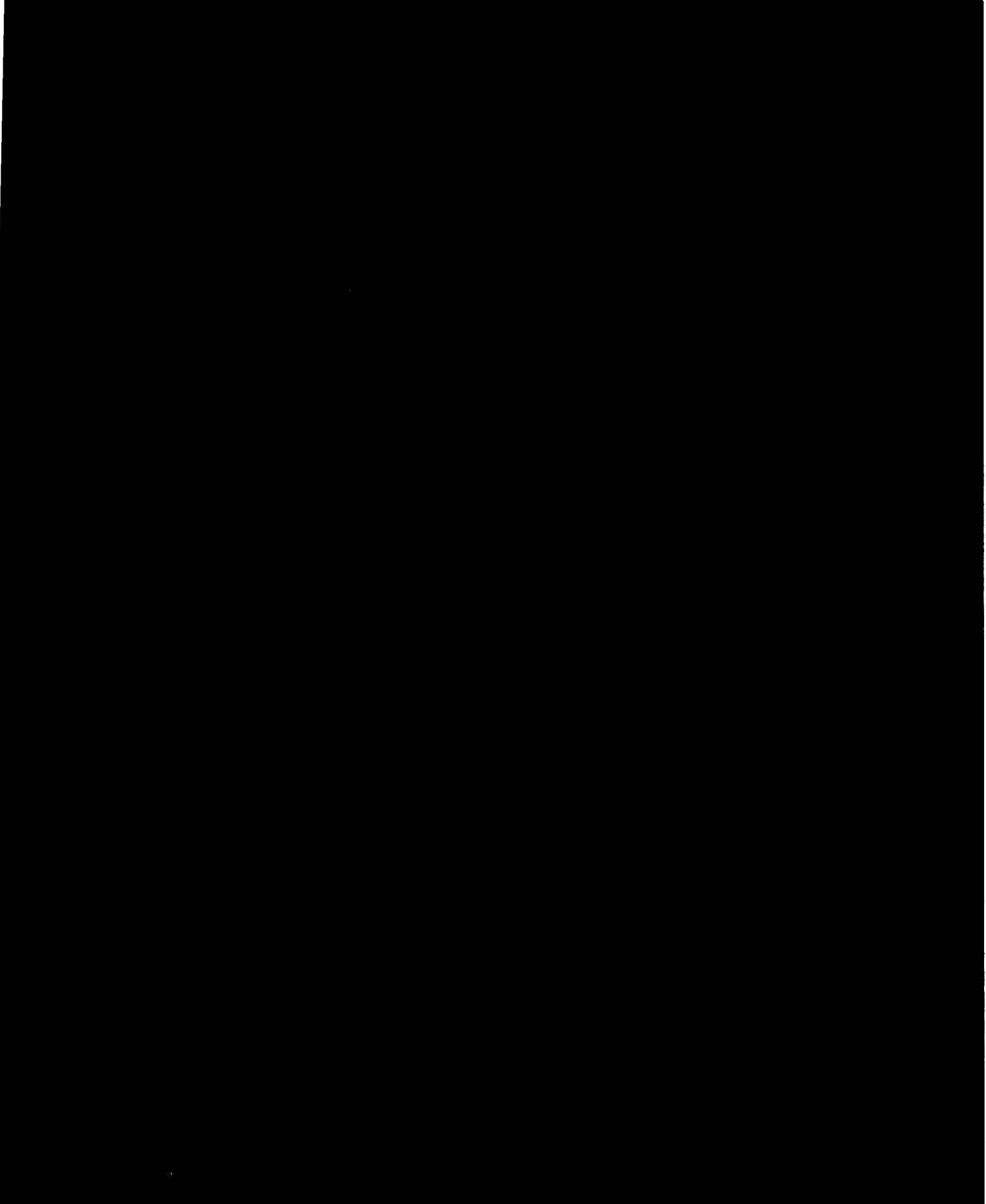
PUBLIC VERSION

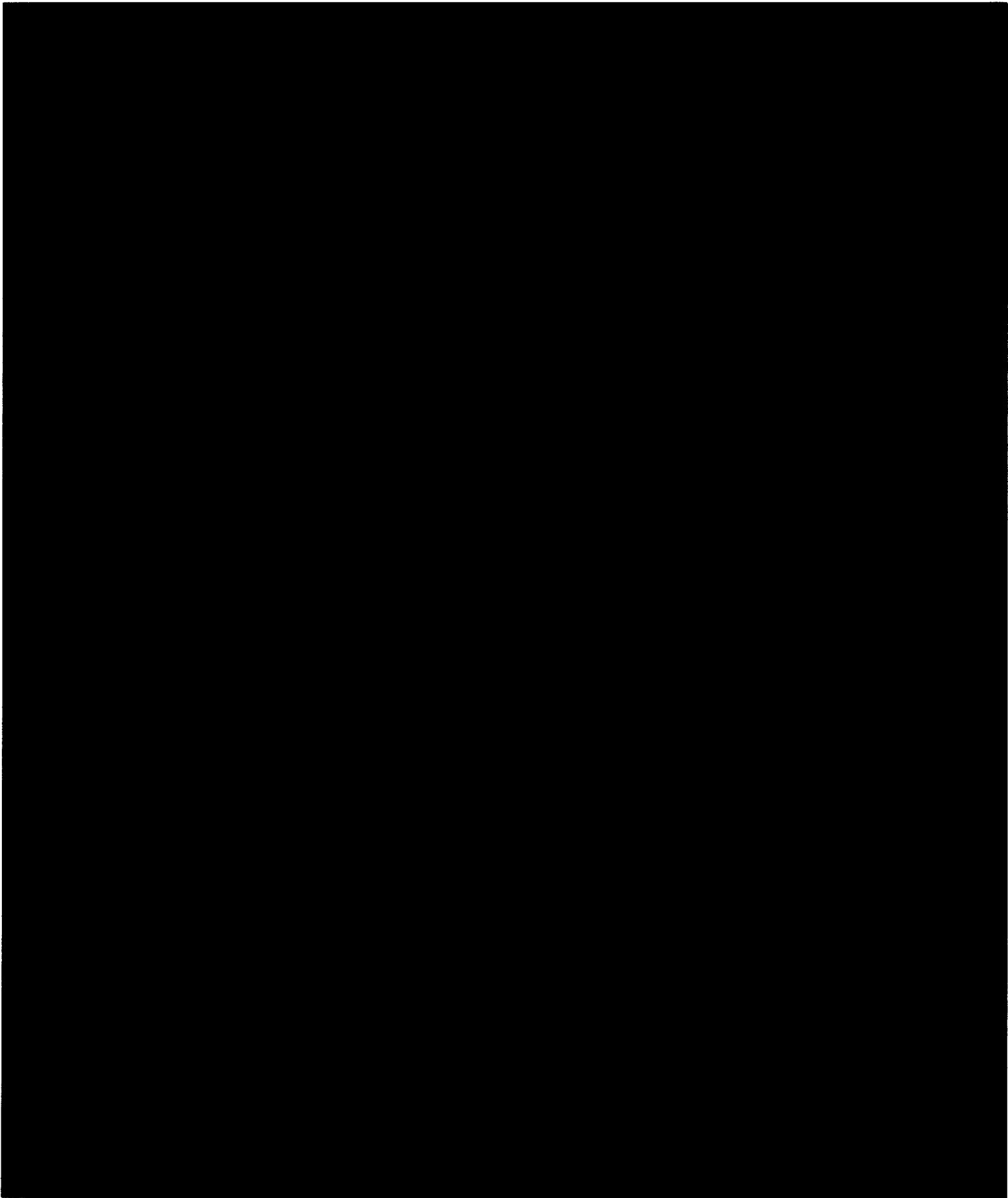
## **Exhibit 4**

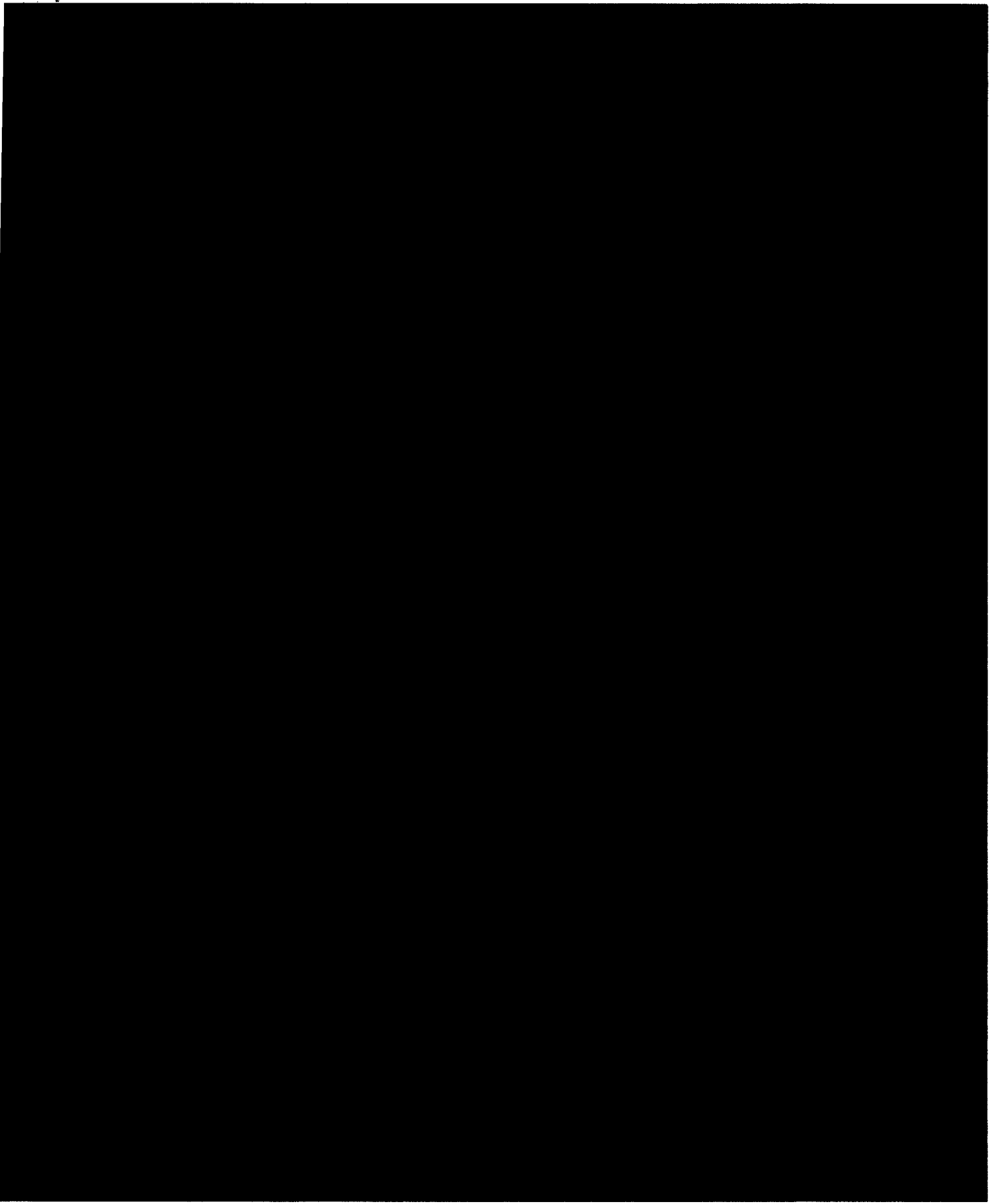
**ATT00160**

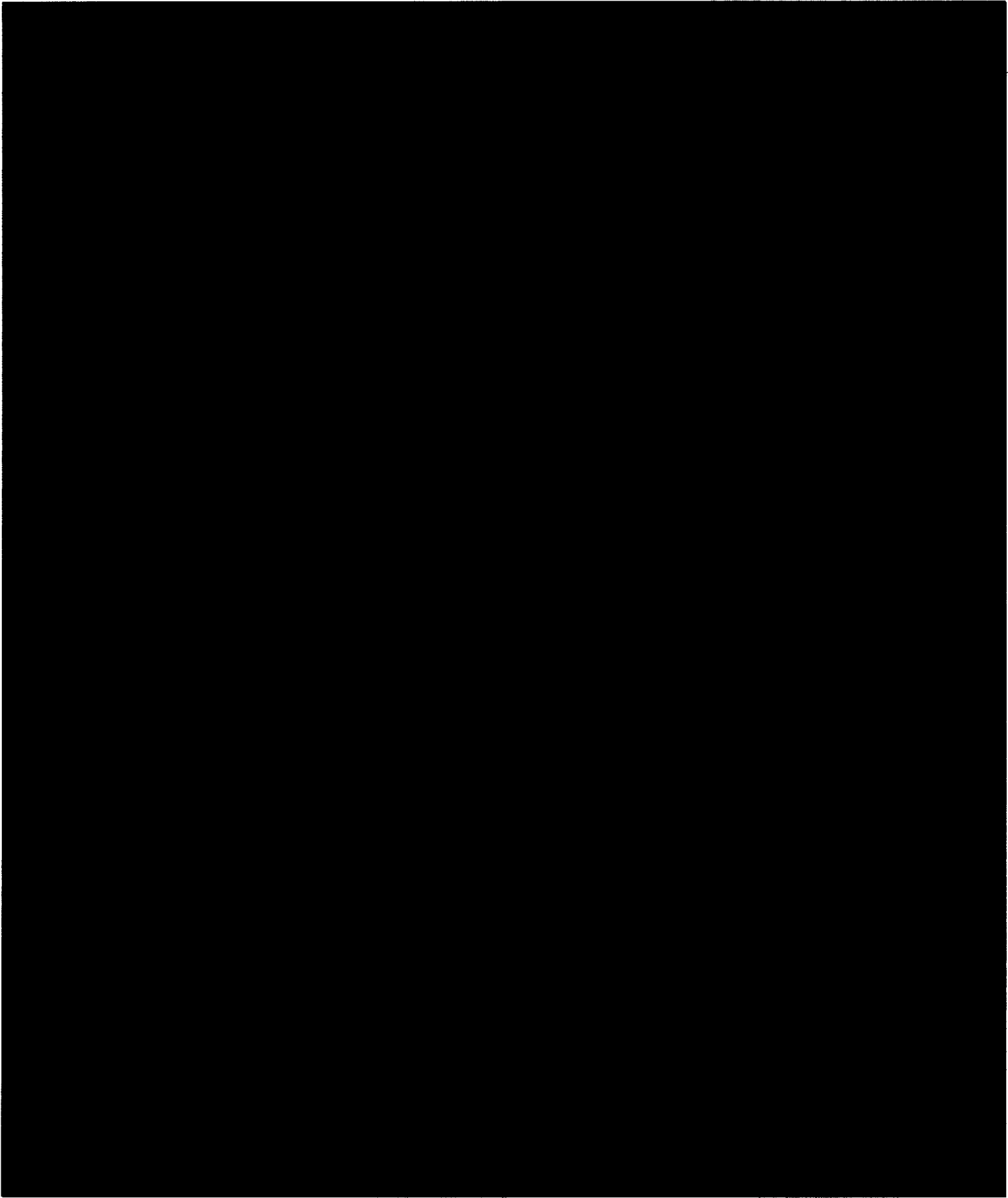


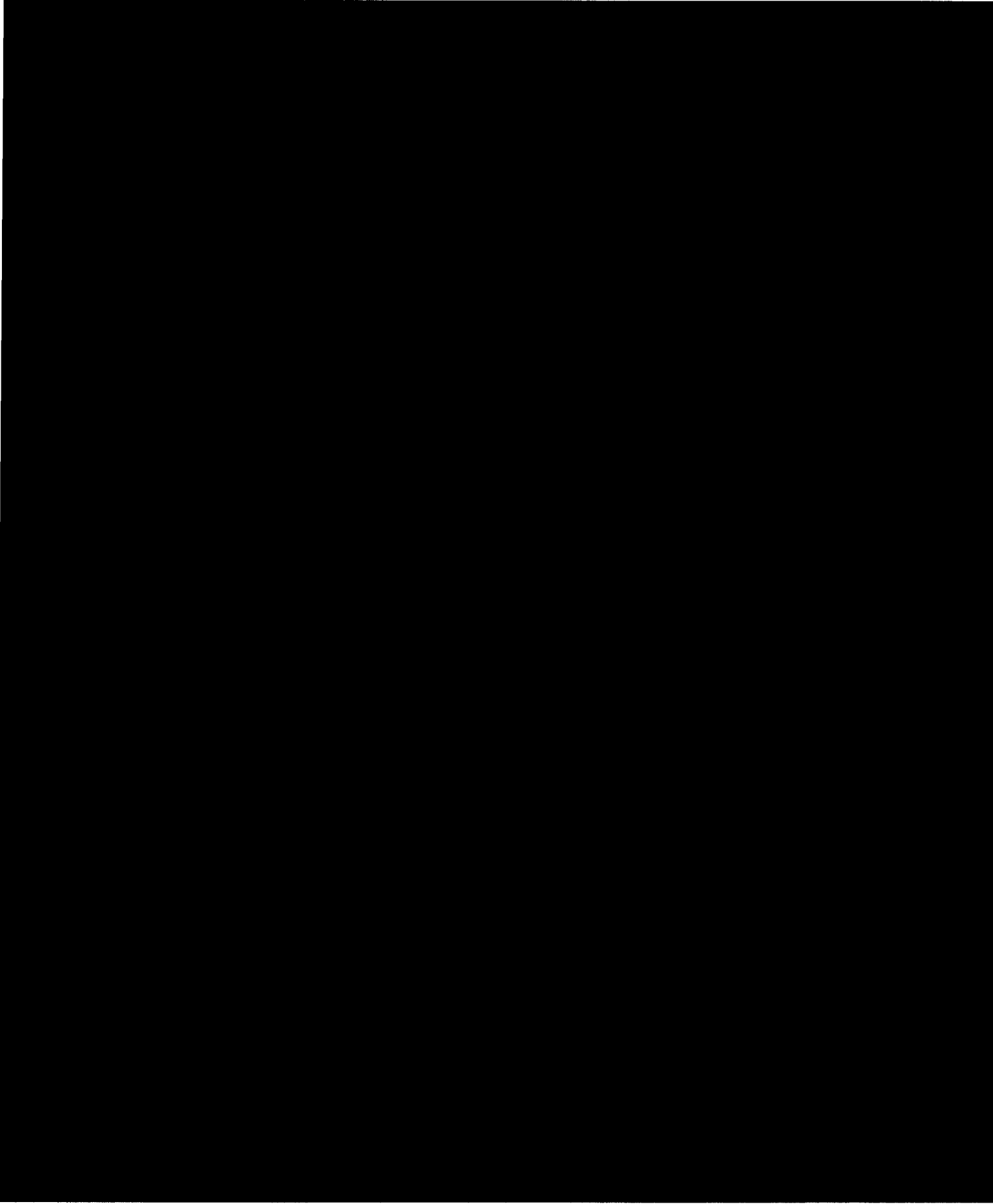






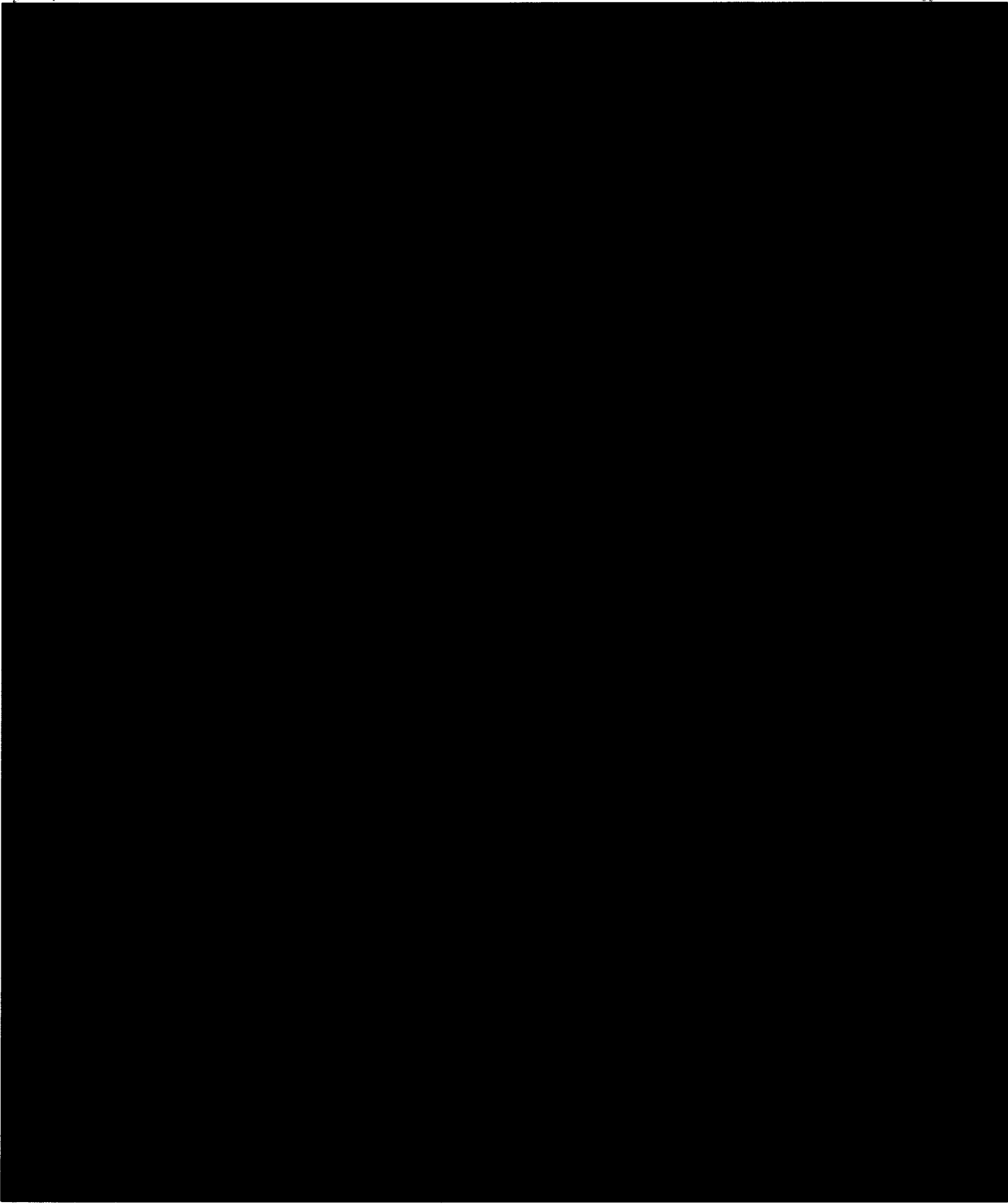




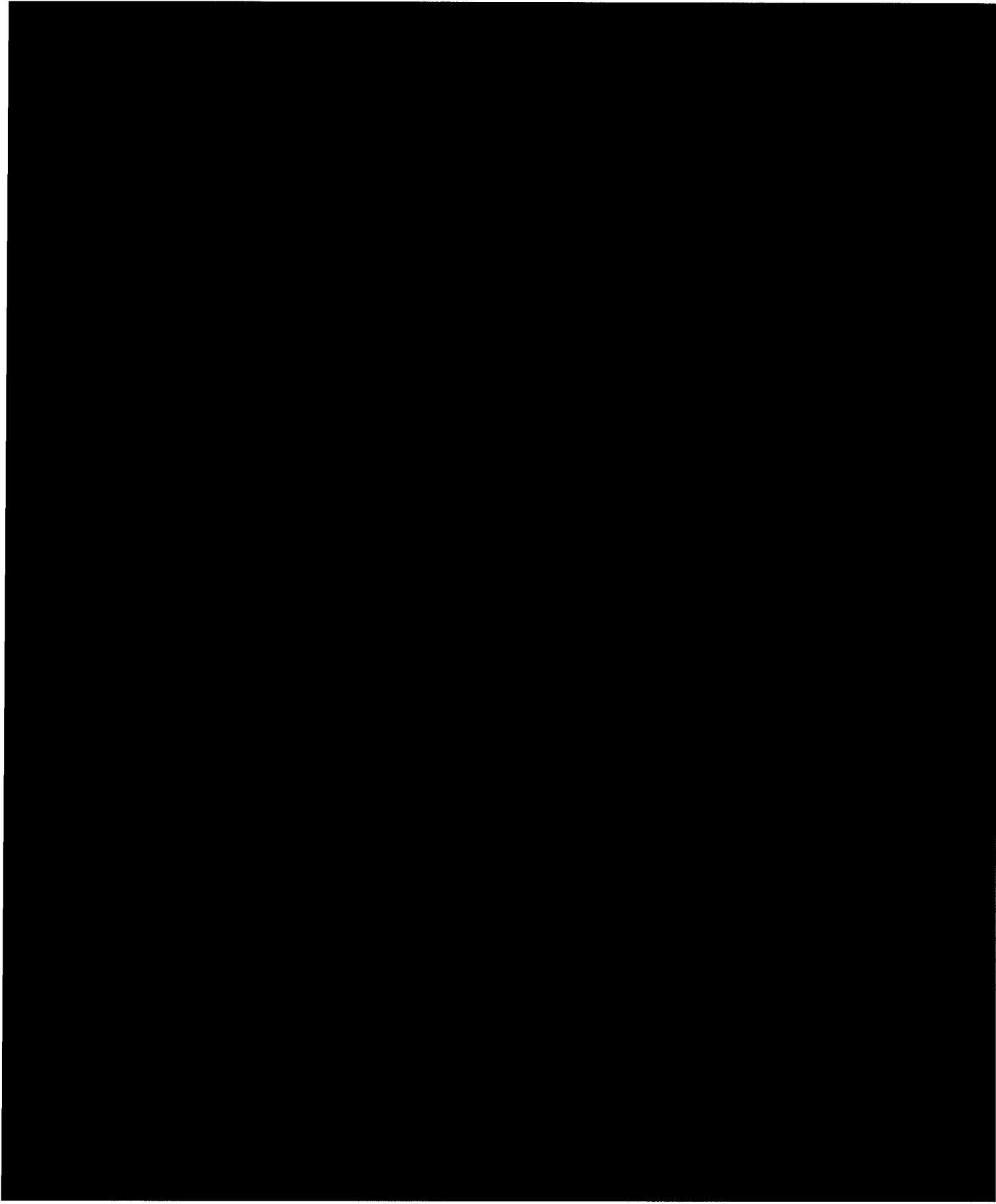


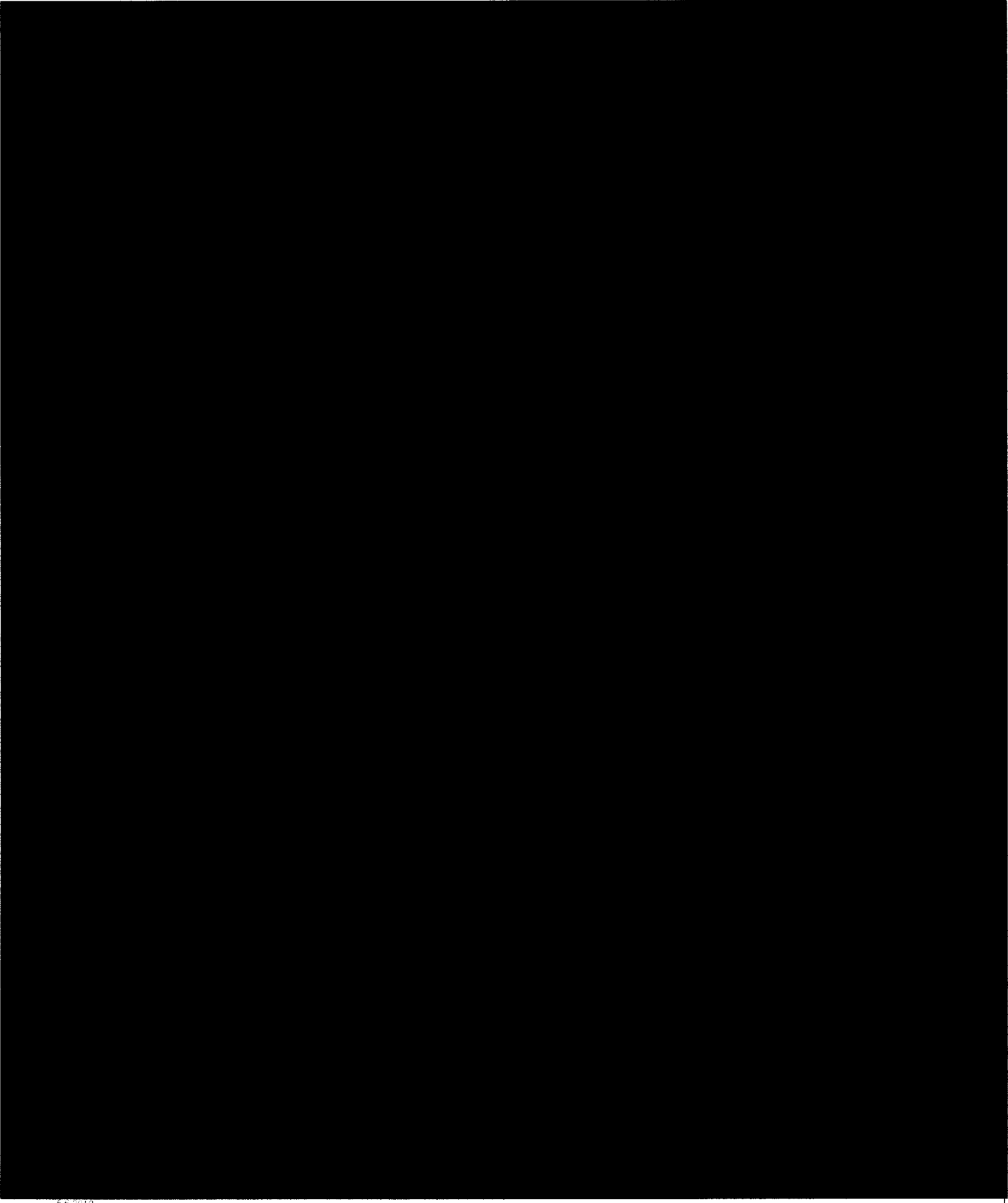


PUBLIC VERSION



**ATT00168**





PUBLIC VERSION

# Exhibit 5

ATT00171



# INVOICE

Return payment to  
FLORIDA POWER CORPORATION  
P.O. Box 14042  
Controller's Dept. A7D  
St. Petersburg, FL 33733

Issuing Office RA # 784

Date January 25, 1991

Invoice 1079

TO:

Southern Bell  
21JJ1 Southern Bell Tower  
301 West Bay Street  
Jacksonville, FL 32202

PAYABLE UPON RECEIPT

QUANTITY	ITEM / DESCRIPTION OF WORK	UNIT COST	TOTAL
48,278	Attachments on FPC poles (611600 SB)		
5,675	Attachments on SBT poles (DFPRSB)		
	Net differential due FPC		
	Net annual rental due for attachments on FPC poles for period January 1, 1990 to December 31, 1990 in accordance with Article X of Agreement dated June 1, 1969, Amended October 16, 1980 and January 2, 1990.		
	Please address any questions to:		
	Ken B. Corbett Joint Use Specialist Joint Use Affairs (813) 866-5736		
----- PLEASE RETURN COPY OF INVOICE WITH REMITTANCE -----			

**ATT00172**

PUBLIC VERSION

# **Exhibit 6**

**ATT00173**



**AT&T**

**Dianne W. Miller**  
Director, Construction & Engineering

**PUBLIC VERSION**

AT&T Services, Inc.  
754 Peachtree Street, NE  
C-1263  
Atlanta, GA 30308

May 22, 2019

Scott Freeburn  
Manager of Joint Use and Tower Leasing  
Duke Energy Corporation  
3300 Exchange Place  
NP4D  
Lake Mary, FL 32746  
Scott.Freeburn@pgnmail.com

**BY EMAIL AND CERTIFIED MAIL**

Re: Pole Attachment Rental Rates

Dear Mr. Freeburn:

We would like to schedule a meeting with Duke Energy to discuss the pole attachment rental rates that AT&T should be paying to attach to poles covered by the 1969 and 2000 joint use agreements entered by our mutual predecessor companies with respect to poles in Florida, and in North Carolina and South Carolina, respectively. For ease of reference, because these were previously managed by Progress Energy Florida and Progress Energy CP&L before the merger of Duke Energy and Progress Energy, we will refer to them as the "Progress Energy Agreements."

As you are undoubtedly aware, the FCC recognized in its 2011 *Pole Attachment Order* that ILECs are entitled by statute to "just and reasonable" rates that are "competitively neutral" to the pole attachment rates that apply to their CLEC and cable company competitors. In its 2018 *Third Report and Order*, the FCC took the next step and adopted a presumption that ILECs are entitled to a new telecom rate under certain agreements, which include the Progress Energy Agreements. The FCC further found that an electric utility may only charge a higher rate if it proves by clear and convincing evidence that the terms and conditions of a joint use agreement provide the ILEC a net material advantage over its competitors. If the electric utility makes that showing, the maximum rate it may charge is the pre-existing telecom rate.

AT&T has long been paying pole attachment rates under the Progress Energy Agreements that are [REDACTED] of the presumptively just and reasonable new telecom rate, as well as the maximum pre-existing telecom rate. As a result, we would like to meet with Duke Energy's executives to determine the appropriate rental rates for our companies. Should the negotiations fail, AT&T reserves the right to seek full relief, including refunds for its past overpayments. But we are hopeful that we can resolve this expeditiously as business partners.

We would like to meet in June and are available any day other than June 17, 18 or 28. We would be glad to travel to your offices in Charlotte or Lake Mary. To facilitate our discussions, we request that Duke Energy provide us its 2018 new telecom rate calculations at least two weeks prior to our meeting so that we can all be better informed about the rental rate that AT&T is

**ATT00174**



**AT&T**

PUBLIC VERSION

Scott Freeburn  
May 22, 2019  
Page 2

entitled to under federal law. Also, if Duke Energy believes that a rate higher than the new telecom rate is justified by net competitive advantages, we request copies of Duke Energy's executed license agreements and all data and quantifications that support its claim.

We look forward to meeting with you soon.

Sincerely,

Dianne Miller  
AT&T  
Director – Construction & Engineering, National Joint Utility Team

**ATT00175**



PUBLIC VERSION

# **Exhibit 7**

**ATT00176**

PUBLIC VERSION

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**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Tuesday, June 18, 2019 11:26 AM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Subject:** RE: Response:: Duke / AT&T - Pole Attachment Rental Rates

Hi Dianne,

The names of the people attending this meeting on behalf of Duke Energy are the following;

Scott Freeburn – Joint Use Manager  
David Hatcher – Managing Director Infrastructure Solutions

The meeting will be held at the Duke Energy facility located at **410 S Wilmington St., Raleigh 27601**. We will meet you at 9:00 AM on Friday, July 26 in the first floor lobby by the security desk.

There is a Sheraton directly across the street or a Marriott one block away. I believe there is also a Marriott Residence Inn about 2 blocks away.

I'll send you a meeting notice via Outlook that you can share with Dan and Mark.

O look forward to talking with you on the July 26.

Thanks  
Scott

---

**From:** MILLER, DIANNE W [<mailto:dm6516@att.com>]  
**Sent:** Tuesday, June 18, 2019 10:56 AM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** Response:: Duke / AT&T - Pole Attachment Rental Rates

Scott,

I apologize for the resend. I did not change the date proposal.  
Thank you for the date choices. We also have some travel scheduled, so my colleagues and I would like to meet with you the morning of Friday, July 26. We can do a start time of 9am if that works for you.  
I will be joined by:

Dan Rhinehart, Director- State Regulatory  
Mark Peters, Area Manager – Regulatory Relations

Would you also let me know the name and title of those who will be joining you, as well as your Raleigh meeting address. Do we enter the lobby and sign in at Security Desk and wait to be escorted to meeting area? I would appreciate your suggestions also for reasonable area hotels.

PUBLIC VERSION

I look forward to meeting you.

Regards,

Dianne

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]

**Sent:** Thursday, June 13, 2019 11:30 AM

**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>

**Subject:** RE: Duke / AT&T - Pole Attachment Rental Rates

Hi Dianne,

My Managing Director has a tough travel schedule and will not be available to meet until the week of July 15. The dates that we would be available for a meeting are July 15, 16, 19, and the entire week of July 22. We would also prefer that the meeting be held in our Raleigh office.

Please let me know if any of these proposed dates would work.

Thanks

*Scott Freeburn*

Duke Energy  
Retail Programs – Joint Use  
3300 Exchange Place  
Lake Mary, FL 32746  
(407) 942-9415 (office)  
(407) 312-3725 (cell)



---

**From:** MILLER, DIANNE W [<mailto:dm6516@att.com>]

**Sent:** Monday, June 10, 2019 12:20 PM

**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>

**Subject:** RE: Duke / AT&T - Pole Attachment Rental Rates

Scott,

Just following up for dates in June for a meeting in Charlotte. We can still meet any day other than June 17, 18, or 28.

Dianne Miller

PUBLIC VERSION

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Wednesday, May 22, 2019 12:43 PM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Subject:** RE: Duke / AT&T - Pole Attachment Rental Rates

Diane,

I am in receipt of your email and the attached letter requesting executive negotiations regarding the AT&T joint use attachments rates. I'll check the calendars for a meeting in Charlotte. At first glance a June meeting may be tough to accommodate but will try and get you some dates to consider soon.

Thanks

*Scott Freeburn*

Duke Energy  
Retail Programs – Joint Use  
3300 Exchange Place  
Lake Mary, FL 32746  
(407) 942-9415 (office)  
(407) 312-3725 (cell)



---

**From:** MILLER, DIANNE W [<mailto:dm6516@att.com>]  
**Sent:** Wednesday, May 22, 2019 10:15 AM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** Duke / AT&T - Pole Attachment Rental Rates

Scott,

I would like to introduce myself as the point of contact for all Joint Use matters at AT&T. Feel free to reach out to me via email at [dianne.miller@att.com](mailto:dianne.miller@att.com) or cell 864-313-8950.

Please see attached correspondence.

Regards,

Dianne Miller  
Director - National Joint Use Team  
AT&T Technology Operations

PUBLIC VERSION

# **Exhibit 8**

**ATT00180**



**AT&T**

**Dianne W. Miller**  
Director, Construction & Engineering

**PUBLIC VERSION**

AT&T Services, Inc.  
754 Peachtree Street, NE  
C-1263  
Atlanta, GA 30308

September 5, 2019

Scott Freeburn  
Manager of Joint Use and Tower Leasing  
Duke Energy Corporation  
3300 Exchange Place  
NP4D  
Lake Mary, FL 32746  
Scott.Freeburn@pgnmail.com

**BY EMAIL**

Re: Pole Attachment Rental Rates

Dear Scott:

Thank you again for the materials you provided last month after our executive-level meeting regarding AT&T's concerns with the pole attachment rental rates it has been paying for use of poles covered by the 1969 and 2000 joint use agreements previously managed by Progress Energy Florida and Progress Energy CP&L, and the just and reasonable rate to which AT&T is entitled under federal law. We reviewed the materials you provided and continue to believe that AT&T should pay a new telecom rental rate like its competitors, with Duke paying a proportional new telecom rate for its use of AT&T's poles calculated in the manner shown in the spreadsheet I sent you last month.

Consistent with the commitments made during our meeting, I would like to schedule a follow-up meeting with the hope of reaching a negotiated resolution. We are available to travel back to Duke's offices in Raleigh for a meeting on September 9-12, 16, or 19-20. Please let me know as soon as possible which of these dates is most convenient for you and your team. We have some questions about Duke's rate calculations that we would like to discuss at the meeting. But more importantly, we want to see whether we can reach an agreement about just and reasonable rates during the meeting. To that end, I will have full settlement authority, and request that Duke come prepared with a proposal to resolve this matter.

Regards,

*Dianne W Miller*

Dianne Miller  
AT&T  
Director – Construction & Engineering, National Joint Utility Team

**ATT00181**

PUBLIC VERSION

# **Exhibit 9**

**ATT00182**



**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Thursday, September 12, 2019 2:39 PM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Cc:** RHINEHART, DAN <[dr3539@att.com](mailto:dr3539@att.com)>; PETERS, MARK A <[mp2586@att.com](mailto:mp2586@att.com)>  
**Subject:** RE: AT&T / Progress Energy Joint Use Agreement

Hi Diane,

We do not intend to have our legal team involved in the October meeting.

Looking forward to meeting with you soon.

Thanks  
Scott

---

**From:** MILLER, DIANNE W [<mailto:dm6516@att.com>]  
**Sent:** Thursday, September 12, 2019 12:34 PM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Cc:** RHINEHART, DAN <[dr3539@att.com](mailto:dr3539@att.com)>; PETERS, MARK A <[mp2586@att.com](mailto:mp2586@att.com)>  
**Subject:** AT&T / Progress Energy Joint Use Agreement

**\*\*\* Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

Scott,  
We could do October 24 for a meeting in Raleigh. A start time of 8:30am eastern on October 24 would work for us. Are you planning to have Legal representation in this meeting as I noticed that you copied some of your Legal team on your September 6 reply email ?

Our attendees as of now from AT&T are:  
Dianne Miller - Director, National Joint Use Team  
Dan Rhinehart - Director, Rates & Regulatory  
Mark Peters - Operations & Regulatory

Should you choose to have Legal representation in this meeting, we would need to update our attendees. Please advise your attendees from Progress Energy.

We will reserve October 24 and begin to arrange our travel into Raleigh.

Regards,  
Dianne



PUBLIC VERSION

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Tuesday, September 10, 2019 2:42 PM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Subject:** RE: AT&T / Progress Energy Joint Use Agreement

Hi Diane,

Hurricane work is all behind us now.

How do the dates of October 22, 23 or 24 work for your team to come to Raleigh? We could start around 8:30 on one of those days and work as long as needed?

Thanks  
Scott

---

**From:** MILLER, DIANNE W [<mailto:dm6516@att.com>]  
**Sent:** Friday, September 6, 2019 4:05 PM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** AT&T / Progress Energy Joint Use Agreement

Scott,

I perfectly understand. We at AT&T send you our best wishes in your restoration.  
We look forward to hearing from you.

Dianne

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Friday, September 06, 2019 9:41 AM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Cc:** Hatcher, David J <[David.Hatcher@duke-energy.com](mailto:David.Hatcher@duke-energy.com)>; Russell, Andy <[Andy.Russell@duke-energy.com](mailto:Andy.Russell@duke-energy.com)>; Fields, Greg <[Greg.Fields@duke-energy.com](mailto:Greg.Fields@duke-energy.com)>; Eric Langley <[eric@langleybromberg.com](mailto:eric@langleybromberg.com)>; Mack, Karol P <[Karol.Mack@duke-energy.com](mailto:Karol.Mack@duke-energy.com)>  
**Subject:** RE: AT&T / Progress Energy Joint Use Agreement

Hi Dianne,

We are knee deep in storm clean up at the moment and hope to have that behind us by early next week.  
I'll reach out to our Duke team to check availability on the dates referenced and get back to you soon.

Thanks,

*Scott Freeburn*

Duke Energy  
Retail Programs – Joint Use  
3300 Exchange Place  
Lake Mary, FL 32746  
(407) 942-9415 (office)

PUBLIC VERSION

(407) 312-3725 (cell)  
<image001.jpg>

PUBLIC VERSION

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**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Wednesday, December 04, 2019 10:24 AM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Cc:** Russell, Andy <[Andy.Russell@duke-energy.com](mailto:Andy.Russell@duke-energy.com)>  
**Subject:** RE: Pole Cost Data Request

Hi Diane,

Thanks for your email. We are working on gathering this data and will be getting back with you soon.

Thanks  
Scott

---

**From:** MILLER, DIANNE W [<mailto:dm6516@att.com>]  
**Sent:** Tuesday, December 3, 2019 5:29 PM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** Pole Cost Data Request

Scott,

Thank you for reaching out. We're compiling the information you requested and expect to provide it very soon.

We appreciate your commitment to provide us an offer within 4 weeks. So that AT&T is prepared to evaluate your offer, we'd also like some information regarding the Duke operating companies in the Carolinas, Indiana, and Ohio. Much of it is similar to the information you provided previously regarding the Progress operating companies. More specifically, we would like:

- Total distribution pole counts for Duke Carolinas (year-end 2015-2018), Duke Indiana (year-end 2010-2018), and Duke Ohio (2010-2018);
- Spreadsheets showing the calculation of the rates charged CLECs by Duke Carolinas (2016-2019), Duke Indiana (2011-2019), and Duke Ohio (2011-2019), along with source data for inputs if that source data is not publicly available and copies of, or links to, decisions or materials used to determine the applicable rate of return;
- Copies of license agreements between Duke Carolinas, Duke Indiana, and Duke Ohio and CLECs and cable providers;
- Any other information that Duke thinks is relevant to the rate that AT&T should pay for use of Duke's poles.

It is important that we receive this information promptly and well in advance of receiving your offer, so that we can quickly respond. We commit that we will treat the information as confidential, just as we expect you will treat our information in that manner.

Again, thank you again for your work on these negotiations and I wish you and your colleagues Happy Holidays.

Regards,

PUBLIC VERSION

Dianne Miller

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Wednesday, November 13, 2019 1:51 PM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Cc:** Fields, Greg <[Greg.Fields@duke-energy.com](mailto:Greg.Fields@duke-energy.com)>; Russell, Andy <[Andy.Russell@duke-energy.com](mailto:Andy.Russell@duke-energy.com)>; Hatcher, David J <[David.Hatcher@duke-energy.com](mailto:David.Hatcher@duke-energy.com)>  
**Subject:** Pole Cost Data Request

Hi Diane,

Please see the attached letter to your attention outlining our request for pole cost data for the Midwest states. Once we receive this information, we hope to have a proposal back to you within 4 weeks.

Please feel free to call me if you have any questions.

Thanks

*Scott Freeburn*

Duke Energy  
Retail Programs – Joint Use  
3300 Exchange Place  
Lake Mary, FL 32746  
(407) 942-9415 (office)  
(407) 312-3725 (cell)



PUBLIC VERSION

# **Exhibit 13**

**ATT00194**



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**Attachments:** Progress\_Sample Proportional 2019 Rate Calculation (OH IN).pdf; Progress\_ATT Pole Attachment Data 2017 (IN OH).pdf

**From:** MILLER, DIANNE W  
**Sent:** Wednesday, December 18, 2019 9:24 PM  
**To:** 'Freeburn, Scott' <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>; 'scott.freeburn@pgnmail.com' <[scott.freeburn@pgnmail.com](mailto:scott.freeburn@pgnmail.com)>  
**Cc:** 'andy.russell@duke-enery.com' <[andy.russell@duke-energy.com](mailto:andy.russell@duke-energy.com)>; 'greg.fields@duke-energy.com' <[greg.fields@duke-energy.com](mailto:greg.fields@duke-energy.com)>; 'david.hatcher@duke-energy.com' <[david.hatcher@duke-energy.com](mailto:david.hatcher@duke-energy.com)>  
**Subject:** Pole Cost Data Request

Scott,

Thank you for the data about Indiana and Ohio and your commitment to provide AT&T an enterprise-wide proposal. My team is still reviewing the materials you sent, but we made it a priority to consider the 2018 cost data you included so that we could promptly send you the attached rate information.

We had requested cost data for prior years so we could provide you the proportional rate calculations you requested for Indiana and Ohio in the same manner and for the same 2018 rental year that we provided you for North Carolina, South Carolina, and Florida. Because we did not receive 2017 cost data from you, the attached rate calculations are for the 2019 rental year, but otherwise follow the same approach as our prior calculations. We trust that you will maintain this information, like the prior information, in confidence.

I look forward to continuing our discussions in the coming weeks. In the meantime, I hope you have a very happy holiday season.

Regards,

Dianne

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Friday, December 13, 2019 3:32 PM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Cc:** Russell, Andy <[Andy.Russell@duke-energy.com](mailto:Andy.Russell@duke-energy.com)>; Fields, Greg <[Greg.Fields@duke-energy.com](mailto:Greg.Fields@duke-energy.com)>; Hatcher, David J <[David.Hatcher@duke-energy.com](mailto:David.Hatcher@duke-energy.com)>  
**Subject:** Pole Cost Data Request

PUBLIC VERSION

Dianne,

In response to your December 3 request for additional data and other information, I am attaching the following:

- A spreadsheet showing the calculation of FCC CATV based on year ending 2018 data for DEC, DEI and DEO. This spreadsheet also includes the total distribution pole count for each of those jurisdictions for the year ending 2018. This should give you all of the data you need to calculate rates under various implementations of the FCC's rate formulas.
- Our DEO pole attachment tariff
- A copy of the executed CLEC agreement between DEC and AT&T which covers AT&T attachments outside its ILEC territory
- A copy of the CLEC agreement DEI recently proposed to AT&T for attachments outside AT&T's ILEC territory

Also, your December 3 email asks for "Any other information that Duke thinks is relevant to the rate that AT&T should pay for use of Duke's poles." As you can probably appreciate, this is a really broad request and I believe we outlined at least some of this information in our last meeting.

As set forth in my November 13 letter, we still need AT&T's Ohio and Indiana pole cost data in order to prepare an enterprise wide proposal.

Thanks

*Scott Freeburn*

Duke Energy  
Retail Programs – Joint Use  
3300 Exchange Place  
Lake Mary, FL 32746  
(407) 942-9415 (office)  
(407) 312-3725 (cell)



# **Exhibit 14**



**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Thursday, January 16, 2020 8:32 AM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Cc:** Russell, Andy <[Andy.Russell@duke-energy.com](mailto:Andy.Russell@duke-energy.com)>  
**Subject:** Proposal Update

Hi Diane,

Thanks for the phone call yesterday and the pole data sent back in December. I know that I mentioned that we would try and have something for you within four weeks. Unfortunately the last two weeks of December were tough as most people were out on vacation. I do have a 3 day meeting scheduled with our Duke team the last week of January to focus on creating a methodology to determine pole rent enterprise wide. I'll give you an update by the end of the month if not a proposal.

Feel free to give me a call if you would like to discuss.

Thanks,

*Scott Freeburn*

Duke Energy  
Retail Programs – Joint Use  
3300 Exchange Place  
Lake Mary, FL 32746  
(407) 942-9415 (office)  
(407) 312-3725 (cell)



# Exhibit 15

PUBLIC VERSION

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**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Tuesday, February 18, 2020 11:04 AM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Subject:** RE: Duke Energy - Duke Progress Proposal

Hi Diane,

I totally understand your position. I am disappointed that we have not acted quicker. I actually sent another follow up email last night asking that we be allowed to send our offer. I will make some calls today and let it be know that you have reached out again.

Thanks  
Scott

---

**From:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Sent:** Tuesday, February 18, 2020 10:49 AM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** FW: Duke Energy - Duke Progress Proposal

Scott,

Thank you for updating me on the status of Duke Energy's promised settlement proposal. I am disappointed, however, that so little concrete progress has been made since I forwarded you the detailed cost information you requested in December. As much as AT&T prefers a negotiated resolution, and appreciates your efforts to move this along, I am sure you understand that we cannot wait indefinitely.

Regards,

Dianne

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Wednesday, February 12, 2020 3:22 PM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Subject:** RE: Duke Energy - Duke Progress Proposal / Pending Invoices

Hi Diane,

Thank you very much for the timely processing the invoices. We greatly appreciate it.

The Duke Energy joint use negotiating team rolled up our AT&T proposal to senior execs for review several weeks back. While we have some feedback in a few of the states, we are still waiting on the Carolinas. I'm as eager as you are to get moving on this and have sent out several follow up emails regarding the status of the proposal. I was hoping to have something for you by this Friday but understand a few of the final decision makers are out this week. I apologize for any delay. It's very difficult in a company this size to get a ruling on something this complex across five states.

PUBLIC VERSION

I promise to keep pushing this internally and will let you know the minute we get a final reading.

Thanks for your patience.  
Scott

---

**From:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Sent:** Wednesday, February 12, 2020 2:46 PM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** Duke Energy - Duke Progress Proposal / Pending Invoices

Scott,

We have processed for payment all of the invoices listed below in your email.  
Florida and Ohio were the last two that we received – FL is Net 30 days and Ohio is Net 45 days – you should receive payment according to the contract terms.

AT&T does expect that a refund of AT&T's overpayments will be addressed in our further resolution discussions.

Since we are approaching February 14, a status of receipt of your proposal would be appreciated.

Kind Regards,  
Dianne

---

**From:** Freeburn, Scott [<mailto:Scott.Freeburn@duke-energy.com>]  
**Sent:** Monday, February 03, 2020 8:33 AM  
**To:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Subject:** RE: Duke Energy - Duke Progress Proposal / Pending Invoices

Diane,

Thanks for your e-mail. I wasn't sure from your email if you were referencing all of the outstanding 2019 pole rent invoices sent. I have referenced the invoices below.

- DEC (Duke Energy Carolinas) NC & SC – 2 invoices
- DEP (Duke Energy Progress) NC & SC – 2 invoices
- DEF (Duke Energy Florida) – 1 invoice
- DEO (Duke Energy Ohio) – 1 invoice

I appreciate your processing of these invoices for payment. Duke understands, but respectfully disagrees with, AT&T's position with respect to these invoices. With respect to the 2019 invoices, I want to make sure there is no misunderstanding: Duke is not committing to any refunds, credits or other adjustments with respect to 2019 net rentals. We are only saying that, from our perspective, this issue is "on the table" for purposes of the parties' ongoing negotiations. That said, we look forward to continuing our discussions in an effort to reach an amicable resolution.

As soon as our proposal is vetted and cleared internally, I will have it to you and your team for review. If it looks like it will take longer than Friday, February 14 to get it to you, I will let you know.



PUBLIC VERSION

Thanks again,  
Scott

---

**From:** MILLER, DIANNE W <[dm6516@att.com](mailto:dm6516@att.com)>  
**Sent:** Thursday, January 30, 2020 4:46 PM  
**To:** Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>; Freeburn, Scott <[Scott.Freeburn@duke-energy.com](mailto:Scott.Freeburn@duke-energy.com)>  
**Subject:** Duke Energy - Duke Progress Proposal / Pending Invoices

Scott,

Thanks for yesterday's conversation. To recap, we received recent 2019 invoices for Duke Energy NC, Duke Energy SC, Duke Progress NC and Duke Progress SC ("the utilities") and look forward to receiving the rate proposal as you anticipate within the next two weeks.

As a sign of good faith, and based on your representations that AT&T can consider any adjustment to 2019 rates to be a part of the negotiations, AT&T will process payment of the 2019 invoices and the utilities should receive those amounts soon. But to be clear about our position, as with AT&T's payments on past invoices, AT&T maintains that the utilities have no right under federal law to the amounts that were invoiced and expects that a refund of AT&T's overpayments will be addressed in the near future.

Looking forward to receiving your rate proposal and our further negotiations!

Kind Regards,

Dianne

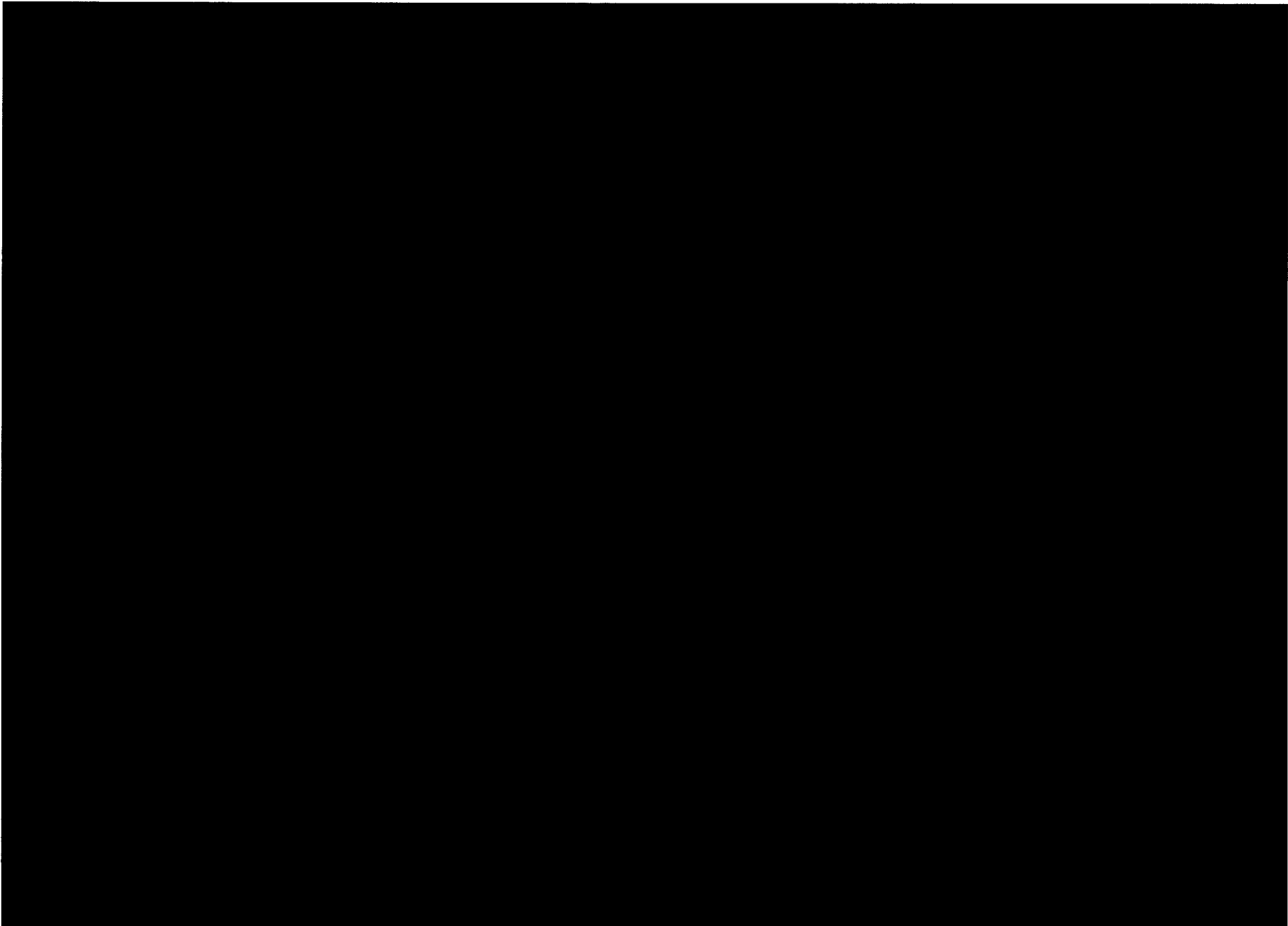
# Exhibit 16



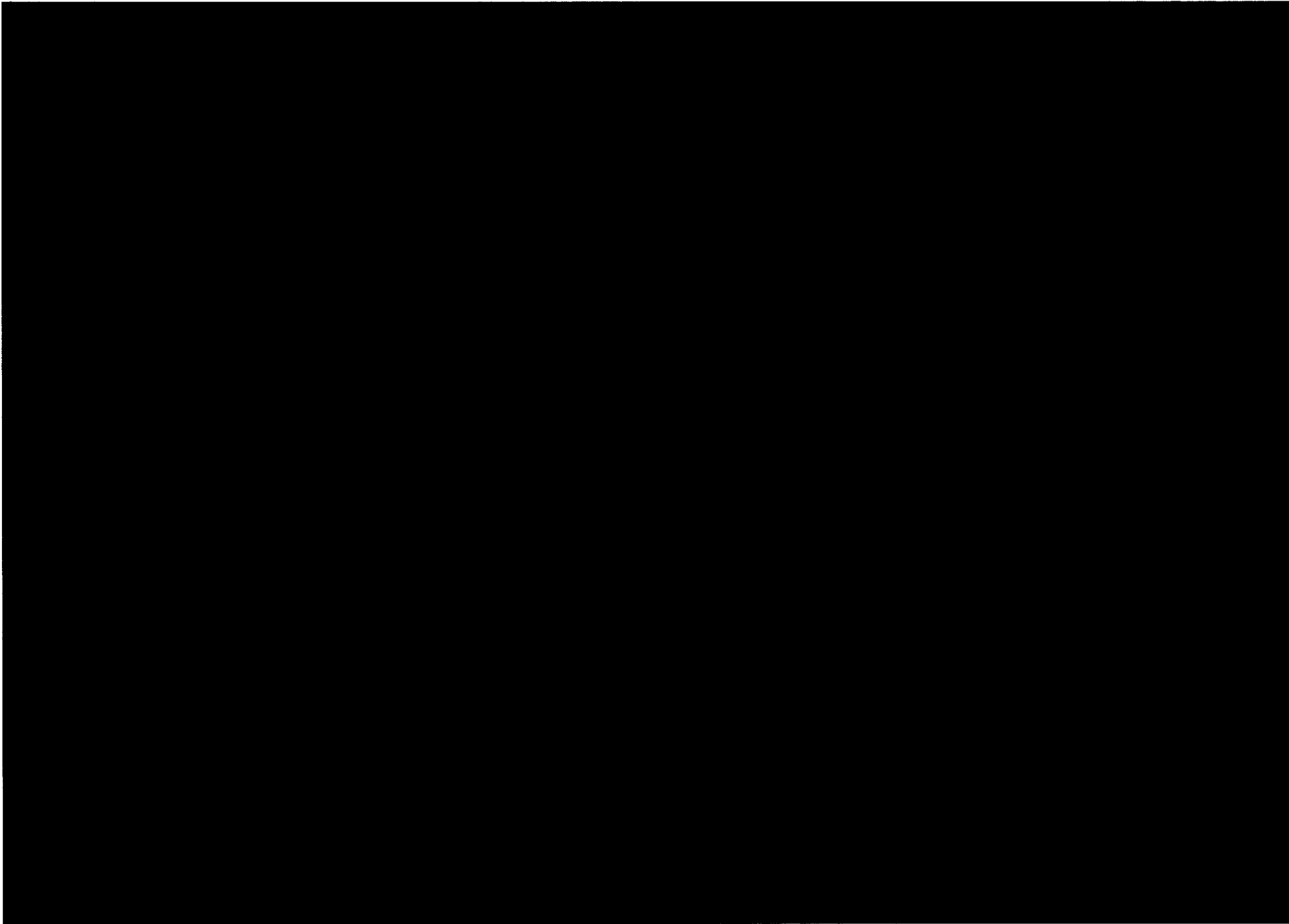
# Exhibit 17



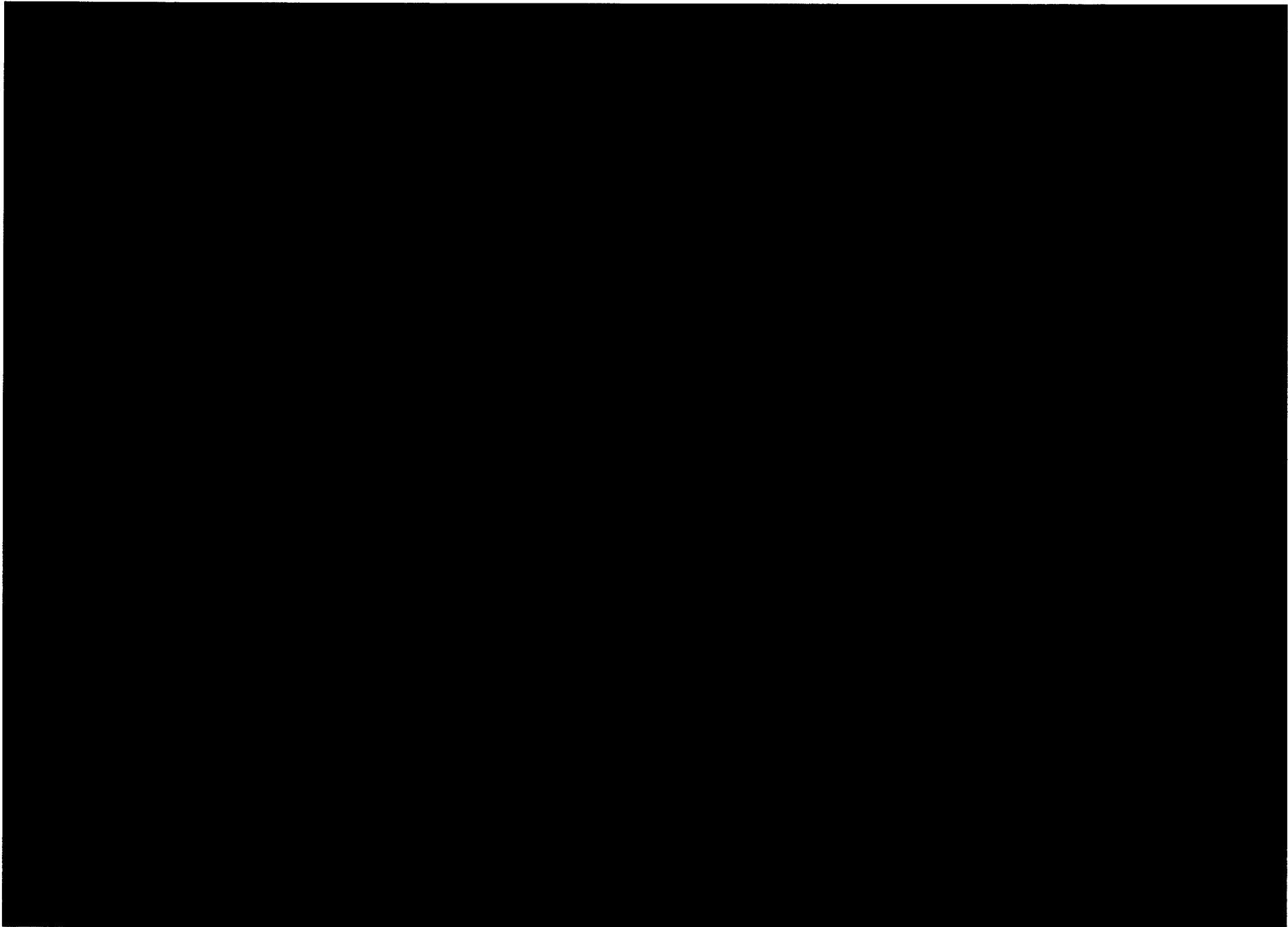
PUBLIC VERSION



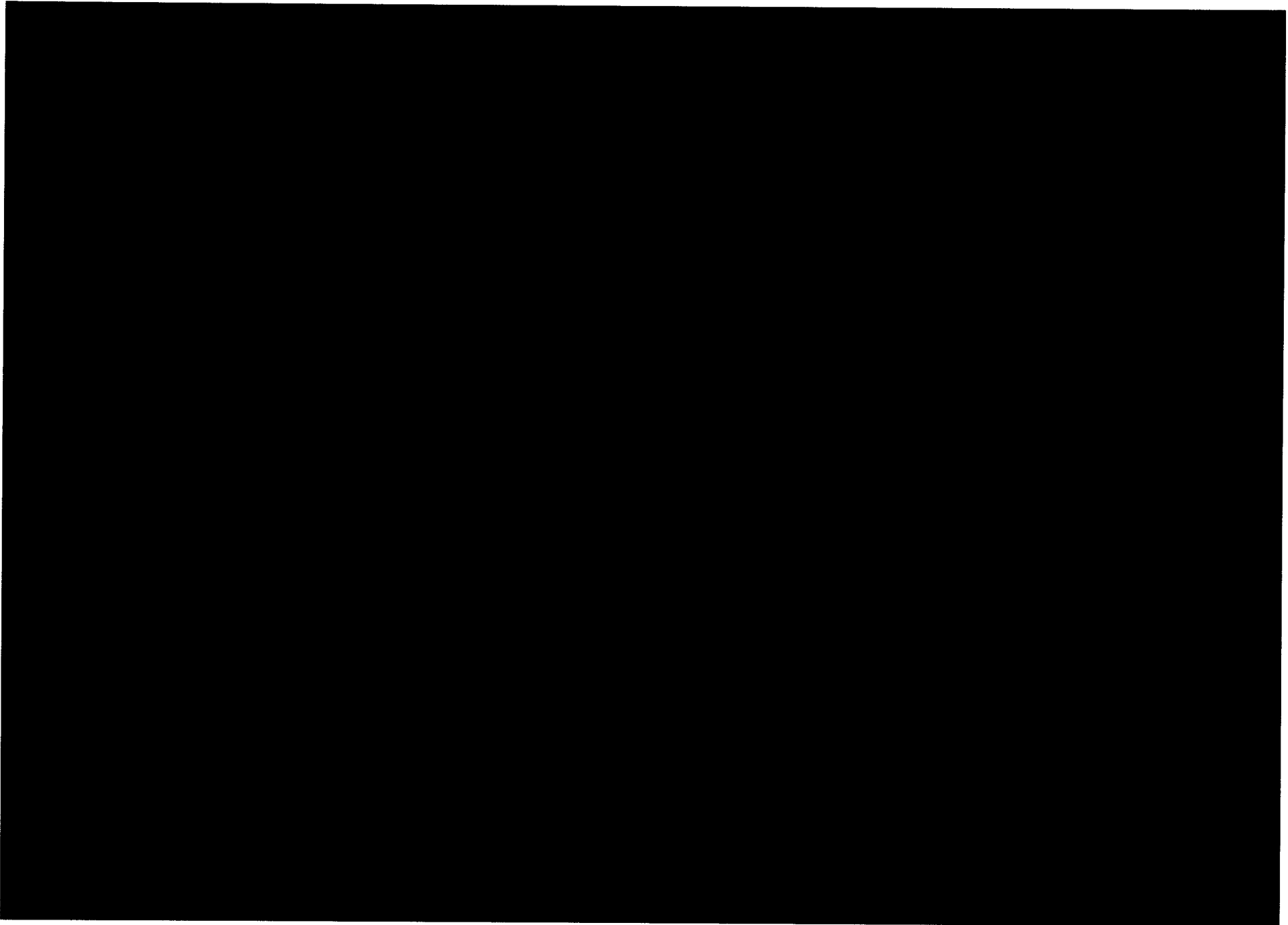
**ATT00206**



PUBLIC VERSION



**ATT00208**



PUBLIC VERSION

# **Exhibit 18**

**ATT00210**

PUBLIC VERSION


UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

**FORM 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal period ended December 31, 2019 or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number	Registrant, State of Incorporation or Organization, Address of Principal Executive Offices and Telephone Number	IRS Employer Identification No.
1-32853	 <b>DUKE ENERGY CORPORATION</b> (a Delaware corporation) 550 South Tryon Street Charlotte, North Carolina 28202-1803 704-382-3853	20-2777218
1-4928	<b>DUKE ENERGY CAROLINAS, LLC</b> (a North Carolina limited liability company) 526 South Church Street Charlotte, North Carolina 28202-1803 704-382-3853	56-0205520
1-15929	<b>PROGRESS ENERGY, INC.</b> (a North Carolina corporation) 410 South Wilmington Street Raleigh, North Carolina 27601-1748 704-382-3853	56-2155481
1-3382	<b>DUKE ENERGY PROGRESS, LLC</b> (a North Carolina limited liability company) 410 South Wilmington Street Raleigh, North Carolina 27601-1748 704-382-3853	56-0165465
1-3274	<b>DUKE ENERGY FLORIDA, LLC</b> (a Florida limited liability company) 299 First Avenue North St. Petersburg, Florida 33701 704-382-3853	59-0247770
1-1232	<b>DUKE ENERGY OHIO, INC.</b> (an Ohio corporation) 139 East Fourth Street Cincinnati, Ohio 45202 704-382-3853	31-0240030
1-3543	<b>DUKE ENERGY INDIANA, LLC</b> (an Indiana limited liability company) 1000 East Main Street Plainfield, Indiana 46168 704-382-3853	35-0594457
1-6196	<b>PIEDMONT NATURAL GAS COMPANY, INC.</b> (a North Carolina corporation) 4720 Piedmont Row Drive Charlotte, North Carolina 28210 704-364-3120	56-0556998

**ATT00211**

PUBLIC VERSION

# **Exhibit 19**

**ATT00212**



February 16, 2015

Mr. Bart Fletcher  
Public Utility Supervisor  
Surveillance Section  
Division of Accounting and Finance  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, Inc.'s Earnings Surveillance Report for the twelve months ended December 31, 2014.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2014. The separation factors used for the jurisdictional amounts were developed from the cost of service prepared in compliance with the Stipulation & Settlement Agreement, Order No. PSC-13-0598-FOF-EI.

The report also includes Schedule 6, the CR3 Regulatory Asset Value provided quarterly (Docket 130208-EI), Schedule A and B, the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), and the Commercial/Industrial Service Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

A handwritten signature in cursive script that reads "Marcia Olivier".

Marcia Olivier  
Director Rates & Regulatory Planning

dc  
Attachment  
xc: Mr. J. R. Kelly, Office of the Public Counsel



PUBLIC VERSION

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	4,977,003,307	4,534,505,927	(864,255,431)	754,027,408	4,424,277,904	47.54%	9.50%	4.52%	10.50%	4.99%	11.50%	5.47%
Long Term Debt	4,808,727,173	4,381,190,954	(835,034,320)		3,546,156,634	38.11%	5.14%	1.96%	5.14%	1.96%	5.14%	1.96%
Short Term Debt *	(85,057,915)	(77,495,553)	14,770,287	229,703,883	166,978,617	1.79%	1.22%	0.02%	1.22%	0.02%	1.22%	0.02%
Customer Deposits												
Active	212,816,732	212,816,732	(40,561,865)		172,254,868	1.85%	2.27%	0.04%	2.27%	0.04%	2.27%	0.04%
Inactive	1,583,181	1,583,181	(301,747)		1,281,434	0.01%						
Investment Tax Credits **	1,087,391	990,713	(188,825)		801,887	0.01%						
Deferred Income Taxes	1,834,581,380	1,671,471,693	(318,574,617)	(200,115,774)	1,152,781,302	12.39%						
FAS 109 DIT - Net	(215,661,182)	(196,487,092)	37,449,513		(159,037,580)	-1.71%						
<b>Total</b>	<b>11,535,080,068</b>	<b>10,528,576,555</b>	<b>(2,006,697,006)</b>	<b>783,615,517</b>	<b>9,305,495,066</b>	<b>100.00%</b>		<b>6.54%</b>		<b>7.02%</b>		<b>7.49%</b>
* Daily Weighted Average												
** Cost Rates Calculated Per IRS Ruling												

PUBLIC VERSION

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	5,222,186,481	4,623,579,568	(812,717,155)	729,976,602	4,540,839,016	47.51%	9.50%	4.51%	10.50%	4.99%	11.50%	5.46%
Long Term Debt	4,640,661,936	4,108,713,810	(722,215,796)		3,386,498,014	35.44%	5.33%	1.89%	5.33%	1.89%	5.33%	1.89%
Short Term Debt *	83,881,000	74,265,919	(13,054,212)	164,565,046	225,776,753	2.36%	1.22%	0.03%	1.22%	0.03%	1.22%	0.03%
Customer Deposits												
Active	216,296,806	216,296,806	(38,019,920)		178,276,886	1.87%	2.23%	0.04%	2.23%	0.04%	2.23%	0.04%
Inactive	1,651,583	1,651,583	(290,310)		1,361,273	0.01%						
Investment Tax Credits **	425,513	376,737	(66,222)		310,515	0.00%						
Deferred Income Taxes	2,119,038,625	1,876,138,228	(329,781,223)	(167,311,918)	1,379,045,088	14.43%						
FAS 109 DIT - Net	(212,931,026)	(188,523,245)	33,137,977		(155,385,267)	-1.63%						
<b>Total</b>	<b>12,071,210,918</b>	<b>10,712,499,406</b>	<b>(1,883,006,858)</b>	<b>727,229,731</b>	<b>9,556,722,278</b>	<b>100.00%</b>		<b>6.47%</b>		<b>6.95%</b>		<b>7.42%</b>
* Daily Weighted Average												
** Cost Rates Calculated Per IRS Ruling												

PUBLIC VERSION

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	4,977,003,307	4,534,505,927	(864,255,431)	754,027,408	4,424,277,904	47.54%	9.50%	4.52%	10.50%	4.99%	11.50%	5.47%
Long Term Debt	4,808,727,173	4,381,190,954	(835,034,320)		3,546,156,634	38.11%	5.14%	1.96%	5.14%	1.96%	5.14%	1.96%
Short Term Debt *	(85,057,915)	(77,495,553)	14,770,287	229,703,883	166,978,617	1.79%	1.22%	0.02%	1.22%	0.02%	1.22%	0.02%
Customer Deposits												
Active	212,816,732	212,816,732	(40,561,865)		172,254,868	1.85%	2.27%	0.04%	2.27%	0.04%	2.27%	0.04%
Inactive	1,583,181	1,583,181	(301,747)		1,281,434	0.01%						
Investment Tax Credits **	1,087,391	990,713	(188,825)		801,887	0.01%						
Deferred Income Taxes	1,834,581,380	1,671,471,693	(318,574,617)	(200,115,774)	1,152,781,302	12.39%						
FAS 109 DIT - Net	(215,661,182)	(196,487,092)	37,449,513		(159,037,580)	-1.71%						
<b>Total</b>	<b>11,535,080,068</b>	<b>10,528,576,555</b>	<b>(2,006,697,006)</b>	<b>783,615,517</b>	<b>9,305,495,066</b>	<b>100.00%</b>		<b>6.54%</b>		<b>7.02%</b>		<b>7.49%</b>
* Daily Weighted Average												
** Cost Rates Calculated Per IRS Ruling												

PUBLIC VERSION

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	5,222,186,481	4,623,579,568	(812,717,155)	729,976,602	4,540,839,016	47.51%	9.50%	4.51%	10.50%	4.99%	11.50%	5.46%
Long Term Debt	4,640,661,936	4,108,713,810	(722,215,796)		3,386,498,014	35.44%	5.33%	1.89%	5.33%	1.89%	5.33%	1.89%
Short Term Debt *	83,881,000	74,265,919	(13,054,212)	164,565,046	225,776,753	2.36%	1.22%	0.03%	1.22%	0.03%	1.22%	0.03%
Customer Deposits												
Active	216,296,806	216,296,806	(38,019,920)		178,276,886	1.87%	2.23%	0.04%	2.23%	0.04%	2.23%	0.04%
Inactive	1,651,583	1,651,583	(290,310)		1,361,273	0.01%						
Investment Tax Credits **	425,513	376,737	(66,222)		310,515	0.00%						
Deferred Income Taxes	2,119,038,625	1,876,138,228	(329,781,223)	(167,311,918)	1,379,045,088	14.43%						
FAS 109 DIT - Net	(212,931,026)	(188,523,245)	33,137,977		(155,385,267)	-1.63%						
<b>Total</b>	<b>12,071,210,918</b>	<b>10,712,499,406</b>	<b>(1,883,006,858)</b>	<b>727,229,731</b>	<b>9,556,722,278</b>	<b>100.00%</b>		<b>6.47%</b>		<b>6.95%</b>		<b>7.42%</b>
* Daily Weighted Average												
** Cost Rates Calculated Per IRS Ruling												

PUBLIC VERSION

DUKE ENERGY FLORIDA  
Average - Capital Structure  
Pro Forma Adjusted Basis  
December 2015

Schedule 4  
Page 1 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,114,702,534	\$4,658,027,808	(\$745,039,338)	\$758,170,897	\$4,671,159,367	47.18%	9.50%	4.48%	10.50%	4.95%	11.50%	5.43%
Long Term Debt	4,581,253,822	4,172,208,952	(667,333,885)		3,504,875,067	35.40%	5.37%	1.90%	5.37%	1.90%	5.37%	1.90%
Short Term Debt *	245,126,308	223,239,798	(35,706,620)	(48,706,939)	138,826,238	1.40%	0.17%	0.00%	0.17%	0.00%	0.17%	0.00%
Customer Deposits												
Active	219,324,889	219,324,889	(35,080,441)		184,244,448	1.86%	2.32%	0.04%	2.32%	0.04%	2.32%	0.04%
Inactive	1,641,019	1,641,019	(262,477)		1,378,543	0.01%						
Investment Tax Credits **	353,448	321,890	(51,485)		270,405	0.00%						
Deferred Income Taxes	2,310,060,656	2,103,803,047	(336,497,783)	(205,703,042)	1,561,602,222	15.77%						
FAS 109 DIT - Net	(211,613,962)	(192,719,657)	30,825,004		(161,894,653)	-1.64%						
<b>Total</b>	<b>\$12,260,848,715</b>	<b>\$11,185,847,746</b>	<b>(\$1,789,147,026)</b>	<b>\$503,760,916</b>	<b>\$9,900,461,636</b>	<b>100.00%</b>		<b>6.43%</b>		<b>6.90%</b>		<b>7.37%</b>

\* Daily Weighted Average  
\*\* Cost Rates Calculated Per IRS Ruling

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 Pro Forma Adjusted Basis  
 December 2015

Schedule 4  
 Page 2 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,121,368,708	\$4,728,678,443	(\$813,120,301)	\$763,931,668	\$4,679,489,809	46.18%	9.50%	4.39%	10.50%	4.85%	11.50%	5.31%
Long Term Debt	4,095,530,150	3,781,497,923	(650,247,795)		3,131,250,128	30.90%	6.01%	1.86%	6.01%	1.86%	6.01%	1.86%
Short Term Debt *	813,100,000	750,754,078	(129,095,981)	24,391,702	646,049,799	6.38%	0.17%	0.01%	0.17%	0.01%	0.17%	0.01%
Customer Deposits												
Active	222,269,727	222,269,727	(38,220,410)		184,049,317	1.82%	2.28%	0.04%	2.28%	0.04%	2.28%	0.04%
Inactive	1,603,209	1,603,209	(275,680)		1,327,529	0.01%						
Investment Tax Credits **	279,513	258,080	(44,378)		213,702	0.00%						
Deferred Income Taxes	2,459,670,709	2,271,070,981	(390,522,202)	(227,481,417)	1,653,067,362	16.31%						
FAS 109 DIT - Net	(212,127,588)	(195,862,319)	33,679,522		(162,182,798)	-1.60%						
<b>Total</b>	<b>\$12,501,694,427</b>	<b>\$11,560,270,121</b>	<b>(\$1,987,847,225)</b>	<b>\$560,841,953</b>	<b>\$10,133,264,848</b>	<b>100.00%</b>		<b>6.30%</b>		<b>6.76%</b>		<b>7.22%</b>

\* Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling

ATT00219

PUBLIC VERSION

DUKE ENERGY FLORIDA  
Average - Capital Structure  
FPSC Adjusted Basis  
December 2015

Schedule 4  
Page 3 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,114,702,534	\$4,658,027,808	(\$745,039,338)	\$758,170,897	\$4,671,159,367	47.18%	9.50%	4.48%	10.50%	4.95%	11.50%	5.43%
Long Term Debt	4,581,253,822	4,172,208,952	(667,333,885)		3,504,875,067	35.40%	5.37%	1.90%	5.37%	1.90%	5.37%	1.90%
Short Term Debt *	245,126,308	223,239,798	(35,706,620)	(48,706,939)	138,826,238	1.40%	0.17%	0.00%	0.17%	0.00%	0.17%	0.00%
Customer Deposits												
Active	219,324,889	219,324,889	(35,080,441)		184,244,448	1.86%	2.32%	0.04%	2.32%	0.04%	2.32%	0.04%
Inactive	1,641,019	1,641,019	(262,477)		1,378,543	0.01%						
Investment Tax Credits **	353,448	321,890	(51,485)		270,405	0.00%						
Deferred Income Taxes	2,310,060,656	2,103,803,047	(336,497,783)	(205,703,042)	1,561,602,222	15.77%						
FAS 109 DIT - Net	(211,613,962)	(192,719,657)	30,825,004		(161,894,653)	-1.64%						
<b>Total</b>	<b>\$12,260,848,715</b>	<b>\$11,185,847,746</b>	<b>(\$1,789,147,026)</b>	<b>\$503,760,916</b>	<b>\$9,900,461,636</b>	<b>100.00%</b>		<b>6.43%</b>		<b>6.90%</b>		<b>7.37%</b>
<p>* Daily Weighted Average ** Cost Rates Calculated Per IRS Ruling</p>												

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 FPSC Adjusted Basis  
 December 2015

Schedule 4  
 Page 4 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,121,368,708	\$4,728,678,443	(\$813,120,301)	\$763,931,668	\$4,679,489,809	46.18%	9.50%	4.39%	10.50%	4.85%	11.50%	5.31%
Long Term Debt	4,095,530,150	3,781,497,923	(650,247,795)		3,131,250,128	30.90%	6.01%	1.86%	6.01%	1.86%	6.01%	1.86%
Short Term Debt *	813,100,000	750,754,078	(129,095,981)	24,391,702	646,049,799	6.38%	0.17%	0.01%	0.17%	0.01%	0.17%	0.01%
Customer Deposits						0	0		0		0	
Active	222,269,727	222,269,727	(38,220,410)		184,049,317	1.82%	2.28%	0.04%	2.28%	0.04%	2.28%	0.04%
Inactive	1,603,209	1,603,209	(275,680)		1,327,529	0.01%						
Investment Tax Credits **	279,513	258,080	(44,378)		213,702	0.00%						
Deferred Income Taxes	2,459,670,709	2,271,070,981	(390,522,202)	(227,481,417)	1,653,067,362	16.31%						
FAS 109 DIT - Net	(212,127,588)	(195,862,319)	33,679,522		(162,182,798)	-1.60%						
<b>Total</b>	<b>\$12,501,694,427</b>	<b>\$11,560,270,121</b>	<b>(\$1,987,847,225)</b>	<b>\$560,841,953</b>	<b>\$10,133,264,848</b>	<b>100.00%</b>		<b>6.30%</b>		<b>6.76%</b>		<b>7.22%</b>

\* Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling

ATT00221





February 15, 2017

Mr. Bart Fletcher  
Public Utility Supervisor  
Surveillance Section  
Division of Accounting and Finance  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2016.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2016. The separation factors used for the jurisdictional amounts were developed from the cost of service prepared in compliance with the Stipulation & Settlement Agreement, Order No. PSC-13-0598-FOF-EI.

The report also includes Schedule A and B, the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), and the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

A handwritten signature in cursive script that reads "Marcia Olivier".

Marcia Olivier  
Director Rates & Regulatory Planning

Attachment

xc: Mr. J. R. Kelly, Office of the Public Counsel

DUKE ENERGY FLORIDA  
 Average - Capital Structure  
 Pro Forma Adjusted Basis  
 December 2016

Schedule 4  
 Page 1 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,023,997,074	\$4,559,486,259	(\$628,289,798)	\$730,143,789	\$4,661,340,251	45.53%	9.50%	4.33%	10.50%	4.78%	11.50%	5.24%
Long Term Debt	4,279,273,292	3,883,618,459	(535,156,313)		3,348,462,145	32.70%	5.52%	1.81%	5.52%	1.81%	5.52%	1.81%
Short Term Debt	568,717,000	516,134,327	(71,122,472)	(14,788,690)	430,223,165	4.20%	0.58%	0.02%	0.58%	0.02%	0.58%	0.02%
Customer Deposits												
Active	217,238,534	217,238,534	(29,935,117)		187,303,417	1.83%	2.31%	0.04%	2.31%	0.04%	2.31%	0.04%
Inactive	1,536,624	1,536,624	(211,744)		1,324,880	0.01%						
Investment Tax Credits	1,535,925	1,393,916	(192,079)		1,201,837	0.01%						
Deferred Income Taxes	2,574,334,211	2,336,315,346	(321,940,458)	(236,465,354)	1,777,909,534	17.36%						
FAS 109 DIT - Net	(216,055,335)	(196,079,200)	27,019,395		(169,059,805)	-1.65%						
<b>Total</b>	<b>\$12,450,577,325</b>	<b>\$11,319,644,264</b>	<b>(\$1,559,828,587)</b>	<b>\$478,889,745</b>	<b>\$10,238,705,423</b>	<b>100.00%</b>		<b>6.20%</b>		<b>6.65%</b>		<b>7.11%</b>

• Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 Pro Forma Adjusted Basis  
 December 2016

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$4,893,172,718	\$4,612,383,662	(\$659,324,194)	\$756,249,201	\$4,709,308,670	44.91%	9.50%	4.27%	10.50%	4.72%	11.50%	5.17%
Long Term Debt	4,689,115,875	4,420,036,385	(631,828,820)		3,788,207,565	36.13%	5.04%	1.82%	5.04%	1.82%	5.04%	1.82%
Short Term Debt	297,467,000	280,397,200	(40,081,804)	(74,224,850)	166,090,546	1.58%	0.58%	0.01%	0.58%	0.01%	0.58%	0.01%
Customer Deposits												
Active	212,920,513	212,920,513	(30,436,246)		182,484,267	1.74%	2.36%	0.04%	2.36%	0.04%	2.36%	0.04%
Inactive	1,699,500	1,699,500	(242,938)		1,456,563	0.01%						
Investment Tax Credits	2,600,684	2,451,446	(350,426)		2,101,021	0.02%						
Deferred Income Taxes	2,696,359,631	2,541,632,153	(363,317,472)	(361,421,885)	1,816,892,797	17.33%						
FAS 109 DIT - Net	(224,499,229)	(211,616,601)	30,249,857		(181,366,744)	-1.73%						
<b>Total</b>	<b>\$12,568,836,692</b>	<b>\$11,859,904,260</b>	<b>(\$1,695,332,042)</b>	<b>\$320,602,466</b>	<b>\$10,485,174,684</b>	<b>100.00%</b>		<b>6.14%</b>		<b>6.59%</b>		<b>7.04%</b>

\* Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,023,997,074	\$4,559,486,259	(\$628,289,798)	\$730,143,789	\$4,661,340,251	45.53%	9.50%	4.33%	10.50%	4.78%	11.50%	5.24%
Long Term Debt	4,279,273,292	3,883,618,459	(535,156,313)		3,348,462,145	32.70%	5.52%	1.81%	5.52%	1.81%	5.52%	1.81%
Short Term Debt	568,717,000	516,134,327	(71,122,472)	(14,788,690)	430,223,165	4.20%	0.58%	0.02%	0.58%	0.02%	0.58%	0.02%
Customer Deposits												
Active	217,238,534	217,238,534	(29,935,117)		187,303,417	1.83%	2.31%	0.04%	2.31%	0.04%	2.31%	0.04%
Inactive	1,536,624	1,536,624	(211,744)		1,324,880	0.01%						
Investment Tax Credits	1,535,925	1,393,916	(192,079)		1,201,837	0.01%						
Deferred Income Taxes	2,574,334,211	2,336,315,346	(321,940,458)	(236,465,354)	1,777,909,534	17.36%						
FAS 109 DIT - Net	(216,055,335)	(196,079,200)	27,019,395		(169,059,805)	-1.65%						
<b>Total</b>	<b>\$12,450,577,325</b>	<b>\$11,319,644,264</b>	<b>(\$1,559,828,587)</b>	<b>\$478,889,745</b>	<b>\$10,238,705,423</b>	<b>100.00%</b>		<b>6.20%</b>		<b>6.65%</b>		<b>7.11%</b>
* Daily Weighted Average												
** Cost Rates Calculated Per IRS Ruling												

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 FPSC Adjusted Basis  
 December 2016

Schedule 4  
 Page 4 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$4,893,172,718	\$4,612,383,662	(\$659,324,194)	\$756,249,201	\$4,709,308,670	44.91%	9.50%	4.27%	10.50%	4.72%	11.50%	5.17%
Long Term Debt	4,689,115,875	4,420,036,385	(631,828,820)		3,788,207,565	38.13%	5.04%	1.82%	5.04%	1.82%	5.04%	1.82%
Short Term Debt	297,467,000	280,397,200	(40,081,804)	(74,224,850)	166,090,546	1.58%	0.58%	0.01%	0.58%	0.01%	0.58%	0.01%
Customer Deposits												
Active	212,920,513	212,920,513	(30,436,246)		182,484,267	1.74%	2.36%	0.04%	2.36%	0.04%	2.36%	0.04%
Inactive	1,699,500	1,699,500	(242,938)		1,456,563	0.01%						
Investment Tax Credits	2,600,684	2,451,446	(350,426)		2,101,021	0.02%						
Deferred Income Taxes	2,696,359,831	2,541,632,153	(363,317,472)	(361,421,885)	1,816,892,797	17.33%						
FAS 109 DIT - Net	(224,499,229)	(211,616,601)	30,249,857		(181,366,744)	-1.73%						
<b>Total</b>	<b>\$12,568,836,692</b>	<b>\$11,859,904,260</b>	<b>(\$1,695,332,042)</b>	<b>\$320,602,466</b>	<b>\$10,485,174,684</b>	<b>100.00%</b>		<b>6.14%</b>		<b>6.59%</b>		<b>7.04%</b>

\* Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling



February 15, 2018

Mr. Bart Fletcher  
Public Utility Supervisor  
Surveillance Section  
Division of Accounting and Finance  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2017.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2017. The demand-related separation factors used for the jurisdictional amounts were from Order No. PSC-2017-0451-AS-EU.

The report also includes the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI, and the Summary of Osprey 2017 Outage O&M and Deferral Costs in compliance with Order No. PSC-2016-0521-TRF-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

A handwritten signature in blue ink that reads "Marcia Olivier".

Marcia Olivier  
Director Rates & Regulatory Planning

Attachment  
xc: Mr. J. R. Kelly, Office of the Public Counsel

**ATT00227**

PUBLIC VERSION

DUKE ENERGY FLORIDA  
Average - Capital Structure  
Pro Forma Adjusted Basis  
Dec 2017

Schedule 4  
Page 1 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,154,887,401	\$4,657,740,815	(\$460,633,311)	\$669,104,959	\$4,866,212,463	44.04%	9.50%	4.18%	10.50%	4.62%	11.50%	5.06%
Long Term Debt	5,467,663,019	4,940,351,791	(488,582,489)		4,451,769,302	40.29%	5.03%	2.03%	5.03%	2.03%	5.03%	2.03%
Short Term Debt *	(166,901,090)	(150,804,849)	14,914,041	(30,589,866)	(166,480,674)	(1.51%)	0.58%	(0.01%)	0.58%	(0.01%)	0.58%	(0.01%)
Customer Deposits												
Active	205,654,348	205,654,348	(20,338,453)		185,315,895	1.68%	2.27%	0.04%	2.27%	0.04%	2.27%	0.04%
Inactive	1,727,299	1,727,299	(170,823)		1,556,475	0.01%						
Investment Tax Credits **	3,909,058	3,532,061	(349,308)		3,182,753	0.03%	7.89%	0.00%	7.89%	0.00%	7.89%	0.00%
Deferred Income Taxes	2,656,690,875	2,400,474,842	(237,398,069)	(455,859,128)	1,707,217,645	15.45%						
<b>Total</b>	<b>\$13,323,630,908</b>	<b>\$12,058,676,306</b>	<b>(\$1,192,558,412)</b>	<b>\$182,655,964</b>	<b>\$11,048,773,858</b>	<b>100.00%</b>		<b>6.24%</b>		<b>6.68%</b>		<b>7.12%</b>

\* Daily Weighted Average

\*\* Cost Rates Calculated Per IRS Ruling

ATT00228

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 Pro Forma Adjusted Basis  
 Dec 2017

Schedule 4  
 Page 2 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,610,942,847	\$5,012,340,583	(\$646,715,590)	\$656,931,278	\$5,022,556,271	44.29%	9.50%	4.21%	10.50%	4.65%	11.50%	5.09%
Long Term Debt	5,735,269,482	5,123,403,457	(661,045,441)		4,462,358,016	39.35%	4.80%	1.89%	4.80%	1.89%	4.80%	1.89%
Short Term Debt *	(313,046,865)	(279,649,526)	36,081,688	108,874,057	(134,693,781)	(1.19%)	0.58%	(0.01%)	0.58%	(0.01%)	0.58%	(0.01%)
Customer Deposits												
Active	200,073,978	200,073,978	(25,814,479)		174,259,499	1.54%	2.33%	0.04%	2.33%	0.04%	2.33%	0.04%
Inactive	1,871,004	1,871,004	(241,406)		1,629,598	0.01%						
Investment Tax Credits **	9,341,260	8,344,689	(1,076,671)		7,268,018	0.06%	7.82%	0.01%	7.82%	0.01%	7.82%	0.01%
Deferred Income Taxes	2,710,789,538	2,421,589,523	(312,444,789)	(303,605,704)	1,805,539,029	15.92%						
<b>Total</b>	<b>\$13,955,241,244</b>	<b>\$12,487,973,708</b>	<b>(\$1,611,256,688)</b>	<b>\$462,199,631</b>	<b>\$11,338,916,651</b>	<b>100.00%</b>		<b>6.13%</b>		<b>6.57%</b>		<b>7.02%</b>

\* Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling



PUBLIC VERSION

DUKE ENERGY FLORIDA  
Average - Capital Structure  
FPSC Adjusted Basis  
Dec 2017

Schedule 4  
Page 3 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,154,887,401	\$4,657,740,815	(\$460,633,311)	\$669,104,959	\$4,866,212,463	44.04%	9.50%	4.18%	10.50%	4.62%	11.50%	5.06%
Long Term Debt	5,467,663,019	4,940,351,791	(488,582,489)		4,451,769,302	40.29%	5.03%	2.03%	5.03%	2.03%	5.03%	2.03%
Short Term Debt *	(166,901,090)	(150,804,849)	14,914,041	(30,589,866)	(166,480,674)	(1.51%)	0.58%	(0.01%)	0.58%	(0.01%)	0.58%	(0.01%)
Customer Deposits												
Active	205,654,348	205,654,348	(20,338,453)		185,315,895	1.68%	2.27%	0.04%	2.27%	0.04%	2.27%	0.04%
Inactive	1,727,299	1,727,299	(170,823)		1,556,475	0.01%						
Investment Tax Credits **	3,909,058	3,532,061	(349,308)		3,182,753	0.03%	7.89%	0.00%	7.89%	0.00%	7.89%	0.00%
Deferred Income Taxes	2,656,690,875	2,400,474,842	(237,398,069)	(455,859,128)	1,707,217,645	15.45%						
<b>Total</b>	<b>\$13,323,630,908</b>	<b>\$12,058,676,306</b>	<b>(\$1,192,558,412)</b>	<b>\$182,655,964</b>	<b>\$11,048,773,858</b>	<b>100.00%</b>		<b>6.24%</b>		<b>6.68%</b>		<b>7.12%</b>
* Daily Weighted Average												
** Cost Rates Calculated Per IRS Ruling												

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 FPSC Adjusted Basis  
 Dec 2017

Schedule 4  
 Page 4 of 4

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	\$5,610,942,847	\$5,012,340,583	(\$646,715,590)	\$656,931,278	\$5,022,556,271	44.29%	9.50%	4.21%	10.50%	4.65%	11.50%	5.09%
Long Term Debt	5,735,269,482	5,123,403,457	(661,045,441)		4,462,358,016	39.35%	4.80%	1.89%	4.80%	1.89%	4.80%	1.89%
Short Term Debt *	(313,046,865)	(279,649,526)	36,081,688	108,874,057	(134,693,781)	(1.19%)	0.58%	(0.01%)	0.58%	(0.01%)	0.58%	(0.01%)
Customer Deposits												
Active	200,073,978	200,073,978	(25,814,479)		174,259,499	1.54%	2.33%	0.04%	2.33%	0.04%	2.33%	0.04%
Inactive	1,871,004	1,871,004	(241,406)		1,629,598	0.01%						
Investment Tax Credits **	9,341,260	8,344,689	(1,076,671)		7,268,018	0.06%	7.82%	0.01%	7.82%	0.01%	7.82%	0.01%
Deferred Income Taxes	2,710,789,538	2,421,589,523	(312,444,789)	(303,605,704)	1,805,539,029	15.92%						
<b>Total</b>	<b>\$13,955,241,244</b>	<b>\$12,487,973,708</b>	<b>(\$1,611,256,688)</b>	<b>\$462,199,631</b>	<b>\$11,338,916,651</b>	<b>100.00%</b>		<b>6.13%</b>		<b>6.57%</b>		<b>7.02%</b>

\* Daily Weighted Average  
 \*\* Cost Rates Calculated Per IRS Ruling



February 14, 2019

Mr. Bart Fletcher  
Public Utility Supervisor  
Surveillance Section  
Division of Accounting and Finance  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2018.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2018. The demand-related separation factors used for the jurisdictional amounts were from Order No. PSC-2017-0451-AS-EU.

The report also includes the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI, and the Summary of Osprey 2017 Outage O&M and Deferral Costs in compliance with Order No. PSC-2016-0521-TRF-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

A handwritten signature in cursive script that reads "Marcia Olivier".

Marcia Olivier  
Director Rates & Regulatory Planning

Attachment

xc: Mr. J. R. Kelly, Office of the Public Counsel

**ATT00232**

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 Average - Capital Structure  
 Pro Forma Adjusted Basis  
 Dec-18

Schedule 4  
 Page 1 of 4

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point		Mid-Point		High-Point	
							Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	5,886,848,270	5,315,754,153	(655,556,521)	588,381,568	5,248,579,200	44.32%	9.50%	4.21%	10.50%	4.65%	11.50%	5.10%
Long Term Debt	5,916,715,514	5,342,723,920	(658,882,523)		4,683,841,397	39.55%	4.72%	1.87%	4.72%	1.87%	4.72%	1.87%
Short Term Debt *	(226,441,006)	(204,473,542)	25,216,359	(37,189,773)	(216,446,956)	(1.83%)	1.60%	(0.03%)	1.60%	(0.03%)	1.60%	(0.03%)
Customer Deposits												
Active	198,990,345	198,990,345	(24,540,153)		174,450,192	1.47%	2.34%	0.03%	2.34%	0.03%	2.34%	0.03%
Inactive	2,136,848	2,136,848	(263,523)		1,873,325	0.02%						
Investment Tax Credits **	12,092,649	10,919,519	(1,346,631)		9,572,888	0.08%	7.25%	0.01%	7.78%	0.01%	8.30%	0.01%
Deferred Income Taxes	2,824,081,232	2,550,111,851	(314,488,294)	(295,105,366)	1,940,518,191	16.39%						
<b>Total</b>	<b>14,614,423,852</b>	<b>13,216,163,094</b>	<b>(1,629,861,286)</b>	<b>256,086,428</b>	<b>11,842,388,236</b>	<b>100.00%</b>		<b>6.09%</b>		<b>6.53%</b>		<b>6.98%</b>
* Daily Weighted Average ** Cost Rates Calculated Per IRS Ruling												

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 Pro Forma Adjusted Basis  
 Dec-18

Schedule 4  
 Page 2 of 4

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point		Mid-Point		High-Point	
							Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	6,091,224,075	5,455,250,664	(241,967,376)	575,566,582	5,788,849,870	43.90%	9.50%	4.17%	10.50%	4.61%	11.50%	5.05%
Long Term Debt	6,029,765,351	5,400,208,731	(239,525,993)		5,160,682,737	39.14%	4.64%	1.81%	4.64%	1.81%	4.64%	1.81%
Short Term Debt *	108,258,000	96,954,983	(4,300,434)	(219,871,209)	(127,216,659)	(0.96%)	3.12%	(0.03%)	3.12%	(0.03%)	3.12%	(0.03%)
Customer Deposits												
Active	197,899,557	197,899,557	(8,777,825)		189,121,732	1.43%	2.35%	0.03%	2.35%	0.03%	2.35%	0.03%
Inactive	1,901,168	1,901,168	(84,326)		1,816,841	0.01%						
Investment Tax Credits **	42,013,177	37,626,659	(1,668,929)		35,957,730	0.27%	7.21%	0.02%	7.74%	0.02%	8.26%	0.02%
Deferred Income Taxes	2,832,453,482	2,536,722,265	(112,516,192)	(287,583,745)	2,136,622,328	16.20%						
<b>Total</b>	<b>15,303,514,809</b>	<b>13,726,564,026</b>	<b>(608,841,074)</b>	<b>68,111,628</b>	<b>13,185,834,580</b>	<b>100.00%</b>		<b>6.01%</b>		<b>6.45%</b>		<b>6.89%</b>

\* Daily Weighted Average

\*\* Cost Rates Calculated Per IRS Ruling

PUBLIC VERSION

DUKE ENERGY FLORIDA  
 Average - Capital Structure  
 FPSC Adjusted Basis  
 Dec-18

Schedule 4  
 Page 3 of 4

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point		Mid-Point		High-Point	
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Common Equity	5,886,848,270	5,315,754,153	(655,556,521)	588,381,568	5,248,579,200	44.32%	9.50%	4.21%	10.50%	4.65%	11.50%	5.10%
Long Term Debt	5,916,715,514	5,342,723,920	(658,882,523)		4,683,841,397	39.55%	4.72%	1.87%	4.72%	1.87%	4.72%	1.87%
Short Term Debt *	(226,441,006)	(204,473,542)	25,216,359	(37,189,773)	(216,446,956)	(1.83%)	1.60%	(0.03%)	1.60%	(0.03%)	1.60%	(0.03%)
Customer Deposits												
Active	198,990,345	198,990,345	(24,540,153)		174,450,192	1.47%	2.34%	0.03%	2.34%	0.03%	2.34%	0.03%
Inactive	2,136,848	2,136,848	(263,523)		1,873,325	0.02%						
Investment Tax Credits **	12,092,649	10,919,519	(1,346,631)		9,572,888	0.08%	7.25%	0.01%	7.78%	0.01%	8.30%	0.01%
Deferred Income Taxes	2,824,081,232	2,550,111,851	(314,488,294)	(295,105,366)	1,940,518,191	16.39%						
<b>Total</b>	<b>14,614,423,852</b>	<b>13,216,163,094</b>	<b>(1,629,861,286)</b>	<b>256,086,428</b>	<b>11,842,388,236</b>	<b>100.00%</b>		<b>6.09%</b>		<b>6.53%</b>		<b>6.98%</b>

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PUBLIC VERSION

DUKE ENERGY FLORIDA  
 End of Period - Capital Structure  
 FPSC Adjusted Basis  
 Dec-18

Schedule 4  
 Page 4 of 4

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point		Mid-Point		High-Point	
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Long Term Debt	6,029,765,351	5,400,208,731	(239,525,993)		5,160,682,737	39.14%	4.64%	1.81%	4.64%	1.81%	4.64%	1.81%
Short Term Debt *	108,258,000	96,954,983	(4,300,434)	(219,871,209)	(127,216,659)	(0.96%)	3.12%	(0.03%)	3.12%	(0.03%)	3.12%	(0.03%)
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Inactive	1,901,168	1,901,168	(84,326)		1,816,841	0.01%						
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