

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. 20-214
Bureau ID No. EB-20-MD-002

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COMMUNICATIONS
DIVISION

**MOTION TO COMPEL FPL'S RESPONSES TO INTERROGATORY NOS. 1-3
OF AT&T'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 1.729 and 1.730, 47 C.F.R. §§ 1.729-30, Complainant ("AT&T") submits this motion to compel Defendant ("FPL") to respond fully to interrogatories.

I. BACKGROUND

Count II of AT&T's Complaint alleges that the pole abandonment provision in the parties' Joint Use Agreement ("JUA") and FPL's implementation of it are unjust and unreasonable pole attachment terms, conditions, and practices.¹ AT&T explained that a pole abandonment provision allows a pole owner to transfer ownership of a single pole it no longer needs (*i.e.*, because it will underground its facilities or no longer serve customers from that location) to an attacher that needs to continue using the pole and which, as the new pole owner, will eventually pay for its removal and disposal. AT&T further explained that FPL unlawfully applied this pole abandonment

¹ See, e.g., *Fla. Cable Telecommunications Ass'n v. Gulf Power Co.*, 18 FCC Rcd 9599, 9603 (¶ 8) (2003) ("The terms and conditions of pole attachments ... include not only the reasonableness of the contract provisions themselves, but also the reasonableness of pole owner practices in implementing contract provisions.").

provision to poles that FPL *replaced*. Unlike abandoned poles, replaced poles are no longer needed by *any* attacher; so, the pole owner must remove and dispose of the replaced pole at its cost after all attachers have transferred their facilities to the replacement pole. Count II alleges that FPL's actions in this regard are unprecedented, unreasonable, and contrary to industry practice, FPL's standard practices, and Commission policy because, among other reasons, they are retaliation for AT&T's questioning FPL's unjust and unreasonable pole attachment rates.²

AT&T served interrogatories upon FPL and now seeks to compel FPL's response to Interrogatory Nos. 1-3 about FPL's pole abandonment practices since 2011, which will show the unreasonableness of FPL's practices in this case. FPL refuses to respond to these requests, arguing that the information is irrelevant because this case should focus only on its effort to abandon and charge AT&T for thousands of replaced poles with no useful future. Although this is a case about reasonableness, FPL believes AT&T has no right to information that would permit a comparison of the challenged conduct to FPL's decades-long standard pole abandonment practices. For the reasons explained below, the Commission should require FPL to provide full and complete answers to Interrogatory Nos. 1-3 immediately, but not later than November 13, 2020.³

² See *BellSouth Telecommunications, LLC d/b/a AT&T Fla. v. Fla. Power and Light Co.* (“AT&T v. FPL”), Proceeding No. 19-187, 2020 WL 2568977, at *1 (¶ 1) (May 20, 2020).

³ During attempts to resolve this dispute, FPL agreed to fully answer Interrogatory Nos. 4, 6, and 7. Ex. F at ATT00560 (Letter from C. Murphey, counsel for FPL, to F. Scaduto, counsel for AT&T (Oct. 5, 2020) (“FPL Oct. 5 Letter”). FPL provided supplemental responses, and the parties are still working through remaining issues with them. AT&T reserves the right to seek to compel answers to those interrogatories if FPL does not provide complete responses.

II. ARGUMENT

In Interrogatory Nos. 1-3, AT&T asked FPL to:

1. Disclose the pole abandonment provisions in its joint use agreements and license agreements (No. 1);
2. Provide information about each FPL pole that FPL claims to have abandoned from 2011 forward under the pole abandonment provisions in its agreements (No. 2); and
3. Provide the number of FPL poles to which the entity was attached during the year FPL abandoned each identified pole (to allow for a proportionality analysis) (No. 3).⁴

This information is “relevant to the material facts in dispute in the pending proceeding.”⁵

The requested information will shed light on FPL’s long-standing standard pole abandonment practices, which are unquestionably relevant because the Commission considers “industry practices” when “setting reasonable terms and conditions in pole attachment cases.”⁶ The information will also speak directly to allegations throughout Count II of AT&T’s Complaint. For example:

- The type of poles FPL abandons in the normal course is relevant to AT&T’s allegation that “FPL’s effort to shift its pole removal and disposal costs to AT&T through the JUA’s pole abandonment provision is unjust and unreasonable because a replaced pole is not by definition an ‘abandoned’ pole.”⁷
- The quantity and frequency of poles FPL abandons in the normal course is relevant to AT&T’s allegation that “FPL’s attempt to classify over 11,000 replaced poles at one time as abandoned is an unreasonable practice.”⁸
- The manner in which FPL abandons poles in the normal course is relevant to AT&T’s allegations that “FPL’s abrupt demand that AT&T complete over 11,000 transfers within 60 days was *instanter* unreasonable, especially as compared to FPL’s description of

⁴ See Ex. A at ATT00534-535 (AT&T’s First Set of Interrogatories).

⁵ 47 C.F.R. § 1.730(a).

⁶ *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, 17 FCC Rcd 6268, 6271 (¶ 8) (2002).

⁷ Compl. ¶ 36.

⁸ Compl. ¶ 37.

industry practice,” which is to “encourage or require attachers to provide advance notice of large applications to allow both parties an opportunity to plan.”⁹

FPL refused to answer Interrogatory Nos. 1-3 for four meritless reasons. *First*, FPL argued that how it treated pole abandonments other than the 11,000+ replaced poles at issue is irrelevant.¹⁰ But any reasonableness analysis *necessarily* includes a comparative component. Both parties’ pleadings confirm as much. AT&T alleged that FPL’s interpretation and implementation of the JUA’s pole abandonment provision is unjust and unreasonable compared to both industry practice and *FPL’s own practices*.¹¹ And FPL’s Answer even compares its behavior to AT&T’s alleged “past actions,” arguing that AT&T has abandoned poles to FPL “after converting [AT&T’s] facilities (*e.g.* undergrounding or relocating).”¹² This clearly illustrates the relevance and importance of past practices to demonstrate reasonableness.

Second, FPL argued that how it interpreted and applied other pole abandonment provisions should not be discoverable because this case does not allege a violation of 47 U.S.C. § 224(f) (nondiscriminatory access).¹³ This is beside the point. By definition, unreasonable discrimination among attachers is unjust and unreasonable under § 224(b). Thus, information showing that FPL imposed a uniquely onerous and unprecedented interpretation of the pole abandonment provision on only AT&T is relevant and discoverable to illustrate FPL’s unjust and unreasonable conduct.

⁹ Compl. ¶ 41.

¹⁰ See Ex. F at 00560-561 (FPL Oct. 5 Letter).

¹¹ See, *e.g.*, Compl. ¶¶ 39-42.

¹² FPL’s Brief in Support of Its Answer at 86 (“FPL Br.”).

¹³ Ex. F at ATT00561 (FPL Oct. 5 Letter).

Third, FPL argued that information that pre-dates the challenged pole abandonments is irrelevant.¹⁴ But FPL relied on “AT&T’s past actions” in its Answer.¹⁵ AT&T is entitled to a reasonable snapshot of FPL’s pole abandonment practices over time, particularly because AT&T alleged that FPL changed its interpretation of the pole abandonment provision only after and in response to AT&T’s request for just and reasonable pole attachment rates.¹⁶ And the timeframe AT&T requested—2011 to present—is reasonable and tailored because it captures only those years when FPL was under a statutory duty to provide just and reasonable terms and conditions to AT&T and all other relevant attachers.¹⁷

Fourth, FPL argued that its pole attachment agreements “contain confidential and proprietary information that FPL does not share with third parties.”¹⁸ The parties easily can address FPL’s concerns via a confidentiality and non-disclosure agreement—just as they resolved this very same issue, with the Enforcement Bureau’s assistance, in the related pole attachment rate complaint proceeding.¹⁹ The Commission should compel FPL to answer Interrogatory Nos. 1-3.

III. CONCLUSION

For these reasons, AT&T requests that the Commission compel FPL to respond fully to Interrogatory Nos. 1-3 from AT&T’s First Set of Interrogatories immediately, but no later than November 13, 2020.

¹⁴ *Id.* at ATT00562.

¹⁵ FPL Br. at 86.

¹⁶ *See, e.g.*, Compl. ¶¶ 7, 32.

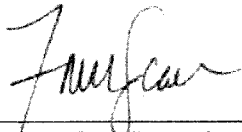
¹⁷ FPL rejected a compromise proposed by AT&T to accept responses going back to only 2014.

¹⁸ Ex. F at ATT00562 (FPL Oct. 5 Letter).

¹⁹ *See* Letters dated Sept. 16, 2019 and Sept. 18, 2019, *AT&T v. FPL*, Proceeding No. 19-187, Bureau ID No. EB-19-MD-006.

Respectfully submitted,

Robert Vitanza
Gary Phillips
David Lawson
AT&T SERVICES, INC.
1120 20th Street NW, Suite 1000
Washington, DC 20036
(214) 757-3357

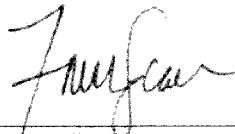
By: 
Christopher S. Huther
Claire J. Evans
Frank Scaduto
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
chuther@wiley.law
cevans@wiley.law
fscaduto@wiley.law

Dated: October 30, 2020

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

RULE 1.721(M) VERIFICATION

I, Frank Scaduto, as signatory to this submission, hereby verify that I have read this Motion to Compel FPL's Responses to AT&T's Interrogatory Nos. 1-3 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.



Frank Scaduto

**RULE 1.729(B) CERTIFICATION
OF GOOD FAITH ATTEMPT TO RESOLVE DISPUTE**

I, Frank Scaduto, as counsel for BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”), hereby certify that a good faith attempt to resolve the dispute was made prior to filing the foregoing Motion to Compel FPL’s Responses to Interrogatory Nos. 1-3 of AT&T’s First Set of Interrogatories.

1. On September 10, 2020, I called Cody T. Murphey, counsel for Defendant Florida Power and Light Company (“FPL”), to discuss the deficiencies in FPL’s interrogatory responses.

2. On September 16, 2020, I followed up on the discovery issues with Mr. Murphey, who informed me that a written response from FPL was forthcoming.

3. On September 18, 2020, Mr. Murphey sent an email stating: “Regarding FPL’s objections to Interrogatory Nos. 1 through 4, FPL believes that its objections are meritorious as written and do not require additional explanation.” *See Exhibit C.*

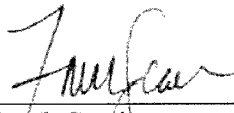
4. On September 29, 2020, I sent Mr. Murphey a letter memorializing the discovery deficiencies we previously discussed by phone, offering a compromise as to the timeframe of information required in FPL’s response, and requesting the interrogatories be answered by October 2, 2020. *See Exhibit D.*

5. On September 30, 2020, Mr. Murphey requested that the October 2, 2020 deadline for FPL to provide its responses be extended to Monday, October 5, 2020 “to allow FPL additional time to process and draft its responses.” I replied with AT&T’s consent to the extension request. *See Exhibit E.*

6. On October 5, 2020, Mr. Murphey sent a letter stating that “FPL stands on its prior objections” and rejecting AT&T’s proposed compromise as to the timeframe of information sought in Interrogatory Nos. 1-3. *See Exhibit F.*

7. On October 27, 2020, I confirmed by email that the parties were at an impasse with respect to Interrogatory Nos. 1-3 and that AT&T would be seeking intervention from the Commission.

8. On October 30, 2020, Charles A. Zdebski, counsel for FPL, responded to my October 27 email to confirm that "FPL stands by its objections" as to Interrogatory Nos. 1-3. As Mr. Zdebski's email further notes, the parties continue to work through their differences as to other interrogatories not at issue in this motion to compel. *See* Exhibit G.



Frank Scaduto

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2020, I caused a copy of the foregoing Motion to Compel FPL's Responses to Interrogatory Nos. 1-3 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
(by ECFS)

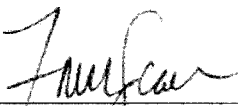
Charles A. Zdebski
Robert J. Gastner
Cody T. Murphey
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW, 12th Floor
Washington, DC 20006
(by email)

Rosemary H. McEnery
Michael Engel
Federal Communications Commission
Enforcement Bureau
Market Disputes Resolution Division
445 12th Street, SW
Washington, DC 20554
(by email)

Joseph Ianno, Jr.
Maria Jose Moncada
Charles Bennett
Florida Power and Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(by overnight delivery)

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



Frank Scaduto

Exhibit A

**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. 20-____
Bureau ID No. EB-20-MD-____

AT&T'S FIRST SET OF INTERROGATORIES TO FPL

Complainant, BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"), by and through its undersigned counsel, requests that Defendant, Florida Power and Light Company ("FPL"), 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 and by mail at Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

The information sought in each Interrogatory is necessary to the resolution of this dispute because each seeks information regarding allegations of AT&T's Pole Attachment Complaint that FPL has imposed unjust and unreasonable pole attachment terms and conditions on AT&T, and engaged in unjust and unreasonable practices, in violation of 47 U.S.C. § 224. 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 FPL'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. “FPL” means Florida Power and Light Company and any persons associated with it, including, but not limited to, each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, 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.
6. “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 FPL. 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 FPL.

(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.

7. "ILEC" means incumbent local exchange carrier.

8. “Joint Use Agreement” means any agreement entered into by FPL and any ILEC that grants access to FPL’s distribution poles, including any amendments, exhibits, appendices, and operational guidelines, practices, or policies.

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

10. “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.

11. “Pole Abandonment Provision” means a provision in a Joint Use Agreement or License Agreement allowing or requiring FPL, upon notice to the other party to the Joint Use Agreement or License Agreement, to transfer ownership of an FPL-owned pole it intends to abandon.

12. “Storm Hardening Plan” means any plan adopted by FPL pursuant to Florida law as provided by Fla. Admin. Code Ann. r. 25-6.0342 (2007), Fl. Stat. § 366.96, and/or Fla. Admin. Code Ann. r. 25-6.030.

13. “You” and “your” have the same meaning as FPL.

14. 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 FPL or any other person acting in the interest of, or on behalf of, FPL. If FPL does not have responsive information, or has information that is only partially responsive, FPL 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 FPL 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. Identify all FPL Joint Use Agreements and License Agreements that were in effect at any time from 2011 forward that contain a Pole Abandonment Provision. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with FPL, the language of the Pole Abandonment Provision, and the dates on which the Joint Use Agreement or License Agreement was in effect. In lieu of quoting each Pole

Abandonment Provision, FPL may produce a copy of the relevant FPL Joint Use Agreements and License Agreements.

2. With respect to each entity identified in response to Interrogatory 1, separately identify every FPL pole by pole number and location that FPL claims to have abandoned to that entity from 2011 forward. Include in your response the date on which FPL provided notice of its intention to transfer ownership of each pole under the Pole Abandonment Provision, the date the transfer of ownership occurred, the amount the entity paid FPL for the pole, the manner in which the payment amount was calculated for each pole, and the dates on which the payment amount was invoiced and paid. Separately list FPL poles for which the transfer of ownership was disputed and undisputed.

3. With respect to each entity identified in response to Interrogatory 2, separately identify the number of FPL poles to which the entity had facilities attached during the year FPL claims to have abandoned each pole identified in response to Interrogatory 2. If this information is not available, identify the number of poles or attachments for which FPL invoiced pole attachment rent during the year FPL claims to have abandoned each pole identified in response to Interrogatory 2.

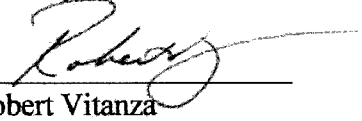
4. On an annual basis from 2011 forward, identify the number of poles FPL replaced or relocated pursuant to a Storm Hardening Plan and the amount that the Florida Public Service Commission has authorized FPL to recover in its electric rates or otherwise for the removal and disposal of the poles replaced or relocated in connection with a Storm Hardening Plan. Provide the amount as a total amount, annual amount, and per-pole amount, and include all support for FPL's calculation.

5. Identify the cost, estimated cost, or average cost FPL incurs to remove a pole and to dispose of a pole that it replaced or relocated pursuant to a Storm Hardening Plan. Identify the cost, estimated cost, or average cost by pole height and class.

6. Describe in detail the field audit referenced in Mr. Jarro's March 20, 2019 letter to AT&T (Pole Attachment Complaint Exhibit 21). In your response, identify all entities and persons who designed and/or performed the field audit, the method and manner in which the field audit was performed, the number of poles that were visited in person to determine whether AT&T's facilities were attached, the date on which each pole was visited, the cost FPL incurred or paid for the field audit, and the results of the field audit. Include in your response the data that was collected during the field audit, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, or guidelines upon which the data was collected.

7. Identify the alleged "amount due FPL for the ownership transfer of the identified poles" referenced in Mr. Jarro's February 22, 2019 letter to AT&T (Pole Attachment Complaint Exhibit 20) and, if different, the alleged "amount due FPL for the transfer of ownership for the identified abandoned poles" referenced in Mr. Jarro's March 20, 2019 letter to AT&T (Pole Attachment Complaint Exhibit 21). Separately provide the total amount and the per-pole amount FPL contends was due for the 5,230 poles listed in the attachment to Mr. Jarro's March 20, 2019 letter to AT&T (Pole Attachment Complaint Exhibit 21). Include in your response the basis, methodology, and assumptions used by FPL to calculate the "amount due," the date FPL first communicated to AT&T the "amount due," and the date FPL first provided AT&T documentation of and support for FPL's calculation of the "amount due."

Respectfully submitted,

By: 

Robert Vitanza
Gary Phillips
David Lawson
AT&T SERVICES, INC.
1120 20th Street NW, Suite 1000
Washington, DC 20036
(214) 757-3357

Christopher S. Huther
Claire J. Evans
Frank Scaduto
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
chuther@wiley.law
cevans@wiley.law
fscaduto@wiley.law

Dated: July 6, 2020

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

CERTIFICATE OF SERVICE


I hereby certify that on July 6, 2020, I caused a copy of the foregoing AT&T's First Set of Interrogatories to FPL to be served concurrently with AT&T's Pole Attachment Complaint on the following (service method indicated):

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

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(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

Exhibit B

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**
Washington, DC 20554

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

Complainant,

v.

FLORIDA POWER & LIGHT
COMPANY,

Respondent.

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Proceeding No. 20-214
Bureau ID No.: EB-20-MD-002

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

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

Opposition

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

General Objections

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

ATT00540

2. FP&L objects to AT&T's First Set of Interrogatories to the extent that the number of interrogatories, together with subparts, total more than the ten interrogatories allowed by Rule 1.730.
3. FP&L objects to AT&T's First Set of Interrogatories to the extent that they seek information protected from disclosure under the attorney-client communication and work-product doctrines.
4. FP&L objects to AT&T's First Set of Interrogatories insofar as they, in essence, ask for FP&L's full, substantive response to the complaint within the deadline for responding to the interrogatories.

Objections to Definitions

FP&L objects to the definition of "FPL" on the grounds that it is overly broad and unduly burdensome and, if applied literally within each interrogatory, would seek information that is protected by the attorney-client privilege and work-product doctrine, would thwart the purpose of consulting and testifying experts, and would seek information that is not relevant to any claim or defense in this proceeding. AT&T defines "FPL" to mean "Florida Power & Light Company and any persons associated with it, including but not limited to, each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, attorney, successors, predecessors, representatives, investigators, experts, employees, ex-employees, consultants, representatives and others who are in possession of, or who may have obtained, information for or on behalf of the above-mentioned persons or entities." *See* AT&T's First Set of Interrogatories, p. 2.

FP&L objects to the definition of the term "identify" on the grounds that it would render each interrogatory in which the term is used vague, overly broad, unduly burdensome and not

reasonably calculated in scope. For example, the definition of “identify” when “referring to data” not only would require type, vintage, and location of collection but also would require “the rules or guidelines governing its collection, and all facts, figures, measurements, and other data collected and analyses performed.” AT&T’s First Set of Interrogatories, p. 3.

Objections to Individual Interrogatories

Interrogatory No. 1. Identify all FPL Joint Use Agreements and License Agreements that were in effect at any time from 2011 forward that contain a Pole Abandonment Provision. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with FPL, the language of the Pole Abandonment Provision, and the dates on which the Joint Use Agreement or License Agreement was in effect. In lieu of quoting each Pole Abandonment Provision, FPL may produce a copy of the relevant FPL Joint Use Agreements and License Agreements.

Objection. FP&L objects to this interrogatory as being overly broad in scope and burdensome as it would take a significant amount of resources and expense to search through countless records and gather the requested data dating back to 2011. More importantly, this interrogatory is seeking information entirely irrelevant to this proceeding. The allegations and legal claims found in AT&T’s complaint focus solely on FP&L’s Joint Use Agreement with AT&T. The terms and conditions of other agreements with third parties are not relevant to any claim or defense in this proceeding. Finally, such other third party agreements contain confidential and proprietary information that FPL does not share with third parties.

Interrogatory No. 2. With respect to each entity identified in response to Interrogatory 1, separately identify every FPL pole by pole number and location that FPL claims to have abandoned to that entity from 2011 forward. Include in your response the date on which FPL provided notice

of its intention to transfer ownership of each pole under the Pole Abandonment Provision, the date the transfer of ownership occurred, the amount the entity paid FPL for the pole, the manner in which the payment amount was calculated for each pole, and the dates on which the payment amount was invoiced and paid. Separately list FPL poles for which the transfer of ownership was disputed and undisputed.

Objection. FP&L incorporates its objections to interrogatory 1. Additionally, this request is even more burdensome in that it would require FPL to go through all of its records searching for notices sent to third parties dating back to 2011.

Interrogatory No. 3. With respect to each entity identified in response to Interrogatory 2, separately identify the number of FPL poles to which the entity had facilities attached during the year FPL claims to have abandoned each pole identified in response to Interrogatory 2. If this information is not available, identify the number of poles or attachments for which FPL invoiced pole attachment rent during the year FPL claims to have abandoned each pole identified in response to Interrogatory 2.

Objection. FP&L incorporates its objections to interrogatories numbered 1 and 2.

Interrogatory No. 4. On an annual basis from 2011 forward, identify the number of poles FPL replaced or relocated pursuant to a Storm Hardening Plan and the amount that the Florida Public Service Commission has authorized FPL to recover in its electric rates or otherwise for the removal and disposal of the poles replaced or relocated in connection with a Storm Hardening Plan. Provide the amount as a total amount, annual amount, and per-pole amount, and include all support for FPL's calculation.

Objection. FP&L objects to this interrogatory as being overly broad in scope and burdensome as it would take a significant amount of resources and expense to gather and provide

the requested data dating back to 2011. In seeking historic information dating back to 2011, this interrogatory seeks information entirely irrelevant to this proceeding and not related to any claim or defense at issue.

Interrogatory No. 6. Describe in detail the field audit referenced in Mr. Jarro's March 20, 2019 letter to AT&T (Pole Attachment Complaint Exhibit 21). In your response, identify all entities and persons who designed and/or performed the field audit, the method and manner in which the field audit was performed, the number of poles that were visited in person to determine whether AT&T's facilities were attached, the date on which each pole was visited, the cost FPL incurred or paid for the field audit, and the results of the field audit. Include in your response the data that was collected during the field audit, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, or guidelines upon which the data was collected.

Objection. FP&L objects to this interrogatory as being overly broad and as seeking information entirely irrelevant to this proceeding. The allegations and legal claims found in AT&T's complaint in this proceeding are solely focused on the plain language of FP&L's Joint Use Agreement with AT&T. The remedy sought by AT&T is solely focused on the reformation of that contractual language. Thus, the results of any audit conducted by FP&L and additional details surrounding any such audit are completely irrelevant to the relief sought by AT&T and the legal claims underpinning its request for relief. As such, the information sought by this interrogatory is not relevant to any claim or defense in this proceeding.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC

/s/ Cody T. Murphey

Charles A. Zdebski
Robert J. Gastner
Cody T. Murphey
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(Tel) 202.659.6600
(Fax) 202.659.6699
czdebski@eckertseamans.com

Joseph Ianno, Jr.
Maria Jose Moncada
Charles Bennett
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408

Counsel to Florida Power & Light Company

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2020 I caused a copy of the foregoing Opposition and Objections to AT&T's First Set of Interrogatories to be served on the following as indicated below:

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

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

Lisa B. Griffin
Lia Royle
Federal Communications Commission
Enforcement Bureau
Market Disputes Resolution Division
445 12th Street, SW
Washington, D.C. 20554
(Via ECFS and e-mail)

Marlene H. Dortch, Secretary
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701
(Via ECFS)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(Via U.S. Mail)

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

/s/ Cody T. Murphey

Cody T. Murphey

Exhibit C

Scaduto, Frank

From: Cody Murphey <cmurphey@eckertseamans.com>
Sent: Friday, September 18, 2020 5:09 PM
To: Scaduto, Frank
Cc: Charles A. Zdebski; Robert J. Gastner; Huther, Christopher; Evans, Claire
Subject: No. 20-214 - FPL's Responses
Attachments: NO. 20-214 - ATTACHMENT TO FPL RESP. - INT. NO. 7 (Y0185698xBD6FB).xlsx

External Email

Frank,

Pursuant to our discussion on Wednesday, we are writing in response to AT&T's request that FPL provide additional explanation in support of its objections to AT&T's First Set of Interrogatories.

Regarding FPL's objections to Interrogatory Nos. 1 through 4, FPL believes that its objections are meritorious as written and do not require additional explanation.

With respect to FPL's objections to Interrogatory No. 6, FPL will provide a response to Interrogatory No. 6. FPL is currently working on its response. Once finalized, we will file FPL's response with the Commission as a supplement to its August 28, 2020 Responses to AT&T's First Set of Interrogatories and promptly send to AT&T.

Finally, we have attached to this email the Attachment identified in FPL's response to AT&T's Interrogatory No. 7 in the native, excel format.

Best,

Cody

Cody Murphey, Associate
ECKERT SEAMANS CHERIN & MELLOTT, LLC
919 East Main Street, Suite 1300 | Richmond, VA 23219

T: 804-788-7765 C: 804-370-4112 F: 804-698-2950
cmurphey@eckertseamans.com | [bio](#) | [vCard](#) | [LinkedIn](#)

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eckertseamans.com

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Exhibit D

Frank Scaduto
202.719.3479
fscaduto@wiley.law



Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
Tel: 202.719.7000

September 29, 2020

wiley.law

Cody Murphey
Eckert Seamans Cherin & Mellott, LLC
919 East Main Street, Suite 1300
Richmond, VA 23219

Re: *BellSouth Telecommunications, LLC d/b/a AT&T Florida v. Florida Power and Light Company*, Proceeding Number 20-214, Bureau ID Number EB-20-MD-002

Dear Mr. Murphey:

I am writing on behalf of BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T") in response to your email of September 18, 2020, regarding the discovery responses of Florida Power and Light Company ("FPL") in the above-captioned proceeding. We appreciate FPL committing to provide a response to Interrogatory No. 6 and producing the native Excel spreadsheet in response to Interrogatory No. 7. We disagree, however, with FPL's continued refusal to respond to Interrogatory Nos. 1 through 4 and have not yet received a complete response to Interrogatory No. 7.

As discussed on our September 10, 2020 telephone call, Interrogatory Nos. 1 through 4 are relevant and go to the heart of the reasonableness inquiry that is central to AT&T's pole attachment complaint. We disagree with the assertion in your September 18 email that FPL's July 17, 2020 objections to those Interrogatories "are meritorious as written and do not require additional explanation." This letter memorializes AT&T's position with respect to those Interrogatories and identifies the deficiencies in FPL's response to Interrogatory No. 7 in the hopes the parties can resolve their differences without resort to intervention by the Enforcement Bureau.

FPL's abandonment practices under similar contract language: Interrogatory Nos. 1, 2, and 3

Interrogatory Nos. 1 through 3 seek information about pole abandonment provisions in FPL's agreements with other attachers and FPL's abandonment or attempted abandonment of poles under those provisions. This information is directly relevant to AT&T's claim that FPL is engaging in an unreasonable practice in violation of 47 U.S.C. § 224 by singling AT&T out and pressing a novel interpretation of the pole abandonment provision designed to increase AT&T's costs. The quantity, frequency, timing, and cost of poles abandoned by FPL under its other agreements will shed light on AT&T's claim that FPL has unreasonably relied on the JUA's pole abandonment provision to try to force a mass transfer of replaced poles and shift FPL's pole removal and disposal costs to AT&T.

FPL's recovery of pole abandonment costs in PSC rate proceedings: Interrogatory No. 4

Interrogatory No. 4 seeks information about costs the Florida Public Service Commission ("PSC") has authorized FPL to recover in its electric rates or otherwise for the removal and

ATT00551

disposal of joint use poles replaced or relocated in connection with a Storm Hardening Plan. This information is relevant because, as AT&T alleged, FPL unreasonably seeks to shift FPL's pole replacement and disposal costs to AT&T even though State regulations already provide FPL full compensation for those costs. AT&T is entitled to understand how the costs should be recovered according to the PSC, and whether FPL is trying to double-collect the same costs from AT&T through its unreasonable interpretation of the pole abandonment provision.

Other than relevance, which is addressed above, FPL objects to Interrogatories Nos. 1 through 4 on burden and scope grounds because they seek information going back to 2011. AT&T believes this timeframe is appropriate because FPL has had a continuous obligation since 2011, with the issuance of the *Pole Attachment Order*,¹ to ensure the rates, terms, and conditions in the JUA are just and reasonable. The timeframe also provides a reasonable snapshot of FPL's pole abandonment practices and cost recovery over time, which is relevant because AT&T alleged that FPL changed its interpretation of the pole abandonment provision in response to AT&T's request for just and reasonable pole attachment rates. However, in the interest of compromise, and without waiving AT&T's right to move to compel responses back to 2011, AT&T agrees to accept responses for a shorter timeframe going back to 2014. The resulting five-year timeframe should alleviate any concerns with burden and scope while still providing a probative snapshot of FPL's practices for purposes of this pole attachment complaint proceeding.

**Information about the alleged "amount due" under the pole abandonment provision:
Interrogatory No. 7**

FPL did not provide a complete response to Interrogatory No. 7, which seeks information relevant to the reasonableness of FPL's effort to charge AT&T for a mass transfer of replaced poles under the JUA's pole abandonment provision. In particular, FPL did not include in "the date FPL first communicated to AT&T the 'amount due'" or "the date FPL first provided AT&T documentation of and support for FPL's calculation of the 'amount due.'" FPL also did not include in its response a description "the basis, methodology, and assumptions used by FPL to calculate the 'amount due,'" other than to provide a lengthy spreadsheet for AT&T to try to decipher. FPL did not lodge an objection to Interrogatory No. 7, so should supplement its response without delay.

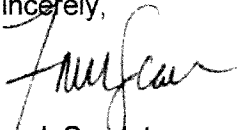
AT&T requests that, by October 2, 2020, FPL supplement its responses to Interrogatory Nos. 6 and 7 and provide a response to Interrogatory Nos. 1 through 4 including complete information from 2014 to the present. In the event FPL chooses to stand on its objections or fails to provide a complete response to these Interrogatories, AT&T reserves the right to file a motion to compel with the Enforcement Bureau.

We look forward to working with you to resolve this matter.

¹ See *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").

Cody Murphey
September 29, 2020
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Scaduto". The signature is written in a cursive, flowing style with a prominent initial "F".

Frank Scaduto

Exhibit E

Scaduto, Frank

From: Scaduto, Frank
Sent: Wednesday, September 30, 2020 7:21 PM
To: 'Cody Murphey'
Cc: Charles A. Zdebski; Robert J. Gastner; Huther, Christopher; Evans, Claire
Subject: RE: No. 20-214 - FPL's Responses

Cody:

AT&T consents to FPL's request to extend the deadline to provide its responses from October 2 to October 5.

Best,

Frank



Frank Scaduto
Attorney at Law
fscaduto@wiley.law

Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006
o: 202.719.3479
[Download V-Card](#) | wiley.law

Note: The firm's domain has changed to wiley.law. To update my contact information, please download my [vCard](#)

From: Cody Murphey <cmurphey@eckertseamans.com>
Sent: Wednesday, September 30, 2020 3:36 PM
To: Scaduto, Frank <FScaduto@wiley.law>
Cc: Charles A. Zdebski <CZdebski@eckertseamans.com>; Robert J. Gastner <rgastner@eckertseamans.com>; Huther, Christopher <CHuther@wiley.law>; Evans, Claire <CEvans@wiley.law>
Subject: RE: No. 20-214 - FPL's Responses

External Email

Frank,

We are in receipt of AT&T's Letter memorializing its position regarding FPL's discovery responses to AT&T's Interrogatories. We are currently working with the client to process and draft FPL's responses to AT&T's Letter. However, we ask that the October 2nd deadline for FPL to provide its responses be extended to Monday, October 5th to allow FPL additional time to process and draft its responses.

Please let us know if you have any questions.

Best,

Cody



Cody Murphey, Associate
ECKERT SEAMANS CHERIN & MELLOTT, LLC
919 East Main Street, Suite 1300 | Richmond, VA 23219

T: 804-788-7765 C: 804-370-4112 F: 804-698-2950

From: Scaduto, Frank <FScaduto@wiley.law>
Sent: Tuesday, September 29, 2020 2:44 PM
To: Cody Murphey <cmurphey@eckertseamans.com>
Cc: Charles A. Zdebski <CZdebski@eckertseamans.com>; Robert J. Gastner <rgastner@eckertseamans.com>; Huther, Christopher <CHuther@wiley.law>; Evans, Claire <CEvans@wiley.law>
Subject: [External] RE: No. 20-214 - FPL's Responses

Cody:

Please see the attached letter.

Best,

Frank



Frank Scaduto
Attorney at Law
fscaduto@wiley.law

Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006
o: 202.719.3479
[Download V-Card](#) | wiley.law

Note: The firm's domain has changed to wiley.law. To update my contact information, please download my [vCard](#)

From: Cody Murphey <cmurphey@eckertseamans.com>
Sent: Friday, September 18, 2020 5:09 PM
To: Scaduto, Frank <FScaduto@wiley.law>
Cc: Charles A. Zdebski <CZdebski@eckertseamans.com>; Robert J. Gastner <rgastner@eckertseamans.com>; Huther, Christopher <CHuther@wiley.law>; Evans, Claire <CEvans@wiley.law>
Subject: No. 20-214 - FPL's Responses

External Email

Frank,

Pursuant to our discussion on Wednesday, we are writing in response to AT&T's request that FPL provide additional explanation in support of its objections to AT&T's First Set of Interrogatories.

Regarding FPL's objections to Interrogatory Nos. 1 through 4, FPL believes that its objections are meritorious as written and do not require additional explanation.

With respect to FPL's objections to Interrogatory No. 6, FPL will provide a response to Interrogatory No. 6. FPL is currently working on its response. Once finalized, we will file FPL's response with the Commission as a supplement to its August 28, 2020 Responses to AT&T's First Set of Interrogatories and promptly send to AT&T.

Finally, we have attached to this email the Attachment identified in FPL's response to AT&T's Interrogatory No. 7 in the native, excel format.

Best,

Cody

Cody Murphey, Associate
ECKERT SEAMANS CHERIN & MELLOTT, LLC
919 East Main Street, Suite 1300 | Richmond, VA 23219

T: 804-788-7765 C: 804-370-4112 F: 804-698-2950
cmurphey@eckertseamans.com | [bio](#) | [vCard](#) | [LinkedIn](#)

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Exhibit F

Cody T. Murphey
(804) 788-7765
cmurphey@eckertseamans.com

October 5, 2020

Frank Scaduto, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

Re: *BellSouth Telecommunications, LLC d/b/a AT&T Florida v. Florida Power & Light Company*
Proceeding No. 20-214
Bureau ID No.: EB-20-MD-002

Dear Mr. Scaduto:

This letter is in response to your letter on behalf of BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”) dated September 29, 2020 regarding the discovery responses of Florida Power & Light Company (“FPL”) in the above-captioned proceeding (“Letter”). For the reasons discussed herein, FPL maintains its objections to Interrogatory Nos. 1 through 3 because the requested information is neither relevant to the claims asserted in AT&T’s Complaint nor proportional to the needs of the case.¹ Regarding Interrogatory No. 4, FPL stands on its prior objections and also notes that the requested information is in the public record and FPL does not have to provide work-product in explaining regulated cost-based ratemaking and cost recovery analysis to AT&T. As to Interrogatory Nos. 6 and 7, FPL will provide the requested response to No. 6 and a supplemental narrative answer to No. 7.

I. Interrogatory Nos. 1 through 3 are not relevant to the claims asserted in AT&T’s Complaint

FPL maintains its objections to Interrogatory Nos. 1 through 3 as stated in its Opposition and Objections to AT&T’s First Set of Interrogatories. The provisions of FPL’s Joint Use Agreements and License Agreements with entities other than AT&T are not relevant to AT&T’s allegations that the terms and conditions of the Joint Use Agreement (“JUA”) between AT&T and FPL, as applied under the particular and unique facts of this case, are unjust and unreasonable. The JUA at issue in this proceeding was negotiated at arm’s length and is specific to AT&T and FPL, just like the joint use agreements between FPL and other ILECs. Equally important, the rights exercised by FPL under the JUA in response to the defaults committed by

¹ See Fed. R. Civ. P. 30; *MCI Telecommunications Corp. v. Pacific Bell Tel. Co., et al.*, 8 FCC Red. 1517, 1519 n. 22 (1993) (“[A]t times we find the Federal Rules to be instructive in handling certain proceedings . . .”).

AT&T under the JUA—such as AT&T’s failure to pay any amounts at all for joint use rental between March 5, 2018 and July 1, 2019, AT&T’s failure to maintain and replace its joint use poles properly, and AT&T’s failure to timely transfer attachments to FPL’s storm-hardened poles—are specific to the unique facts and circumstances of this matter.² FPL exercised these rights in a reasonable, measured and restrained manner over the course of AT&T’s extended period of defaults, in each instance providing a thorough notice of AT&T’s defaults and an incremental proportional response seeking resolution.³ Because of AT&T’s unique pattern of egregious behavior over an extended period of time, no other FPL joint use relationships have any relevance to this case.

Further, AT&T misconstrues the allegations in its Complaint by asserting “[t]hat this information is directly relevant to AT&T’s claim that FPL is engaging in an unreasonable practice in violation of 47 U.S.C. § 224 by singling AT&T out”⁴ AT&T’s claims are that it is entitled to just and reasonable terms and conditions under 47 U.S.C. § 224(b). They are not that it is entitled to nondiscriminatory access under 47 U.S.C. § 224(f), nor can they be, as the Commission has held that ILECs are not entitled to the protections of Section 224(f).⁵ To be sure, the Complaint is properly devoid of an allegation that FPL engaged in discriminatory behavior towards AT&T.

Any allegation that FPL engaged in discriminatory treatment is not only devoid in AT&T’s Complaint, it is divorced from the relief requested. AT&T requests that the Commission “find that FPL has engaged in unjust and unreasonable pole attachment practices . . . and has imposed unjust and unreasonable pole attachment terms and conditions on AT&T in violation of [47 U.S.C. § 224(b)(1)].”⁶ As AT&T states in its Complaint, § 224(b)(1) gives the Federal Communication Commission (“Commission”) authority “to ensure that the pole attachment terms and conditions FPL provides AT&T are just and reasonable.”⁷ Section 224(b)(1) contains no language regarding discriminatory treatment. The Commission, therefore, treats complaints under Section 224(f) as distinct from complaints under Section 224(b).⁸

² See Comp. ¶¶ 9 n.17, 15 n. 37; AT&T Ex. 6, FPL’s Notice of Default.

³ See, e.g., AT&T Ex. 6, FPL’s Notice of Default; AT&T Ex. 8, Letter from M. Jarro; AT&T Ex. 10, FPL’s Notice of Abandonment; AT&T Ex. 11, FPL’s Notice to Initiate Mediation; AT&T Ex. 12, FPL’s Notice of Enforcement of Suspension; AT&T Ex. 16, Letter from M. Jarro; AT&T Ex. 20, Letter from M. Jarro; AT&T Ex. 21, Letter from M. Jarro; AT&T Ex. 23, FPL’s Notice of Termination.

⁴ Letter at 1.

⁵ *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, 5329–30 (¶ 207) (2011) (finding that incumbent LECs “have no statutory right of nondiscriminatory access to poles, ducts, conduits or rights-of-way under [§ 224(f)].”).

⁶ Compl. ¶ 56 (citing to 47 U.S.C. § 224(b)(1) as the federal law FPL allegedly violated).

⁷ Compl. ¶¶ 49, 53.

⁸ *Maw Commc'ns, Inc., Complainant v. Ppl Elec. Utilities Corp.*, No. DA19-771, 2019 WL 3812718, at *7 (OHMSV Aug. 12, 2019) (“Because the current Complaint contains only a single count alleging a denial of access, we deny these additional requests for relief. These requests might be appropriate if MAW’s complaint contained a count

As a result, the FPL joint use agreements that AT&T seeks in Interrogatory Nos. 1 through 3 are not relevant to the allegations and claims in its Complaint because they contain no allegations, nor can they, that FPL failed to provide nondiscriminatory access to AT&T.

II. Information going back to 2011 is not relevant to the specific allegations contained in AT&T's Complaint

FPL stands by its objections to Interrogatory Nos. 1 through 4 on the grounds that the request for information going back to 2011 is overly broad in scope, irrelevant to this proceeding, and not proportional to the needs of this case. While FPL appreciates AT&T's concession of shortening the time period of the request from 2011 to 2014, this does not solve the issue of temporal relevancy.

Throughout its Complaint, AT&T alleges that FPL began engaging in unjust and unreasonable practices in 2018.⁹ AT&T even admits that, prior to 2018, the parties “operated cooperatively for years” under the JUA’s abandonment provision, but alleges that in 2018, “FPL’s interpretation and implementation of the pole abandonment provision is unjust and unreasonable as compared to the parties’ prior practice.”¹⁰ As a result, information going back past 2018 is not relevant to AT&T’s claims that FPL unjustly and unreasonably implemented and interpreted the JUA.

III. The information sought in Interrogatory No. 4 is in the public record

FPL maintains its objections to Interrogatory No. 4 and adds that because it requests information contained in publicly accessible records, FPL is not obligated to provide work-product in explaining cost-based rate recovery and the Florida Public Service Commission’s proceedings to AT&T, which presumably has its own in-house ratemaking experts.

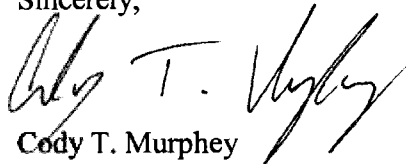
alleging that PPL imposes unjust and unreasonable rates, terms, or conditions of attachment in violation of section 224(b) of the Act, but it does not.”); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 32 F.C.C. Rcd. 11128, n. 21 (2017) (“A ‘pole access complaint’ is a complaint filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole. This term does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access.”).

⁹ See, e.g., Compl. ¶ 9 (“FPL’s threats to dismantle AT&T’s network of cables on FPL poles date back to 2018”); Compl. ¶¶ 30–33 (alleging that FPL’s Notice of Abandonment dated December 19, 2018 was an “abrupt, dramatic change in position” because the parties had previously cooperated under the pole abandonment provision); Compl. ¶ 42 (alleging that FPL’s interpretation and implementation of the pole abandonment provision that began in 2018 “is unjust and unreasonable as compared to the parties’ prior practice. . . .”).

¹⁰ Compl. ¶ 42.

FPL hopes that the above explanations resolve any issues regarding FPL's responses and objections to AT&T's First Set of Interrogatories. Should, however, AT&T have any remaining questions or issues, we suggest that counsel have a phone call in an effort to resolve any such remaining issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Cody T. Murphey". The signature is written in a cursive style with a large, sweeping initial "C".

Cody T. Murphey

Exhibit G

Scaduto, Frank

From: Charles A. Zdebski <CZdebski@eckertseamans.com>
Sent: Friday, October 30, 2020 11:18 AM
To: Scaduto, Frank; Cody Murphey
Cc: Robert J. Gastner; Huther, Christopher; Evans, Claire; Charles A. Zdebski
Subject: Re: No. 20-214 - FPL's Supplemental Responses to ATT's Interrogatories (First Set)

External Email

Frank:

We are writing in response to your email below regarding FPL's supplemental responses to AT&T's First Set of Interrogatories. We have the following updates regarding each interrogatory as indicated.

Interrogatories 1-3: FPL stands by its objections and explanation in its response letter to AT&T.

Interrogatory 4: There was in fact a typo on one of the docket numbers, which we will correct. Regarding the substance of the response, FPL has provided AT&T what it asked for in the interrogatory and follow up. Nonetheless, in a good faith effort to work together to resolve any open questions, FPL is working towards providing a brief narrative response to this interrogatory.

Interrogatory 6: FPL will soon provide a further response.

Interrogatory 7: FPL will soon provide a further response.

Please contact us if you have any questions or wish to discuss this matter further.

Regards,

~ Charlie

ECKERT
SEAMANS
ATTORNEYS AT LAW

Charles A. Zdebski, Member
ECKERT SEAMANS CHERIN & MELLOTT, LLC
1717 Pennsylvania Avenue, NW, 12th Floor | Washington, D.C. 20006

T: 202-659-6605 C: 202-277-3326 F: 202-659-6699

From: Scaduto, Frank <FScaduto@wiley.law>
Sent: Tuesday, October 27, 2020 7:14 PM
To: Cody Murphey

Cc: Charles A. Zdebski; Robert J. Gastner; Huther, Christopher; Evans, Claire
Subject: [External] RE: No. 20-214 - FPL's Supplemental Responses to ATT's Interrogatories (First Set)

Cody:

Thank you for FPL's supplemental responses to AT&T's First Set of Interrogatories. Based on our review to date, we have identified three critical issues with the supplemental responses:

First, with respect to Interrogatory No. 4, one of the docket numbers provided, No. 150061, has nothing to do with FPL or its Storm Hardening Plan. We assume this to be a typographical error. The other docket numbers do not appear to contain "the number of poles FPL replaced or relocated pursuant to a Storm Hardening Plan" or "the amount that the Florida Public Service Commission has authorized FPL to recover in its electric rates or otherwise for the removal and disposal of the poles replaced or relocated in connection with a Storm Hardening Plan." Please provide a correct and complete response to Interrogatory No. 4.

Second, with respect to Interrogatory No. 6, FPL still has failed to "identify all entities and persons who designed and/or performed the field audit." The term "identify" is defined in AT&T's interrogatories to require the full name and address of any person or business organization. Indeed, FPL's first set of interrogatories to AT&T uses a nearly identical definition of "identify." FPL's supplemental response nonetheless refers to an "independent vendor ('Field Inspector')" without identifying the full name and address of that vendor. There is no basis for FPL to continue to withhold the identity of the vendor or any other entities or persons responsive to this request. Please immediately "identify all entities and persons who designed and/or performed the field audit," as required by Interrogatory No. 6.

Third, with respect to Interrogatory No. 7, FPL still has not provided "the date FPL first provided AT&T documentation of and support for FPL's calculation of the 'amount due.'" FPL did not object to Interrogatory No. 7 and there is no basis for FPL's failure to respond in full.

We hope to resolve these differences immediately, as FPL has had over three months to respond to AT&T's first set of interrogatories and the parties have been meeting and conferring for over a month.

We also appreciate our prior discussions and correspondence regarding FPL's decision to stand on its objections, and not respond to, Interrogatory Nos. 1-3. AT&T intends to raise the parties' dispute as to Interrogatory Nos. 1-3 with the Commission.

Best,
Frank



Frank Scaduto
Attorney at Law
fscaduto@wiley.law

Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006

o: 202.719.3479

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Note: The firm's domain has changed to wiley.law. To update my contact information, please download my [vCard](#)

From: Cody Murphey <cmurphey@eckertseamans.com>

Sent: Monday, October 19, 2020 5:50 PM

To: lisa.griffin@fcc.gov; lia.royle@fcc.gov

Cc: Huther, Christopher <CHuther@wiley.law>; Scaduto, Frank <FScaduto@wiley.law>; Evans, Claire <CEvans@wiley.law>; Charles A. Zdebski <CZdebski@eckertseamans.com>; Robert J. Gastner <rgastner@eckertseamans.com>

Subject: No. 20-214 - FPL's Supplemental Responses to ATT's Interrogatories (First Set)

External Email

Ms. Griffin and Ms. Royle:

Please find attached a copy of Florida Power & Light Company's Supplemental Responses to AT&T's First Set of Interrogatories. The attached document was filed electronically with the Commission via ECFS in Proceeding No. 20-214.

Best,

Cody

Cody Murphey, Associate
ECKERT SEAMANS CHERIN & MELLOTT, LLC
919 East Main Street, Suite 1300 | Richmond, VA 23219

T: 804-788-7765 C: 804-370-4112 F: 804-698-2950
cmurphey@eckertseamans.com | [bio](#) | [vCard](#) | [LinkedIn](#)

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