



TRACY W. HATCH
Assistant Vice President – Senior Legal Counsel
AT&T Florida

AT&T Services, Inc.
Legal Department
150 South Monroe St.
Suite 400
Tallahassee, FL 32301

T: 850-577-5505
F: 850-222-4401
Email: th9467@att.com

FILED 11/15/2021
DOCUMENT NO. 12710-2021
FPSC - COMMISSION CLERK

November 15, 2021

Adam Teitzman, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 20210138-PU - Proposed adoption of Rule 25-18.020, F.A.C,
Pole Inspection and Maintenance.**

Dear Mr. Teitzman:

Enclosed for filing are BellSouth Telecommunications LLC, d/b/a AT&T Florida's
Comments on Draft Rule 25-18.020, which we ask that you file in the above captioned
docket.

Sincerely,

Tracy Hatch

TWH/vs
Attachments

FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Adoption of Rule 25-18.020, FAC)
Pole Inspection and Maintenance Plan)
_____)

Docket No. 20210138-PU
Filed: November 15, 2021

AT&T's Comments On Proposed Draft Rule 25-18.020

AT&T welcomes the opportunity to provide comments on the proposed draft of Rule 25-18-020 FAC. Section 366.04(9), Florida Statutes provides the regulatory authority for the Florida Public Service Commission (“Commission”) to engage in regulation of “safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, relocation, emergency response, and storm restoration” for poles owned by communications service providers that also have electric facilities attached. This new statute further requires the adoption of rules to administer and implement its authority.

Legislative grants of authority generally provide specific guidance as to how the grant of authority should be exercised. *See e.g.* 366.03, Florida Statutes. However, with the instant section 366.04(9), the Legislature did not provide any guidance or a “pole star” to guide the rule that will be adopted to implement the provisions. The absence of specific guidance gives the Commission flexibility in developing standards to be met by communications services providers subject to the adopted rules.

Historically, safety and reliability were the principal goals of the pole inspection and maintenance plans approved by the Commission. While AT&T suggests that those goals remain the guide for moving forward with Rule 25-18.020, the Commission should also recognize the dramatic evolution of the communications industry and the manner in which communications services are provided. Since the initial maintenance and inspection plans were before the

Commission more than a decade ago, the communications industry has shifted from a pervasively regulated industry to a fully competitive industry.

In a competitive environment, regulatory compliance costs must be a major consideration to avoid excessive and unneeded regulations that otherwise would burden or interfere with the competitive market. In short, the goal of the rules should be the essential level of safety and reliability that can be achieved with the least regulatory cost burden. To that end, the rules should be based on meaningful standards that require only necessarily useful activities and information. To do otherwise is to simply inflate regulatory compliance cost burden for affected communications services providers without any commensurate benefit to safety and reliability. Any rules adopted should critically balance the regulatory requirement against need and utility of the action or information required. Accordingly, AT&T suggests the following modifications to the draft rule. Accompanying edits to the draft rule are attached.

AT&T suggests modification to the rule in the following instances:

25-18.020(3) – Annual Report – Depending on the cycle for pole inspections, an annual report may be more frequent than needed for purposes of tracking progress on a pole inspection and maintenance plan. For example, if the cycle were 10 years as suggested by Frontier a three- or five-year cycle would be appropriate to inform the Commission on progress within the cycle. Similarly, if an eight-year cycle is assumed, a two or four-year reporting cycle would be more than sufficient to gauge progress of a communications service provider under its plan.

25-18-020(4)(a) – Vegetation Management Cycle – The draft rule imposes a three-year cycle for vegetation management and requires a description of vegetation management techniques for the cycle, the total miles to be managed and the total miles of vegetation management conducted for each year of the cycle. There is no apparent basis for a three-year

cycle. A three-year cycle is inconsistent with the “as needed” standard the National Electrical Safety Code provides.

25-18-020(5)(a)(9) - Pole Relocation – The Commission is required by 266.04(9) to address pole inspections, vegetation management and penalties. The legislation authorizes the Commission to address pole relocation but does not require that relocations be addressed in the rules. AT&T suggests that pole relocations do not in any way affect the safety or reliability of either electric or communications facilities. The number of relocations and the reason will not give the Commission any meaningful information other than simple statistics. More importantly, there is no apparent problem related to relocations that would require action by the Commission. If a problem becomes apparent, the Commission is free to revisit this issue as needed.

25-18-020(5)(a)10 and 11. – Vegetation Management - The Annual Report requires total number of miles of vegetation management conducted including by technique type.

AT&T suggests eliminating the requirements for the “total miles of overhead facilities requiring vegetation management” and the “total miles of overhead facilities” of management conducted in the three-year cycle. This information does not provide any meaningful information that would contribute to safety and reliability. First, AT&T is precluded from conducting any vegetation management in the space in which the overhead electric facilities are located because of safety issues. Hence, AT&T is left to manage vegetation only for aerial communications facilities. Second, all aerial communications facilities are low voltage facilities and do not create a safety issue for personnel working on or around such facilities. Moreover, vegetation is not typically a reliability issue for communications facilities unless the vegetation actually breaks a communications facility. Finally, based on field experience, vegetation management for communications facilities is typically conducted on an “as needed” basis to

clear interference with installation of aerial facilities or where there is a service outage or other service affecting issue. Neither of these instances are numerous or common. The “as needed” approach is consistent with the National Electrical Safety Code Rule 118 which the Commissions draft rule incorporates. This rule requires that vegetation management be performed as necessary based on experience.

There is little reason to expect that reporting miles of vegetation managed or to be managed would provide any reasonably useful information. Compiling and reporting this type of information, would only demonstrate what experience has shown – that there is not a problem to be solved. It would needlessly inflate the regulatory cost without providing any regulatory benefit at the same time that AT&T no longer has a captive base of customers from whom to recover the cost.

25-18.020(5)(a)12 – Emergency Repairs-actual repairs/replacements of poles – This rule section asks for a “description of the company’s emergency procedures and protocols, including any actual repairs or replacement of poles”. The request for the number of repairs or replacement of poles is redundant; it duplicates the information requested in 25-18.020(5)(a)7 and 8. AT&T suggests the duplication be deleted.

25-18.020(5)(b)2 and 3 – Vegetation Management – For the same reasons discussed above, AT&T suggests that the total miles of vegetation management conducted including by technique and total miles of vegetation to be conducted be eliminated from the proposed rule. AT&T is precluded from management of vegetation in the electric space. The requested vegetation management information for the Annual Report does not provide any meaningful information as to either the safety or reliability of any aerial communications facilities. To the

extent that a real problem becomes apparent, the Commission is free to revisit the need for vegetation management.

AT&T appreciates the opportunity to provide these comments and respectfully reserves the right to provide additional comments as needed to address comments of other parties or questions that arise in the course of this proceeding.

1 25-18.020 Pole Safety, Inspection, Maintenance, and Vegetation Management.
2 (1) This rule applies to all communications services providers as defined in Section
3 366.02(5), F.S., that own poles as defined in Section 366.02(6), F.S. This rule does not apply
4 to poles used solely to support wireless communications service facilities or poles with no
5 public utility electrical **overhead** facilities attached. For the purposes of this rule, “overhead facilities”
6 are defined as fixtures, conductors, wires, cables, and other devices owned by public utilities
7 that are attached to poles owned by a communications services provider.

8 (2) Safety, Inspection, and Maintenance Standards. Each communications services
9 provider must exercise due care to reduce hazards to which its employees, customers, and the
10 public may be subjected by reason of its poles. Accordingly, all poles of communications
11 services providers subject to the Commission’s jurisdiction under Section 366.04(9), F.S.,
12 must be constructed, installed, maintained, and inspected in accordance with the 2017
13 National Electrical Safety Code (NESC) C2-2017, which the Commission hereby adopts and
14 incorporates by reference. Each communications services provider that owns poles with public
15 utility **overhead** facilities attached must comply with the standards in these provisions. The 2017 NESC
16 C2-2017 is copyrighted and may be inspected and examined at no cost at the Florida Public
17 Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. A
18 copy of the NESC C2-2017 may be obtained from the Institute of Electric and Electronic
19 Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997.

20 (3) Inspection Cycle and Repair and Replacement of Poles.

21 (a) Each communications services provider must conduct inspections of its poles at least
22 every **eight insert inspection cycle** years to ensure adherence to the strength and clearance
23 standards of the NESC.

24 (b) Poles failing strength testing must be repaired or replaced to meet NESC standards.

25 (4) **Vegetation Management-Cycle**. Each communications services provider must clear

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1 overhead facilities of vegetation as required by the National Electric Safety Code. at least every three years.

2 (5) Periodic Annual Reports. By June 1 of each reporting year, each communications services provider must

3 file with the Commission Clerk an Annual a Report.

4 (a) The Annual Report must include the following information for the prior calendar year:

5 1. The number of poles owned in whole or in part by the communications services

6 provider at the beginning and at the end of the reporting period calendar year;

7 2. The number of poles that were scheduled for inspection;

8 3. The number of poles actually inspected;

9 4. The number of poles that failed inspection;

10 5. The number of poles strength tested;

11 6. The number of poles that failed strength testing;

12 7. The number of poles repaired and a summary of the repairs;

13 8. The number of poles replaced and reason for replacement;

14 ~~9. The number of poles relocated and reason for relocation;~~

15 ~~10. The total miles of vegetation management conducted;~~

16 ~~11. The total miles of vegetation management conducted for each technique used;~~

17 12. A description of the company's emergency procedures and protocols, including any

18 actual repairs or replacements of poles; and

19 13. A description of the company's storm restoration procedures and protocols including

20 any actual repairs or replacements of poles.

21 (b) The Annual Report must include the following information for the upcoming reporting period calendar

22 year:

23 1. The number of poles to be inspected;

24 ~~2. The total miles of overhead facilities for which vegetation management will be~~

25 ~~conducted; and~~

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3. The total miles of each vegetation management technique to be used.

(6) Penalties. A willful violation or refusal to comply with this rule will result in monetary

penalties as follows:

(a) \$500 for the first violation;

(b) \$1,000 for the second violation;

(c) \$1,500 for the third violation;

(d) \$2,000 for the fourth violation; and

(e) \$5,000 for the fifth and any subsequent violation.

Rulemaking Authority 350.127(2), 366.04(9)(b) FS. Law Implemented 366.04(9), 366.095

FS. History-New