

**FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Market Disputes Resolution Division  
445 12<sup>th</sup> St., SW  
Washington, DC 20554**

September 17, 2020

Copies sent by E-mail

**NOTICE OF COMPLAINT**

BellSouth Telecommunications, LLC d/b/a )  
AT&T Florida, )  
 )  
Complainant, )  
 )  
 )  
v. )  
 )  
Duke Energy Florida, LLC, )  
 )  
 )  
Defendant. )

Proceeding Number 20-276  
Bureau ID Number EB-20-MD-003

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Counsel for Complainant

Dear Counsel:

On August 25, 2020, BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) filed with this Commission a complaint against Duke Energy Florida, LLC (Duke) under section 224 of

the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 224.<sup>1</sup> Duke should have a copy of the Complaint as served by hand by AT&T on August 25, 2020. *See* 47 CFR § 1.734(c). If that is not the case, Duke should immediately contact Commission counsel.

Michael Engel and I are Commission counsel for this proceeding. My phone number is (202) 418-7336, and my e-mail address is rosemary.mcenery@fcc.gov. Michael's phone number is (202) 418-1516, and his e-mail address is michael.engel@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing section 224 complaint proceedings, which are found at 47 CFR §§ 1.720-1.740 and 1.1401-1.1415.<sup>2</sup>

### **Schedule for this Proceeding**

On September 16, 2020, the parties jointly proposed a schedule for this proceeding.<sup>3</sup> We adopt the parties' proposed schedule as modified below, and note that the Commission's review period for final action will be extended commensurate with the parties' proposed dates as modified.<sup>4</sup> All filings must comply with the Commission's rules and with this Notice.<sup>5</sup>

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<sup>1</sup> Pole Attachment Complaint, Proceeding No. 20-276, Bureau ID No. EB-20-MD-003 (filed Aug. 25, 2020) (Complaint). On August 28, 2020, Commission Staff issued a letter order holding the Complaint in abeyance to provide Duke an opportunity to make a reasonable response to AT&T under Rule 1.722(g), 47 CFR § 1.722(g). Letter from Rosemary H. McEnery, Chief, MDRD, to Chris Huther, Counsel for AT&T, and Eric Langley, Counsel for Duke, Proceeding No. 20-276, Bureau ID No. EB-20-MD-003 (Aug. 28, 2020). On September 11, 2020, the parties jointly advised that Duke provided a response. Email from Chris Huther, Counsel for AT&T, to Rosemary H. McEnery, Chief, MDRD, Proceeding No. 20-276, Bureau ID No. EB-20-MD-003 (Sept. 11, 2020).

<sup>2</sup> *See also Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. *See Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, complaint proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

<sup>3</sup> Email from Chris Huther, Counsel for AT&T, to Rosemary H. McEnery, Chief, MDRD, Proceeding No. 20-276, Bureau ID No. EB-20-MD-003 (Sept. 16, 2020).

<sup>4</sup> *See Rule Consolidation Order*, 33 FCC Rcd at 7186, para. 23.

<sup>5</sup> Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. Please note that if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. *See* 47 CFR § 1.721(g), (k).

1) By **September 22, 2020**, Duke must file and serve any opposition and objections to AT&T's interrogatories.

2) By **October 7, 2020**, Duke must answer any AT&T interrogatory to which Duke raises no opposition or objection.

3) By **October 30, 2020**, Duke must file and serve an answer to the Complaint that complies with 47 CFR § 1.726. Duke must file and serve concurrently with the answer any interrogatories it poses.<sup>6</sup>

4) By **November 6, 2020**, AT&T must file and serve any opposition and objections to Duke's interrogatories.

5) By **November 24, 2020**, AT&T must file and serve a reply to the answer that complies with 47 CFR § 1.728. AT&T must file and serve with its reply any second request for interrogatories it poses. 47 CFR § 1.730(a).

6) By **December 1, 2020**, AT&T must answer any Duke interrogatory to which AT&T raises no opposition or objection.

7) By **December 2, 2020**, Duke must file and serve any opposition and objections to AT&T's second request for interrogatories.

8) By **December 14, 2020**, Duke must answer any of AT&T's second request for interrogatories to which Duke raises no opposition or objection.

9) The parties must discuss the resolution or narrowing of as many issues as possible. These discussions should include settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements. *See* 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by **December 16, 2020**. The parties may submit these two joint statements in a single document if each is separately identified. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** *See Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97, para. 35. After reviewing the Joint Statement, staff will contact the parties to discuss scheduling the Status Conference. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by **February 12, 2021**. The parties and their counsel should plan their schedules accordingly.

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<sup>6</sup> Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 (“[M]otions to dismiss are rarely warranted. The formal complaint rules “are designed so that a defendant’s answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint.” (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696, para. 34); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 (“[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss. . .”).

The parties must file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must do so in compliance with section 1.731 of the Commission's rules and must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. 47 CFR § 1.731. A party asserting confidentiality for any information or materials should restrict its designations to encompass only the specific information that it asserts is confidential. Confidential designations in pleadings must be clearly identified and marked accordingly, e.g., [Begin Confidential]/[End Confidential]. Confidential filings also must clearly identify and mark each page, or portion thereof, which includes confidential designations. *See* 47 CFR § 1.731(a)(1). *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). The parties must serve all filings via e-mail, hand-delivery, or overnight delivery, together with proof of service. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. *See* 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. *See* 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1.1415 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

*Rosemary H. McEnery*

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Chief, Market Disputes Resolution Division  
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