

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>BELLSOUTH</b>	)	
<b>TELECOMMUNICATIONS, LLC d/b/a</b>	)	
<b>AT&amp;T Florida,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Proceeding No.: 20-276</b>
	)	<b>Bureau ID No.: EB-20-MD-003</b>
<b>DUKE ENERGY FLORIDA, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	

**DUKE ENERGY FLORIDA, LLC’S OBJECTIONS TO  
AT&T’S FIRST SET OF INTERROGATORIES**

Defendant Duke Energy Florida, LLC (“DEF”), pursuant to Rule 1.730 and in accordance with the Enforcement Bureau’s September 17, 2020 Notice of Complaint, 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**

DEF disagrees with AT&T’s claim that, “[t]he 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)...” 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 claim or defense in this proceeding, as set forth more fully below.

### **General Objections**

DEF 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.

DEF objects to AT&T's First Set of Interrogatories insofar as they, in essence, ask for DEF's full, substantive response to the complaint within the deadline for responding to interrogatories.

### **Objections to Definitions**

DEF objects to the definition of "Duke Energy Florida" 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 "Duke Energy Florida" to mean "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." *See* AT&T's First Set of Interrogatories, p. 2. There are many things improper about the scope of this definition, but chief among them is that AT&T's definition of "Duke Energy Florida" would include, for example, Duke Energy Progress, LLC (against whom AT&T has filed a separate pole attachment complaint), as well as other Duke Energy operating companies and

affiliates, each of which is a distinct legal entity and most of which operate within completely distinct jurisdictions.

DEF 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 a document” not only would require type, author, addressee, date and subject but also would require “the name of any person in whose custody the document is kept in the usual course of business.” AT&T’s First Set of Interrogatories, p. 3. As another 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 the collection of the data, and all facts, figures, measurements, and other data collected and analyses performed.” *Id.*

#### **Objections to Individual Interrogatories**

**INTERROGATORY NO. 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.

**OBJECTION:** DEF objects to this interrogatory as being overly broad, unduly burdensome and, if taken literally, would require DEF to answer the complaint within the deadline established for responses to interrogatories. Subject to and without waiving this objection, in its October 7, 2020 interrogatory responses, DEF intends to state the “just and reasonable” rate for AT&T’s use of

DEF's poles and to respond, in summary fashion, to the request to state "all facts" which support DEF's position. DEF will provide further facts in response to this interrogatory with its October 30, 2020 answer to the complaint. DEF will further supplement this response as additional facts are revealed through the course of discovery.

**INTERROGATORY NO. 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.

**OBJECTION:** DEF objects to this interrogatory as overly broad and unduly burdensome insofar as, if taken literally, it would require a recitation of each and every provision in each of the approximately 50 agreements that will be identified in response to this interrogatory. Further, though DEF does not take exception to the relevance of CATV and CLEC pole license agreements (and, more specifically, how the provisions of those very basic agreements compare to the vastly more favorable access terms and conditions given to AT&T under the joint use agreement), the provisions of DEF's joint use agreements with other incumbent local exchange carriers are not relevant to any claim or defense in this proceeding. Finally, DEF objects to producing any executed joint use agreements or pole license agreements on grounds that such agreements are confidential and contain proprietary information that cannot be produced to third parties. Subject

to and without waiving these objections, DEF intends to provide redacted, exemplar agreements with a CATV licensee, a CLEC licensee and a wireless licensee.

**INTERROGATORY NO. 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.

**OBJECTION:** To the extent that it seeks information about the cost sharing arrangements between DEF and other incumbent local exchange carriers ("ILECs") with whom DEF has joint use agreements, DEF objects to this interrogatory on grounds that it seeks information that is not relevant to any claim or defense in this proceeding. By definition, there is only one ILEC in any geographic area; therefore, AT&T does not compete against any of the other ILECs with which DEF has joint use agreements. DEF further objects to producing information about the cost sharing arrangements in other joint use agreements on grounds that some of those cost-sharing arrangements are the result of confidential settlements reached following the effective date of the Commission's assertion of jurisdiction over the rates paid by ILECs to attach to electric utility poles in the 2011 Pole Attachments Order. Subject to and without waiving these objections, DEF intends, in its October 7, 2020 response to the interrogatories, to identify the rates paid by each and every CATV, CLEC and wireless licensee, and to identify the number of poles or attachments

for which the rate was charged. DEF also intends to provide the “backup” calculations for these rates, where applicable.

**INTERROGATORY NO. 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.

**OBJECTION:** See objections to interrogatory number 3 above. Subject to and without waiving these objections, DEF intends to fully quantify the advantages to AT&T under its joint use agreement (or at least those advantages that demonstrate the reasonableness, if not favorability, to AT&T as compared to DEF’s CATV and CLEC licensees).

**INTERROGATORY NO. 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.

**OBJECTION:** To the extent this interrogatory seeks information about, or a quantification of, “each claimed advantage or benefit” that other ILECs enjoy under their joint use agreements with DEF, DEF refers AT&T to the objections raised in response to interrogatory number 4 above.

**Dated:** September 22, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2020, a true and correct copy of Duke Energy Florida, LLC’s Objections to AT&T’s First Set of Interrogatories was filed with the Commission via ECFS and was served on the following (service method indicated):

Robert Vitanza Gary Phillips David Lawson AT&T SERVICES, INC. 1120 20th Street NW, Suite 1000 Washington, DC 20036 (by U.S. Mail)	Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 (by ECFS only)
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/s/ Eric B. Langley  
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OF COUNSEL