

**Before the
Federal Communications Commission
Washington, DC 20554**

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

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-276
Bureau ID No. EB-20-MD-003

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

Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T") respectfully submits the following responses to the First Set of Interrogatories filed by Defendant Duke Energy Florida, LLC ("Duke Florida").

GENERAL OBJECTIONS

In addition to the specific objections enumerated below, AT&T objects to Duke Florida's Interrogatories as follows:

1. AT&T objects to Duke Florida's definitions of "AT&T," "you," and "your" because it is overbroad, unduly expansive and burdensome, and seeks to impose obligations to provide information that has no relevance to the material facts in dispute in this proceeding. Duke Florida's definition of "you," "your," and "AT&T" is not limited to BellSouth Telecommunications, LLC d/b/a AT&T Florida, but broadly includes all "persons associated with" any of its "parents, subsidiaries, [or] affiliates" which are not party to this dispute. AT&T

will not provide non-confidential and non-privileged information beyond that involving AT&T's joint use relationship with Duke Florida.

2. AT&T objects to the Interrogatories because Duke Florida has not shown that “the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.” *See* 47 C.F.R. § 1.730(b). Duke Florida has stated only that each Interrogatory seeks “information regarding the joint use relationship between AT&T and DEF,” which describes far more information than is relevant to, or likely to lead to the discovery of admissible evidence regarding, the determination of the “just and reasonable” rate for AT&T's use of Duke Florida's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

3. AT&T objects to the Interrogatories to the extent that they are “employed for the purpose of delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the proceeding.” *Id.* § 1.730(a). For example, Duke Florida has sought detailed information about third-party use of AT&T's poles, including all of AT&T's joint use agreements and license agreements, which are not relevant to, or likely to lead to the discovery of admissible evidence regarding, the rental rate that is “just and reasonable” and competitively neutral for AT&T's use of *Duke Florida's poles*. At the same time, Duke Florida refused to provide AT&T's access to more than three of its approximately fifty agreements, which are relevant to the rental rate that is “just and reasonable” and competitively neutral for AT&T's use of *Duke Florida's poles*. *See* Duke Florida's Opposition and Objections to AT&T's First Set of Interrogatories at 4-6 (Sept. 22, 2020); *see also* Duke Florida's Responses to AT&T's First Set of Interrogatories (Oct. 7, 2020) (providing only three “exemplar pole license agreements”).

4. AT&T objects to the Interrogatories to the extent that they seek information that is not within AT&T's possession, custody, or control or information that is not within AT&T's present knowledge.

5. AT&T objects to the Interrogatories to the extent that they call for information that is already within Duke Florida's possession, custody, or control.

6. AT&T objects to the Interrogatories to the extent that they seek discovery of legal conclusions, contentions, or information that is publicly available.

7. AT&T objects to the Interrogatories to the extent that they are vague, ambiguous, overbroad, unduly burdensome, oppressive, unreasonably cumulative, or duplicative.

8. AT&T objects to the Interrogatories to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.

9. AT&T objects to the Interrogatories to the extent that they seek information that is protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Nothing contained in AT&T's objections is intended to, or in any way shall be deemed, a waiver of such available privilege or doctrine. AT&T will not provide privileged or otherwise protected information.

10. AT&T objects to the Interrogatories to the extent that they seek confidential or proprietary information. AT&T will not provide responsive, non-privileged confidential or proprietary information unless it is protected by the terms of a mutually agreeable Confidentiality Agreement.

11. AT&T objects to the Interrogatories to the extent that they seek to impose requirements or obligations on AT&T in addition to or different from those imposed by the

Commission's rules. In responding to the Interrogatories, AT&T will respond as required under the Commission's rules.

12. AT&T reserves the right to change or modify any objection should it become aware of additional facts or circumstances following the service of these objections.

13. The foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

Interrogatory No. 1:

Does AT&T contend that the cost sharing methodology established by the 1990 Amendment to the JUA was (a) unjust or unreasonable at the time the 1990 Amendment was executed, and/or (b) the result of unequal bargaining power between the parties? If so, please identify the basis for this contention, with reference to data, documents and communications between the parties. If any part of your answer relies on the parties' relative joint use pole ownership, please explain specifically how this relative pole ownership provided bargaining leverage to one party or the other at the time of the execution of the 1990 Amendment.

Objections:

AT&T objects to this Interrogatory to the extent it seeks legal conclusions or information already provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits. AT&T also objects to this Interrogatory as overly broad and unduly burdensome in that it seeks information dating back 30 years that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the question of what rate is "just and reasonable" by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Florida's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Response:

Subject to and without waiver of these objections and the foregoing general objections, AT&T states that the 1990 Amendment to the JUA was the result of unequal bargaining power between the parties, was unjust and unreasonable when it took effect in 1990, and has been unjust and unreasonable during all rental periods covered by this pole attachment complaint proceeding. AT&T has explained its position on these issues at length in its Pole Attachment Complaint and Pole Attachment Complaint Reply, including their supporting Exhibits and Affidavits. Data, documents, and communications between the parties that support AT&T's position on these issues are attached to AT&T's Pole Attachment Complaint and Duke Florida's Answer. AT&T's position finds further support in the Commission's 2011 *Pole Attachment Order* (26 FCC Rcd 5240), the Enforcement Bureau's 2015 Memorandum Opinion and Order in the *Verizon Florida v. Florida Power and Light Company* proceeding (30 FCC Rcd 1140), the Enforcement Bureau's 2017 Order in the *Verizon Virginia v. Va. Electric and Power Co.* proceeding (32 FCC Rcd 3750), the Commission's 2018 *Third Report and Order* (33 FCC Rcd 7705), the Enforcement Bureau's 2020 Memorandum Opinion and Order in *BellSouth Telecommunications LLC d/b/a AT&T Fla. v. Fla. Power and Light Company* (35 FCC Rcd 5321), and the Commission's 2020 Memorandum Opinion and Order in *Verizon Maryland v. The Potomac Edison Company* (FCC 20-167).

Interrogatory No. 2:

Identify all data in your possession regarding poles jointly used by DEF and AT&T, including, but not limited to, all survey, audit or sampling data concerning pole height, the average number of attaching entities, the number of attachments owned by AT&T, AT&T's attachment height on DEF poles, and the space occupied by DEF and AT&T on each party's poles. Include

in your response when the data was compiled or collected, the entity or entities that compiled or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, and/or guidelines pursuant to which the data was collected.

Objections:

AT&T objects to this Interrogatory as vague, ambiguous, overly broad, and unduly burdensome because it seeks “all data” about all poles jointly used by the parties without any time or other limitation. AT&T further objects to this Interrogatory to the extent that it seeks information that should already be within Duke Florida’s possession or that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Florida’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Response:

Subject to and without waiver of these objections and the foregoing general objections, AT&T states that it has included relevant data regarding poles jointly used by Duke Florida and AT&T in its Pole Attachment Complaint and Pole Attachment Complaint Reply, including their supporting Exhibits and Affidavits. AT&T further states that it does not have any responsive survey, audit or sampling data.

Interrogatory No. 3:

Please identify each and every wireless provider (carrier, infrastructure provider or otherwise) with antenna attachments to AT&T’s poles in Florida and for each year from 2015 forward, state the per pole rate paid by such wireless provider and the methodology by which such rate was calculated.

Objections:

AT&T objects to this Interrogatory because the phrase “antenna attachments” is vague and ambiguous. AT&T further objects to this Interrogatory to the extent it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Florida’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 4:

State the rates, terms, and conditions of all pole attachment or pole license agreements that AT&T has with any cable television system or telecommunications carrier within the state of Florida, and that were in effect at any time from January 1, 2015 forward. Include in your response the name of the entity that is the counterparty to each such agreement, the dates on which the agreement was in effect, the annual pole attachment rates thereunder, the number of each party’s attachments to AT&T poles. AT&T may, alternatively, respond to this interrogatory by producing copies of each such agreement, along with the applicable rates and attachment totals.

Objections:

AT&T objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Florida’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 5:

Please state whether AT&T or its currently retained contractors in Duke Florida's service area have the training and equipment necessary to set AT&T joint use poles with Duke Florida electric facilities attached to them, including the requisite training and equipment to work with or in close proximity to live electrical facilities. If the answer is yes, please identify those contractors and state the number of poles per year since 2011 such contractors have set in energized lines and include within your answer the voltage class of such poles.

Objections:

AT&T objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Florida's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Response:

Subject to and without waiver of these objections and the foregoing general objections, AT&T states that AT&T and its contractors do not "set AT&T's joint use poles with Duke Florida electric facilities attached to them" because utility poles are not set with facilities already attached to them.

Interrogatory No. 6:

What size and type of pole(s) does AT&T set when such pole(s) will not be jointly used with DEF or another electric utility pursuant to a Joint Use Agreement? Please identify the costs incurred by AT&T in the preceding 5 years to construct non-joint use pole lines (including the

cost of installing AT&T's communication facilities) and identify the total number of poles installed.

Objections:

AT&T objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Florida's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 7:

Please identify AT&T's average cost to replace a joint use poles [sic] (including AT&T's cost of transferring its facilities to the new pole) in 2019 and identify the number of poles replaced in 2019.

Objections:

AT&T objects to this Interrogatory as overly broad and unduly burdensome because it is not limited to AT&T's joint use poles with Duke Florida. AT&T further objects to this Interrogatory because it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" rate that is required by 47 U.S.C. § 224(b) and the Commission's Orders and regulations for AT&T's use of Duke Florida's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 8:

Does AT&T contend that it has ever been required to pay modification costs to DEF in order to make use of its allocated space under the JUA? If so, please identify all such instances

and state the costs paid for such modification work. Exclude from your answer all instances in which AT&T paid modification costs in order to obtain more than its allocated space under the JUA.

Objections:

AT&T also objects to this Interrogatory as overly broad and unduly burdensome in that it seeks information dating back to June 1, 1969. AT&T further objects to this Interrogatory because it seeks information that is or should be within Duke Florida's possession.

Response:

Subject to and without waiver of these objections and the foregoing general objections, AT&T states that, although it is not clear what costs Duke Florida considers "modification costs," Duke Florida has admitted that "[w]hen AT&T requires physical modifications to a pole, it is responsible for moving its own equipment." *See* Answer Ex. E at DEF000216 (Metcalf Decl. ¶ 29 n.38). AT&T further states that the allocation of 3 feet of space in the JUA is not something that AT&T wants, uses, or requires because AT&T occupies about the same amount of space on a pole as its competitors, which is presumed to be 1 foot. *See* 47 C.F.R. § 1.1410.

Interrogatory No. 9:

Prior to filing its complaint, did AT&T perform any calculations or analysis to ascertain the scope of its avoided make-ready costs under the JUA? If so, please state the results of such calculations or analysis.

Objections:

AT&T objects to this Interrogatory as based on a factual inaccuracy that AT&T "avoided make-ready costs under the JUA." AT&T further objects to this Interrogatory to the extent it seeks legal conclusions or information already provided by AT&T in its Pole Attachment

Complaint and supporting Affidavits and Exhibits. AT&T also objects to this Interrogatory because it includes no time limitation and requests privileged information. AT&T further objects to this Interrogatory to the extent it seeks information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” rate that is required by 47 U.S.C. § 224(b) and the Commission’s Orders and regulations for AT&T’s use of Duke Florida’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Response:

Subject to and without waiver of these objections and the foregoing general objections, AT&T states that any pre-complaint non-privileged analysis of Duke Florida’s argument about make-ready costs under the JUA is included in AT&T’s Pole Attachment Complaint and Pole Attachment Complaint Reply, including their supporting Exhibits and Affidavits.

Respectfully submitted,

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

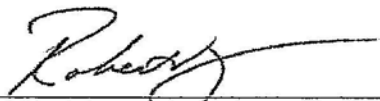
By: 
Robert Vitanza
Gary Phillips
David Lawson
AT&T SERVICES, INC.
1120 20th Street NW, Suite 1000
Washington, DC 20036
(214) 757-3357

Dated: December 1, 2020

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

AFFIRMATION

I, Robert Vitanza, hereby affirm that the foregoing responses to Duke Energy Florida, LLC's First Set of Interrogatories are true and correct to the best of my knowledge as Assistant Vice President – Legal Counsel for AT&T.



Robert Vitanza

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2020, I caused a copy of the foregoing AT&T's Responses to Duke Energy Florida, LLC's First Set of Interrogatories to be served on the following (service method indicated):

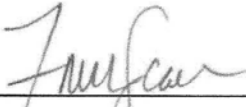
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9050 Junction Drive
Annapolis Junction, MD 20701
(by ECFS)

Eric B. Langley
Robin F. Bromberg
Robert R. Zalanka
Langley & Bromberg LLC
2700 U.S. Highway 280
Suite 240E
Birmingham, AL 35223
(by email)

Rosemary H. McEnery
Michael Engel
Lisa Boehley
Lisa B. Griffin
Lisa J. Saks
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
(by email)

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