

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

BELLSOUTH)	
TELECOMMUNICATIONS, LLC d/b/a)	
AT&T ALABAMA,)	
)	
Complainant,)	
)	
v.)	Proceeding No.: 19-119
)	Bureau ID No.: EB-19-MD-002
ALABAMA POWER COMPANY,)	
)	
Defendant.)	
)	
)	

**ALABAMA POWER COMPANY’S OPPOSITION AND OBJECTIONS TO
AT&T’S FIRST SET OF INTERROGATORIES**

Defendant Alabama Power Company (“Alabama Power”), 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 Alabama (“AT&T”).

Opposition

Alabama Power disagrees with AT&T’s claim that, “[t]he information sought in each Interrogatory is necessary to the resolution of this dispute....” 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

Alabama Power 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.

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

Alabama Power objects to AT&T's First Set of Interrogatories insofar as the time, form and manner of discovery in this dispute should be established through the mandatory arbitration process set forth in Article XIII of the joint use agreement between the parties. *See* Complaint, at Exhibit 1. Alabama Power intends to explain in its answer why this proceeding should be stayed in favor of arbitration given that arbitration is mandatory and given that this dispute falls squarely within the scope of the arbitration provision.

Objections to Definitions

Alabama Power objects to the definition of "Alabama Power" 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 "Alabama Power" to mean "Alabama Power 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. There are many things improper about the scope of this definition but chief among them is that AT&T's definition of "Alabama Power" would include, for example, Gulf Power Company (a former affiliate), Georgia Power Company (a current

affiliate) and Mississippi Power (a current affiliate), each of which is a distinct legal entity over whom Alabama Power has no control (and, in the case of Gulf Power, with whom Alabama Power no longer has a corporate relationship).

Alabama Power 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 “all present locations by address and custodian.” 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 its collection, and all facts, figures, measurements, and other data collected and analyses performed.” *Id.*

Objections to Individual Interrogatories

INTERROGATORY NO. 2: State all facts on which you rely for your contention that the pole attachment rental rates for AT&T’s use of Alabama Power’s poles provided in response to Interrogatory 1 are “just and reasonable” under 47 U.S.C. § 224(b).

OBJECTION: Alabama Power objects to this interrogatory as being overly broad, unduly burdensome and, if taken literally, would require Alabama Power’s to answer the complaint within the deadline established for responses to interrogatories. Subject to and without waiving this objection, Alabama Power intends to respond in summary fashion to this interrogatory within its May 22, 2019 interrogatory response deadline and to provide further facts in response to this interrogatory with its June 21, 2019 answer to the complaint. Alabama Power will further supplement this response as additional facts are revealed through the course of discovery.

INTERROGATORY NO. 3: Explain in detail all steps taken by Alabama Power to ensure that its Joint Use Agreements and License Agreements comply with the “just and reasonable” rate provisions of 47 U.S. C. § 224(b), the *Pole Attachment Order*, the *Verizon Florida* decision, the *Verizon South* decision, and the rate section of the *Third Report and Order* (Section III.C).

OBJECTION: Alabama Power objects to this interrogatory to the extent it presumes Alabama Power is under some sort of affirmative burden to audit or test individual provisions within a Joint Use Agreement or License Agreement, insofar as the justness and reasonableness of a “rate” is inextricably intertwined with the “terms and conditions.” To this end, and given that the interrogatory is premised upon an incorrect or incomplete representation of the law, Alabama Power objects on the grounds that the interrogatory seeks information that is not relevant to any claim or defense in this proceeding. Further, in order for this interrogatory to be proper, the “steps taken by Alabama Power” to evaluate the issues would need to be relevant to the question of whether the rates, terms and conditions in the joint use agreement are just and reasonable. Is AT&T really contending that the “steps taken by” Alabama Power in this regard (assuming, for purposes of analysis, they were robust) make the joint use agreement more or less likely to be deemed just and reasonable? Given this, Alabama Power can only conclude that this interrogatory was propounded for an improper purpose such as delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in this proceeding. Alabama Power further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine. In any event, the publicly available version of the *Verizon South* decision is redacted which would make it impossible for Alabama Power to adequately respond to the interrogatory insofar as it relates to this decision. Subject to and without

waiving these objections, Alabama Power intends to respond with a summary description of the steps taken to ensure that its annual pole attachment rentals charged to CATVs and CLECs are in compliance with the Commission's rules.

INTERROGATORY NO. 5: State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with Alabama Power that were in effect at any time from the 2011 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 Alabama Power and the dates on which the Joint Use Agreement or License Agreement with Alabama Power was in effect.

OBJECTION: Alabama Power 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 74 agreements identified in response to interrogatory number 4. Alabama Power further objects on grounds that it has already provided AT&T with (a) a current, representative CATV pole license agreement, (b) a current, representative CLEC pole license agreement, and (c) the current template offered to CATV and CLEC licensees. Those agreements were attached as exhibits to AT&T's complaint. *See* Complaint, at Exhibits 2-3, 11. Though Alabama Power is willing to provide reasonable, further assurances that the exemplar agreements are, in fact, representative, it is unduly burdensome to ask Alabama Power to restate the provisions of 74 agreements. Further, though Alabama Power 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 Alabama Power's joint use agreements with other incumbent local exchange carriers is not relevant to any claim or defense in this proceeding.

INTERROGATORY NO. 7: With respect to each License Agreement identified in response to Interrogatory 5, identify any advantage or benefit that Alabama Power contends AT&T receives over and above those provided to the attaching entity. Include in your response, beginning with the 2011 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 5 above. Subject to and without waiving these objections, APC 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 Alabama Power's CATV and CLEC licensees).

Dated: May 7, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 2019, a true and correct copy of Alabama Power Company'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):

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