

PUBLIC VERSION

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 RESPONSE TO**  
**AT&T’S FIRST SET OF INTERROGATORIES**

Defendant Alabama Power Company (“Alabama Power”), pursuant to Rule 1.730, submits the following response to the “First Set of Interrogatories” served by Complainant BellSouth Telecommunications, LLC d/b/a AT&T Alabama (“AT&T”).

**General Response**

Alabama Power adopts and incorporates, as if fully set forth herein, its May 7, 2019 Opposition and Objections to AT&T’s First Set of Interrogatories. All responses set forth herein are subject to the May 7, 2019 Opposition and Objections to AT&T’s First Set of Interrogatories.

The responses set forth herein are based on information presently known and available to Alabama Power. Alabama Power reserves the right to supplement these responses as additional information becomes known or available through the discovery process or otherwise.

**Responses to Individual Interrogatories**

**INTERROGATORY NO. 1:** Beginning with the 2011 rental year, state the annual pole attachment rental rate that Alabama Power contends is “just and reasonable” for AT&T’s use of Alabama Power’s poles under 47 U.S.C. § 224(b). Include in your response the formula, calculations, inputs, assumptions, and source data used to calculate each annual rental rate and identify the corresponding pole attachment rental rate that would apply to Alabama Power’s use of AT&T’s poles.

**RESPONSE:** AT&T’s just and reasonable share of the joint use network costs since 2011 is no less than the amount calculated in accordance with Appendix B to the June 1, 1978 Joint Use Agreement between Alabama Power and AT&T. Alabama Power’s just and reasonable share of the joint use network costs since 2011 is no more than the amount calculated in accordance with Appendix B to the Joint Use Agreement. Those amounts, which are a function of annual rates paid by each party to the other, are based on annual rates applied to each joint use pole owned by the other party. For 2011 through 2018, those annual rates were as follows:

	Alabama Power on AT&T Poles		AT&T on Alabama Power Poles	
2011				
2012				
2013				
2014				
2015				
2016				
2017				
2018				

The 2018 rates are estimated rates based on the preceding year’s data. When 2018 data becomes available, these figures are updated. The formula for determining these rates is set forth in Appendix B to the Joint Use Agreement, which identifies fixed space allocation and a fixed limited operating charge applicable to both parties. The variable in the formula is each party’s average

embedded pole cost, which is derived from each party's year end pole cost data and calculated in accordance with the last paragraph of the first page of Appendix B.

Though Alabama Power believes that AT&T's just and reasonable share of the joint use network costs should be higher than as calculated under Appendix B of the Joint Use Agreement, Alabama Power is not seeking, at this time, an increase in AT&T's share of the jointly used network. Nor is Alabama Power seeking, at this time, any reimbursement from AT&T for preceding periods during which AT&T was not carrying a just and reasonable share of the joint use network costs. Alabama Power's response to this interrogatory is without prejudice to its right to later seek an adjustment to the Appendix B cost sharing methodology or to seek reimbursement for preceding periods during which AT&T failed to carry a just and reasonable share of the joint use network costs.

**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).

**RESPONSE:** This response is subject to and without waiving the objections stated in the May 7, 2019 Opposition and Objections to AT&T's First Set of Interrogatories. As an initial matter, AT&T does not pay "pole attachment rental rates" in the same way that Alabama Power's CATV and CLEC pole licensees pay "pole attachment rental rates." Instead, AT&T pays for a share of the jointly used network costs through a cost sharing methodology that the parties first established in 1978, then revised in 1984, 1990 and 1995. Under each iteration of the cost sharing methodology, each party paid an annual rate to the other for poles occupied as joint user. The annual rate was keyed to a targeted joint use network ownership percentage for each party ( [REDACTED] )

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for AT&T and [REDACTED] for Alabama Power), such that if each party owned its targeted percentage of poles, and assuming roughly equal pole costs between the parties, neither party would pay net annual rentals to the other. In this way, the annual rate only becomes relevant when the parties are not at or near their targeted joint use pole ownership. In a jointly used network of poles, as one party's ownership percentage declines, so does its share of annual ownership costs. As the other party's ownership percentage increases, so does its share of annual ownership costs. The annual rental payments are designed to offset the additional annual ownership costs being carried by the party owning more than its targeted share of the jointly used network.

Even setting aside the unique cost sharing relationship in Appendix B of the Joint Use Agreement, the actual annual rate paid by AT&T (which, as explained above, is merely a proxy for pole ownership) includes [REDACTED] feet of allocated space (see Joint Use Agreement, Article I.M(2) and Appendix B, Exhibit 2) as well as [REDACTED] feet of space to protect its facilities and workers from electric lines. This [REDACTED] feet of space on Alabama Power poles, in almost all instances, would not have been built into Alabama Power's joint use poles but for the Joint Use Agreement. In addition to its allocated space, AT&T is not only allowed to occupy additional space but in most instances actually does occupy additional space by virtue of its number of attachments, its attachment height and/or its mid-span sag (AT&T's lines are consistently heavier bundles, with much greater sag, than tensioned CATV and CLEC messengers). Under these circumstances, AT&T is regularly occupying or burdening more than its allocated space on the pole. When this space is combined with the [REDACTED] feet of safety space (referred to as the "communication worker safety zone" in the NESC), this allocation of space would yield per pole rates that are higher than what is required by the Joint Use Agreement. For example, AT&T's per pole rate paid for the 2017 billing year was

██████. During this same period of time, based on Alabama Power's then-current CATV rates, a CATV occupying and/or allocated similar space would have paid ██████ (█████ x ██████/foot).

Further, even with a competitively advantageous annual rate and even with the competitive value of incumbency, AT&T also has certain operational advantages in the Joint Use Agreement that Alabama Power's CATV and CLEC licensees do not have. Some of them are identified in paragraphs 15-23 of AT&T's complaint. In addition to those advantages, AT&T also has the contractual right to remain attached to joint use poles even in the event of a termination of the Joint Use Agreement for convenience or default (see Joint Use Agreement, Articles XI.A. and XV.A.). As set forth in the May 7, 2019 Opposition and Objections, Alabama Power will be submitting additional information responsive to this interrogatory with its answer to the complaint, and Alabama Power may 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).

**RESPONSE:** This response is subject to and without waiving the objections stated in the May 7, 2019 Opposition and Objections to AT&T's First Set of Interrogatories. The annual per attachment rates charged by Alabama Power to CATVs and CLECs are updated each year in the spring after finalization of the FERC Form 1 for the year ending December 31 of the preceding year. The CATV and CLEC licensees are provided notice of the updated rate usually in or around May of each year, in anticipation of July invoices, which allows the CATVs and CLECs an

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opportunity to inquire about the rate calculations. The billing year for almost all of Alabama Power's CATV and CLEC licensees is July 1 through June 30. The rates are calculated using the updated data from FERC Form 1, along with other data (such as updated pole inventory and updated weighted cost of capital), according to the Commission's formulas/decisions and consistent with generally accepted accounting principles. The rate calculations also include the adjustments and clarifications that are outlined in Exhibit A to Alabama Power's pole license agreements with CATVs and CLECs, all of which were developed through lengthy negotiations between Alabama Power and the [REDACTED], which included counsel for both parties. After the draft rate calculations are prepared, they are circulated to various internal stakeholders, as well as outside analysts, to ensure accuracy, completeness, compliance with Alabama Power's CATV and CLEC pole license agreements, and compliance with the law. The *Verizon Florida* and *Verizon South* decisions do not impact these calculations.

**INTERROGATORY NO. 4:** Beginning with the 2011 rental year, identify all entities that have had a Joint Use Agreement or License Agreement with Alabama Power and state whether the entity is an incumbent local exchange carrier, CLEC, cable company, or wireless provider.

**RESPONSE:** Alabama Power is identifying all entities responsive to this request as well as those entities with a Wireless Antenna Addendum. Please see the charts for 2011 through 2019, attached to this Response as **Exhibit 1**. Alabama Power does not know whether any entity with a Wireless Antenna Addendum is actually "wireless provider" as that term is used in the interrogatory.

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**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.

**RESPONSE:** See Alabama Power's May 7, 2019 Opposition and Objections. Subject to and without waiving these objections, please see charts provided as **Exhibit 1** in response to interrogatory number 4 above and interrogatory number 6 below.

**INTERROGATORY NO. 6:** Beginning with the 2011 rental year, state the annual pole attachment rental rate that Alabama Power charged each entity identified in response to Interrogatory 4, the number of poles or attachments for which the pole attachment rental rate was charged, and whether the entity uses Alabama Power'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.

**RESPONSE:** See charts provided as **Exhibit 1** in response to interrogatory number 4 above, as well as the cable and telecom rate calculation worksheets provided as **Exhibit 2** in further response to this interrogatory. The entities identified on the chart as ILECs utilize joint use agreements, and the entities identified as either CATV or CLEC use pole license agreements. The CATV and CLEC rates were invoiced on a per-attachment basis. The ILEC rates were invoiced on a per-pole basis. With very few exceptions, all rates were paid as invoiced.

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**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.

**RESPONSE:** See Alabama Power's May 7, 2019 Opposition and Objections. Subject to and without waiving these objections, Alabama Power intends to identify and quantify the advantages to AT&T under its Joint Use Agreement as compared to Alabama Power's CATV and CLEC licensees.

**INTERROGATORY NO. 8:** Beginning with the 2011 rental year, for each claimed advantage or benefit identified in response to Interrogatory 6, state by year the amount of money that Alabama Power collected from each entity identified in response to Interrogatory 4 concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

**RESPONSE:** Alabama Power is not identifying any "claimed advantage or benefit" in response to interrogatory number 6.

**INTERROGATORY NO. 9:** Beginning with the 2011 rental year, state the rate of return used by Alabama Power in the calculation of rates under 47 C.F.R. § 1.1406(d), including the cost



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of debt, cost of equity, and capital structure, and, if different, Alabama Power's state-authorized weighted average cost of capital and/or weighted cost of equity, including, as appropriate, the cost of debt, cost of equity, and capital structure. Include in your response the formula, calculations, inputs, assumptions, and source data used.

**RESPONSE:** Please see the data attached to this Response as **Exhibit 3**.

**INTERROGATORY NO. 10:** Identify all data regarding poles jointly used by Alabama Power and AT&T, including all survey, audit or sampling data, concerning pole height, the average number of attaching entities, the space occupied by Alabama Power, AT&T, and any other entity. 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, guidelines, upon which the data was collected.

**RESPONSE:** This response is subject to and without waiving the objections stated in the May 7, 2019 Opposition and Objections to AT&T's First Set of Interrogatories. The parties have not conducted any kind of joint survey as contemplated by Appendix B. As recently as 2004/2005, Alabama Power attempted to coordinate this survey with AT&T, but AT&T rejected these efforts. The average height of Alabama Power's 1,429,317 wood poles is 38.28 feet. This data includes poles other than joint use poles. Alabama Power is presently determining whether its pole height data can be further isolated to include only joint use poles. Because the wood pole average height includes many non-joint use poles, such as service poles and poles with no third party attachments (763,802), the average height of joint use poles would be higher than the system wood pole height average. Alabama Power also has a total of 8,659 concrete and steel poles, some of which may be joint use poles. If these poles are factored into the system average, the average pole height is 38.33

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feet. All of the above data comes from Alabama Power's property accounting records and/or mapping data.

Alabama Power's system-wide average number of attaching entities (including Alabama Power) is 1.95. Any joint use pole by definition, though, would have at least two attaching entities. If the system-wide average is calculated based only on the 712,017 Alabama Power poles with third-party attachments, then the average number of attaching entities (including Alabama Power) is 2.91. This figure is likely over-inclusive because it does not capture the numerous poles in Alabama Power's system where only Alabama Power and AT&T are attached. This data comes from Alabama Power's mapping records and periodic field counts which are normally performed on a 3, 4, or 5 year cycle, depending on the agreement, such that the entire system of poles with attachments is counted at least once every five years. The periodic field counts, as mentioned above, do not count the number of attachments on poles where the only attaching entities are Alabama Power and an ILEC joint user – instead, those counts are performed on a per pole, instead of per attachment, basis. Alabama Power employs Pike Engineering to perform pole counts and attachment counts in the field. Following the performance of a field count, Pike performs quality control on 100% of the field data to identify any anomalies. This review includes a data comparison between the current and previous count as well as a spatial review. Data trends along with random selection of geographic areas will determine where a field review is performed. The field review is completed by personnel other than the original personnel who collected the data. Pike will field review up to 5% of the total counts in each annual cycle.

Alabama Power is currently reviewing additional data from surveys performed for purposes of evaluating pole attachment applications, which may contain further information regarding AT&T's use of Alabama Power's poles. This data will be provided with Alabama

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Power's answer to the complaint. AT&T submitted eight photographs of Alabama Power poles (with measurements) as Exhibit M-1 to Exhibit B to the Pole Attachment Complaint. Assuming the accuracy of the measurements on these photos, the photos show an average AT&T attachment height of [REDACTED] which means that AT&T is occupying at least [REDACTED] (not including the safety space) because of the required 12" of clearance above AT&T's attachments and because nobody can attach below AT&T. Alabama Power is in the process of verifying this information in the field.

Dated: May 22, 2019

Respectfully submitted,

/s/ Eric B. Langley  
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Attorneys for Defendant  
Alabama Power Company

**AFFIRMATION**

I, Pamela O. Boyd, do affirm as follows:

1. My name is Pamela O. Boyd. I am currently the Power Delivery Technical Services General Manager at Alabama Power Company;
2. I make this affirmation based upon my own personal knowledge; information supplied by other employees of Alabama Power; and a review of the business records maintained by Alabama Power in the regular course of business; and
3. I affirm that the information included in Alabama Power's Response to AT&T's First Set of Interrogatories is true and correct to the best of my knowledge.

Executed on May 22, 2019.



Pamela O. Boyd  
Power Delivery Technical Services  
General Manager  
Alabama Power Company

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of May 2019, a true and correct copy of the Public Version of Alabama Power Company's Responses to AT&T's First Set of Interrogatories was filed with the Commission via ECFS (Confidential Version filed via hard copy) and was served on the following (service method indicated):

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/s/ Eric B. Langley  
OF COUNSEL

# EXHIBIT 1

**Confidential**

ENTIRE EXHIBIT DESIGNATED CONFIDENTIAL

# EXHIBIT 2

**Confidential**

ENTIRE EXHIBIT DESIGNATED CONFIDENTIAL

# EXHIBIT 3

**Confidential**

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