

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

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

Complainant,

v.

ALABAMA POWER COMPANY,

Defendant.

Proceeding No. 19-119
Bureau ID No. EB-19-MD-002

**AT&T'S RESPONSES TO ALABAMA POWER COMPANY'S
FIRST SET OF INTERROGATORIES**

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

GENERAL OBJECTIONS

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

1. AT&T objects to Alabama Power's definitions of "AT&T," "you," and "your" because they are overbroad, unduly expansive and burdensome, and seek to impose obligations to provide information that has no relevance to the material facts in dispute in this proceeding. Alabama Power's definitions of "AT&T," "you," and "your" are not limited to BellSouth Telecommunications, LLC d/b/a AT&T Alabama, but also include entities that do business as AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T

North Carolina, AT&T South Carolina, AT&T Southeast, and AT&T Tennessee, which are not parties to this dispute.

2. AT&T objects to the Interrogatories because Alabama Power 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). Alabama Power has stated only that each Interrogatory seeks “information regarding the joint use relationship between AT&T and Alabama Power,” 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 Alabama Power’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, Alabama Power 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 *Alabama Power’s poles*. At the same time, Alabama Power refused to provide AT&T’s access to more than two of its more than seventy agreements, which are relevant to the rental rate that is “just and reasonable” and competitively neutral for AT&T’s use of *Alabama Power’s poles*. *See* Alabama Power’s Opposition and Objections to AT&T’s First Set of Interrogatories at 5 (May 7, 2019); *see also* Compl. Exs. 2 & 3 (containing the two license agreements Alabama Power provided as redacted by Alabama Power).

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 Alabama Power'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 TO INTERROGATORIES

Interrogatory No. 1:

Does AT&T contend that the current version of Appendix B to the JUA was (a) unjust or unreasonable at time it 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 provides bargaining leverage to one party or the other.

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 24 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 Alabama Power'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 Appendix B to the JUA was the result of unequal bargaining power between the parties, was unjust and unreasonable when it took effect in 1994, 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, Affidavits and Declaration. 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 Alabama Power Company'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), and the Commission's 2018 *Third Report and Order* (33 FCC Rcd 7705).

Interrogatory No. 2:

Identify all data in your possession regarding poles jointly used by Alabama Power 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, and the space occupied by Alabama Power and AT&T. 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 Alabama Power’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 Alabama Power’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 Alabama Power and AT&T in its Pole Attachment Complaint and Pole Attachment Complaint Reply, including their supporting Exhibits, Affidavits, and Declaration. AT&T further states that it does not have any responsive survey, audit or sampling data.

Interrogatory No. 3:

If AT&T were a CLEC that occupied more than one-foot of space on an Alabama Power pole, how does AT&T contend the rate for such attachments should be calculated? If AT&T were a CATV that occupied more than one-foot of space on an Alabama Power pole, how does AT&T contend the rate for such attachments should be calculated? Please explain your methodology for the answer to this question.

Objections:

AT&T objects to this Interrogatory to the extent it seeks 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 is based on the unsupported factual premise that AT&T occupies more than one foot of space, on average, on Alabama Power's poles. 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 Alabama Power'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 new telecom rate formula, which presumptively applies to AT&T's use of Alabama Power's poles, would also apply to AT&T's use of Alabama Power's poles if AT&T were a CLEC or a cable company because AT&T provides telecommunications services. The new telecom rate formula applies to the use of Alabama Power's poles by "any telecommunications carrier" (which AT&T would be if it were a CLEC) "or cable operator providing telecommunications services" (which AT&T would be if it were a CATV). *See* 47 C.F.R. § 1.1406(d)(2). By contrast, the cable rate formula applies to "cable television systems solely providing cable service" (which AT&T would not be since it provides telecommunications services). *See Cost Allocator Order*, 30 FCC Rcd 13731 (¶ 1) (2015); *see also* 47 C.F.R. § 1.1406(d)(1).

The new telecom rate formula and the cable rate formula include an input for the average amount of space occupied on the pole. The FCC's presumption for the average amount of space occupied by a communications or cable attacher is 1 foot. This 1-foot presumption may be

replaced with the average amount of physical space that is occupied by a communications or cable attacher on the utility's poles if reliable, actual, statistically valid survey data exists. Calculation of the formulas using the space occupied input and other appropriate inputs will generate the applicable per pole rental rate for the communications or cable attacher.¹

Further information about the Commission's rate formulas is included in AT&T's Pole Attachment Complaint and Pole Attachment Complaint Reply, including the supporting Affidavits of Daniel P. Rhinehart. Detailed calculations of the per pole rental rates that result from the proper application of new telecom rate formula for AT&T's use of Alabama Power's poles appear at Exhibit R-1 to Mr. Rhinehart's April 16, 2019 Affidavit.

Interrogatory No. 4:

State the rates, terms, and conditions of all Joint Use Agreements between AT&T and any electric utility (municipally-owned, investor-owned, cooperative, or other) other than Alabama Power in the state of Alabama that were in effect at any time from the 2011 rental year forward. Include in your response the name of the entity that is the counterparty to the Joint Use Agreement, the dates on which the Joint Use Agreement was in effect, the annual rental rates and/or adjustment payments thereunder, the number of poles owned by each party at the time of execution of the agreement and currently, and when the agreement was last negotiated, amended, or otherwise revised. AT&T may, alternatively, respond to this interrogatory by producing copies of each such agreement, along with the applicable rates and attachment totals.

¹ The maximum just and reasonable new telecom rate is the higher of the rates yielded from the formulas that appear at 47 C.F.R. § 1.1406(d)(2)(i) and (d)(2)(ii).

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 Alabama Power’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 5:

State the rates, terms, and conditions for of [sic] all pole attachment or pole license agreements that AT&T has with any cable television system or telecommunications carrier within the state of Alabama, and that were in effect at any time from January 1, 2011 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 Alabama Power’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 6:

Please state whether AT&T or its currently retained contractors in Alabama Power's service area have the training and equipment necessary to set AT&T joint use poles with Alabama Power 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 Alabama Power'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 Alabama Power has required that Alabama Power set AT&T's joint use poles in energized lines irrespective of the qualifications and training of AT&T's contractors and that Alabama Power charges AT&T a premium for the work so that Alabama Power's recovery exceeds the agreed-upon value of the work. *See* Compl. Ex. 1 at ATT00114.

Interrogatory No. 7:

What size and type of pole(s) does AT&T set when such pole(s) will not be jointly used with an 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 Alabama Power'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 Alabama Power in order to make use of its allocated space under the joint use agreement? If so, please identify all such instances and state the costs paid for such modification work.

Objections:

AT&T objects to this Interrogatory as vague, ambiguous, overly broad, and unduly burdensome because it does not identify the "joint use agreement" to which it refers and, if Alabama Power intended to refer to the JUA, it seeks information about AT&T's use of Alabama Power's poles since 1978. AT&T further objects to this Interrogatory because it seeks information that is or should be within Alabama Power'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 Alabama Power considers "modification costs," Alabama Power has admitted that AT&T is required to pay such costs in order to use space on Alabama Power's poles. *See, e.g.*, Answer Ex. C at APC000082 (Morgan Decl. ¶ 18)

(“When we do modification work for AT&T under the joint use agreement, such as replacement of defective poles or installation of taller poles to meet AT&T’s needs, we send a billing authorization request to AT&T before actually sending the invoice.”). AT&T further states that the allocation of 2.5 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 determine whether the scheduled costs in Appendix A to the JUA result in cost savings to AT&T and/or result in under-recovery by Alabama Power of its actual costs? If so, please state the results of such calculations or analysis.

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 because it includes no time limitation, requests privileged information, and seeks information about Alabama Power’s costs that is not available to AT&T. 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 Alabama Power’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 Alabama Power's argument about Appendix A of the JUA is included in AT&T's Pole Attachment Complaint and Pole Attachment Complaint Reply, including their supporting Exhibits, Affidavits, and Declaration.

Interrogatory No. 10:

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 Alabama Power's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Response:

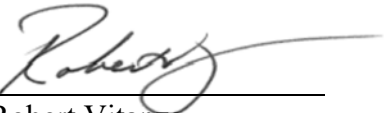
Subject to and without waiver of these objections and the foregoing general objections, AT&T states that any pre-complaint non-privileged analysis of Alabama Power's argument about make-ready costs under the JUA is included in AT&T's Pole Attachment Complaint and

Pole Attachment Complaint Reply, including their supporting Exhibits, Affidavits, and Declaration.

Respectfully submitted,

Christopher S. Huther
Claire J. Evans
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
chuther@wileyrein.com
cevans@wileyrein.com

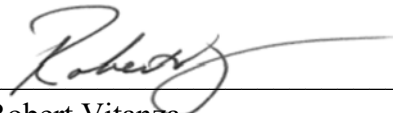
Dated: July 26, 2019

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

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

AFFIRMATION

I, Robert Vitanza, hereby affirm that the foregoing responses to Alabama Power'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 July 26, 2019, I caused a copy of the foregoing AT&T's Responses to Alabama Power Company's First Set of Interrogatories to be served on the following (service method indicated):

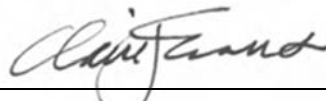
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(by ECFS)

Eric B. Langley, Esq.
Robin F. Bromberg, Esq.
Langley & Bromberg LLC
2700 U.S. Highway 280
Suite 240E
Birmingham, AL 35223
Counsel for Defendant
(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)

Rosemary H. McEnery, Esq.
Lia Royle, Esq.
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(by email)

Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
100 North Union Street
RSA Union Building
Room 850
Montgomery, AL 36104
(by overnight delivery)



Claire J. Evans