

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

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

JOINT STATEMENT

Pursuant to 47 C.F.R. § 1.733(b)(2), the Commission’s April 24, 2019 Notice of Complaint, and the scheduling requests granted on April 29, 2019 and July 31, 2019, Complainant BellSouth Telecommunications, LLC d/b/a AT&T Alabama (“AT&T”) and Defendant Alabama Power Company (“Alabama Power”), through undersigned counsel, submit the following Joint Statement regarding (I) stipulated facts, (II) disputed facts, (III) key legal issues, (IV) discovery matters, (V) scheduling, and (VI) settlement prospects.

I. Stipulated Facts¹

1. AT&T is an incumbent local exchange carrier (“ILEC”) that provides telecommunications and other services in areas of Alabama.
2. Alabama Power is an investor-owned electric utility that provides electric and other services within the state of Alabama. Alabama Power own poles in Alabama that are used

¹ The parties’ stipulation to a fact does not mean the parties agree that the stipulated fact is material to any issue in this proceeding—only that the stated fact is uncontroverted.

for wire communications. Alabama Power is not owned by a railroad, a person who is cooperatively organized, or a person owned by the Federal Government or a State.

3. AT&T and Alabama Power are parties to a Joint Use Agreement between Alabama Power Company and South Central Bell Telephone Company that took effect June 1, 1978 and was amended thereafter (the “Joint Use Agreement”). A true and correct copy of the Joint Use Agreement as amended is attached to AT&T’s Complaint as Exhibit 1, *see* ATT00102-119, and to Alabama Power’s Answer as Exhibit 1, *see* APC000302-319.

4. Appendix B to the Joint Use Agreement contains the methodology for determining “the amount of pole rental owed by each party to the other for the preceding year.” *See* ATT00116; APC000316. The most recent version of Appendix B took effect on January 1, 1994 and states that AT&T then owned 168,705 of the jointly used poles (32%) and Alabama Power then owned 357,026 of the jointly used poles (68%). *See id.* Appendix B states that “[e]ach party’s annual rental rate shall be computed annually” using the formula set forth in Appendix B. *See* ATT00116, -119; APC000316, -319.

5. Currently, Alabama Power and AT&T share approximately 809,000 utility poles in Alabama. AT&T owns approximately 179,000 (22%) of the jointly used poles and Alabama Power owns approximately 630,000 (78%) of the jointly used poles. These joint pole ownership numbers are estimated because the parties do not have current joint field survey data that establishes the precise number of jointly used poles owned and shared by the parties. The parties use estimated joint use pole ownership numbers for purposes of invoicing and paying annual rentals under Appendix B to the Joint Use Agreement.

6. Under Appendix B, the “amount of annual rental owed to either party by the other shall be calculated by multiplying the number of joint use poles owned by that party by the

appropriate annual rental rate.” *See* ATT00116; APC000316. “The party owing the larger amount to the other,” which has always been AT&T, makes “a payment to the other which is equivalent to the net difference in the two amounts.” *See id.*

7. For each calendar year, Alabama Power, as the party to which net rental payments are owed, issues AT&T two separate rental invoices. Alabama Power issues the first invoice late in the calendar year and estimates the “net rental due” using the preceding year’s rental rates as “estimated rental rates.” *See, e.g.,* ATT00199. In spring or summer of the following year, Alabama Power issues a true-up invoice with “final rental rate calculations” based on year-end cost data. *See, e.g.,* ATT00196. The invoices attached to AT&T’s Complaint as Exhibits 4 (final true-up invoice for 2017) and 5 (estimated invoice for 2018) are representative of Alabama Power’s “Joint Use Pole Rental” invoices. *See* ATT00195-199.

8. For the 2011 through 2017 calendar years, the per pole rates that were invoiced and paid are as follows:

	2011	2012	2013	2014	2015	2016	2017
Rate for AT&T’s use of Alabama Power’s poles							
Rate for Alabama Power’s use of AT&T’s poles							

9. The following table shows the calculation of the “net rental” invoiced by Alabama Power for the 2011 through 2017 years:

	AT&T's Annual Rental to Alabama Power			-	Alabama Power's Annual Rental to AT&T			=	Net Rental
Year	Annual Rate	x	Alabama Power Poles	-	Annual Rate	x	AT&T Poles	=	Net Rental
2011			534,848				168,489		
2012			547,524				169,955		
2013			560,500				171,433		
2014			573,784				172,925		
2015			587,383				174,429		
2016			601,303				175,947		
2017			615,554				177,477		

10. AT&T paid Alabama Power's "Joint Use Pole Rental" invoices in full for 2011 through 2017 years. AT&T also paid in full Alabama Power's preliminary estimated "Joint Use Pole Rental" invoice for 2018, which calculated a "net rental" of [REDACTED] using the rates invoiced in 2017 and adjusted pole ownership numbers. *See* ATT00199.

11. Each year from 2011 through 2018, there were between 20 and 29 cable companies and between 15 and 25 CLECs with attachments on Alabama Power's poles. *See* APC00001-12. In 2018, Alabama Power had agreements with 22 ILECs, 21 cable companies, and 32 CLECs, and wireless addendums with several providers. *See* APC000011. In 2018, Alabama Power had over 604,000 CLEC and cable attachments on its poles. *See id.* In 2018, Alabama Power also shared almost 741,000 poles with various ILECs. *See id.*

12. In a letter dated March 7, 2018, AT&T requested a meeting with Alabama Power "to discuss the pole attachment rental rates that [AT&T] should be paying to attach to Alabama Power's poles." A true and correct copy of this letter is attached to AT&T's Complaint as Exhibit 7, *see* ATT00206-208, and to Alabama Power's Answer as Exhibit 9, *see* APC000465-467.

13. The parties met on June 1, 2018 at Alabama Power’s corporate headquarters in Birmingham, Alabama. Attending the meeting for AT&T were Daniel Rhinehart, Director – Regulatory, and Kyle Hitchcock, then-Associate Director for AT&T’s National Joint Utility Team. Attending the meeting for Alabama Power were Pam Boyd, Power Delivery Technical Services General Manager, Sherri Morgan, Joint Use Team Leader, Bobby Hawthorne, Distribution Engineering Services Manager, and Eric Brasher, Joint Use Specialist. True and correct copies of the parties’ correspondence leading up to the June 1, 2018 meeting are attached to AT&T’s Complaint as Exhibits 7 through 10, *see* ATT00206-214, and to Alabama Power’s Answer as Exhibits 9 through 11, *see* APC000465-471.

14. Following the June 1, 2018 meeting, Alabama Power sent AT&T an email dated June 15, 2018 that included a document titled “Model CLEC Agreement.” A true and correct copy of the June 15, 2018 email and attached document is attached to AT&T’s Complaint as Exhibit 11, *see* ATT00215-253, and to Alabama Power’s Answer as Exhibits 7 and 12, *see* APC000426-462, -472-475.

15. In 2018, the parties exchanged additional correspondence about issues raised in AT&T’s Complaint. True and correct copies of their correspondence are attached to AT&T’s Complaint as Exhibits 12 through 15, *see* ATT00254-269, and to Alabama Power’s Answer as Exhibits 13 through 16, *see* APC000476-491. By letter dated July 19, 2018, which is attached to AT&T’s Complaint as Exhibit 13 and to Alabama Power’s Answer as Exhibit 14, Alabama Power provided AT&T a copy of two redacted license agreements. True and correct copies of the redacted license agreements are attached to AT&T’s Complaint as Exhibits 2 and 3, *see* ATT00120-194, and to Alabama Power’s Answer as Exhibits 5 and 6, *see* APC000351-425.

16. On February 22, 2019, the parties met a second time at Alabama Power's corporate headquarters in Birmingham, Alabama. Attending the meeting for AT&T were Dianne Miller, Director – Construction & Engineering, Daniel Rhinehart, Director – Regulatory, Dorian Denburg, Assistant Vice President – Senior Legal Counsel, and Christopher Huther, outside counsel; Mark Peters, Area Manager – Regulatory Relations, participated by telephone. Attending the meeting for Alabama Power were Pam Boyd, Power Delivery Technical Services General Manager, Sherri Morgan – Joint Use Team Leader, Shane Powell – Distribution Manager, Teresa Minor – Risk Services Director, and Eric Langley, outside counsel. True and correct copies of the parties' correspondence leading up to the February 22, 2019 meeting are attached to AT&T's Complaint as Exhibits 16 and 17, *see* ATT00270-280, and Alabama Power's Answer as Exhibits 17 through 21, *see* APC000492-515.

17. The parties exchanged additional correspondence following the February 22, 2019 meeting, true and correct copies of which are attached to AT&T's Complaint as Exhibits 18 through 20, *see* ATT00281-290, and Alabama Power's Answer as Exhibits 22 and 23, *see* APC0000516-522.

18. Alabama Power made a settlement proposal to AT&T on March 22, 2019. AT&T made a counteroffer to Alabama Power on March 28, 2019.

II. Disputed Facts

The parties could not reach agreement on disputed facts to include in this filing. All facts from the parties' pleadings that are not stipulated above are disputed.

III. Key Legal Issues

The parties could not reach agreement on key legal issues to include in this filing. Please refer to the parties' pleadings for legal issues.

IV. Discovery

AT&T's Position on Remaining Discovery:

Although Alabama Power has refused to produce relevant discovery, AT&T is willing to forego further discovery provided Alabama Power is denied any further discovery. AT&T notes that the parties have already fully briefed their merits positions and have submitted almost 1000 pages of evidence. In addition, Alabama Power's request for additional discovery, including its exceptional request for depositions, is not "necessary to the resolution of this dispute," *see* 47 C.F.R. § 1.730(a), and runs counter to the Commission's objective of promptly and efficiently resolving pole attachment complaint disputes.

Alabama Power's Position on Remaining Discovery:

Alabama Power disagrees that it "has refused to produce relevant discovery" and seeks the following additional discovery:

- Responses to certain of the interrogatories served by Alabama Power on June 21, 2019 (namely responses to interrogatories 4, 5 and 7);
- The deposition of Christian Dippon, a third-party witness who submitted two affidavits/declarations on behalf of AT&T in this proceeding; and
- The depositions of two additional AT&T fact witnesses.

V. Schedule for Pleadings

To the extent the Commission believes additional briefing on a particular issue or issues would be helpful to its understanding of this case under 47 C.F.R. § 1.732(a), the April 24, 2019 Notice of Complaint as amended on April 29, 2019 sets Friday, September 13, 2019 as the deadline for all briefing.

VI. Settlement

AT&T does not believe that settlement is presently possible given the irreconcilable merits positions taken by the parties. Alabama Power believes that settlement is still a possibility, especially now that both parties have fully disclosed their data and positions through formal filings.

VII. Other Matters

Given the vast number of disputed facts, the number of witnesses who have submitted testimony (lay and expert), the number and range of legal issues, and other factors, Alabama Power believes the Enforcement Bureau should consider whether this matter should be designated for hearing. AT&T does not believe a hearing is necessary, appropriate, or permitted by the Commission's rules, and would only serve to delay resolution of this matter, unnecessarily increase the cost and expense to the parties, and impose an undue burden on the Commission.

Dated: August 7, 2019

Respectfully and jointly submitted,

/s/ Christopher S. Huther

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I caused a copy of the foregoing Joint Statement to be served on the following (service method indicated):

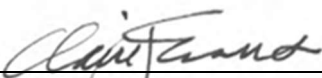
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