

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

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

Complainant,

v.

FLORIDA POWER AND LIGHT
COMPANY,

Defendant.

Proceeding No. 19-187
Bureau ID No. EB-19-MD-006

**AT&T'S OBJECTIONS TO FLORIDA POWER AND LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES**

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

GENERAL OBJECTIONS

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

1. AT&T objects to FPL's instruction to "deliver its responses via electronic mail to FPL's counsel within twenty (20) calendar days" because AT&T's October 28, 2019 response deadline was set by letter order of the Federal Communications Commission's Enforcement Bureau. *See* Letter from L. Griffin to C. Huther and C. Zdebski (Sept. 3, 2019).
2. AT&T objects to the Interrogatories because FPL has not provided any explanation as to why "the information sought in each interrogatory is both necessary to the

resolution of the dispute and not available from any other source.” 47 C.F.R. § 1.730(b). The Interrogatories are therefore facially deficient under the Commission’s rules.

3. AT&T objects to FPL’s definition of “you,” “your,” and “AT&T” 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. FPL’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 working for or on behalf of any” “affiliated company or business” which is 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 FPL.

4. AT&T objects to FPL’s definition of “1975 JUA” because it is vague, ambiguous, and seeks “information that is beyond the scope of permissible inquiry related to the material facts in dispute in the proceeding.” *Id.* § 1.730(a). FPL has defined the “1975 JUA” as “the January 1, 1975 Joint Use Agreement entered between FPL and AT&T’s predecessor-in-interest, Southern Bell” without reference to any subsequent amendment. A determination of the “just and reasonable” rate for AT&T’s use of FPL’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint, however, must be determined based on the Joint Use Agreement, as amended in 2007 and terminated effective September 2019 (“JUA”).

5. 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, in a dispute about the “just and reasonable” rate for AT&T’s use of FPL’s poles beginning with the 2014 rental year, FPL has sought detailed information dating back 44 years, some of which

involves hypothetical scenarios that are premised on FPL's mischaracterization of the JUA. FPL has also asked for extensive information dating back to 2009, including information about "each joint use pole replaced by AT&T" irrespective of whether the pole was jointly used by AT&T and FPL. Such information is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the rental rate that is "just and reasonable" under the Pole Attachment Act for AT&T's use of FPL's poles beginning with the 2014 rental year.

6. 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.

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

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

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

10. 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.

11. 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.

12. AT&T objects to the Interrogatories to the extent that they seek disclosure of confidential or proprietary information prior to the parties' execution of a mutually agreeable confidentiality agreement.

13. 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.

14. 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.

15. 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.

SPECIFIC OBJECTIONS TO INTERROGATORIES

Interrogatory No. 1:

Identify each instance during the last ten years when AT&T replaced a joint use pole because the pole had suffered damage as a result of AT&T's facilities being attached at either the lowest point on the pole or in the space designated for AT&T under the 1975 JUA.

Objections:

AT&T objects to this Interrogatory to the extent it suggests that AT&T is not competitively disadvantaged by its location on a joint use pole if the damage to its facilities does not also require a replacement of the joint use pole. AT&T also objects to this Interrogatory as vague, ambiguous, overly broad, and unduly burdensome. AT&T further objects to the 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 FPL's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 2:

Fully describe the factual basis and expense for each cost or disadvantage AT&T claims to bear as a result of being a joint use pole owner under the 1975 JUA and explain whether such cost is accounted for in AT&T's rates to FPL and third party attachers.

Objections:

AT&T objects to this Interrogatory because the phrase "expense for each cost or disadvantage" is vague and ambiguous. AT&T also 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 or seeks to transfer to AT&T the burden that the Commission placed on FPL to prove by "clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers" in order to rebut the new telecom rate presumption.¹ 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 FPL's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

¹ See *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7768 (¶ 123) (2018).

Interrogatory No. 3:

For each cost or disadvantage identified in response to interrogatory number 2, fully explain how such cost or disadvantage neutralizes any benefit to AT&T under the 1975 JUA, as claimed in the Complaint, given that FPL owns approximately 66% of the joint use poles and AT&T owns approximately 34% of the joint use poles.

Objections:

AT&T objects to this Interrogatory because the phrase “neutralizes any benefit to AT&T under the 1975 JUA” is vague and ambiguous. AT&T also 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 further objects to this Interrogatory to the extent it seeks information about “any benefit to AT&T” under the JUA—as opposed to any competitive benefit—because it is overly broad and 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 FPL’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint. AT&T also objects to this Interrogatory to the extent it incorrectly assumes that the JUA provides AT&T a competitive benefit and incorrectly states the pole ownership percentages of the parties. According to FPL’s most recent pole attachment rental invoice, FPL owns 425,704 (67%) and AT&T owns 213,210 (33%) of 638,914 poles jointly used by the parties. *See* Complaint Ex. 2 at ATT00147.

Interrogatory No. 4:

Identify each joint use pole replaced by AT&T in the last ten years.

Objections:

AT&T objects to this Interrogatory as overly broad and unduly burdensome because it is not limited to poles that are jointly used by the parties or to the rental years at issue in AT&T's Pole Attachment Complaint. AT&T also 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 FPL's poles during the rental years at issue in AT&T's Pole Attachment Complaint.

Interrogatory No. 5:

Identify each instance and all related documentation since 1975 regarding any effort or attempt by AT&T to renegotiate the 1975 JUA rates, terms or conditions and as to each attempt, identify specifically when each attempt occurred, the new rates, terms or conditions that were proposed by AT&T and the end result of such discussions.

Objections:

AT&T objects to this Interrogatory as overly broad and unduly burdensome because it seeks information dating back 44 years 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 FPL's poles during the rental years at issue in AT&T's Pole Attachment Complaint. AT&T also 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 further objects

to this Interrogatory to the extent it seeks confidential settlement communications and/or privileged information.

Interrogatory No. 6:

Identify all efforts made by AT&T in the last ten years with regard to joint use poles to survey the average pole height, average space used by FPL or AT&T or the average number of attachers on all poles subject to the 1975 JUA.

Objections:

AT&T objects to this Interrogatory because the distinction between “joint use poles” and “poles subject to the 1975 JUA” is vague and ambiguous. AT&T also 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 FPL’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 7:

Fully describe how AT&T, from 1975 to the present, would construct its own pole network and the cost of such network if AT&T did not have access to FPL’s pole network under the 1975 JUA.

Objections:

AT&T objects to this Interrogatory because it calls for speculation and incorrectly assumes that AT&T has not “construct[ed] its own pole network.” AT&T also objects to this Interrogatory as overly broad and unduly burdensome because it seeks information dating back 44 years 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 FPL’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint.

Interrogatory No. 8:

Fully describe how AT&T, from 1975 to the present, would obtain access to private easements and public rights-of-way and the cost of such access if FPL did not procure such access for AT&T under the 1975 JUA.

Objections:

AT&T objects to this Interrogatory because it calls for speculation and incorrectly assumes that AT&T has not “obtain[ed] access to private easements and public rights-of-way.” AT&T also objects to this Interrogatory as overly broad and unduly burdensome because it seeks information dating back 44 years 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 FPL’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint. AT&T further objects to this Interrogatory to the extent it misstates the terms and conditions of the JUA with respect to obtaining access to easements and rights-of-way in connection with joint use poles.

Interrogatory No. 9:

Fully describe and identify the costs of AT&T, from 1975 to the present, to indemnify FPL, provide surety bonds to cover FPL’s cost of removing AT&T’s attachments and obtain property insurance if the 1975 JUA did not relieve AT&T from any obligation or need to do such things.

Objections:

AT&T objects to this Interrogatory on the grounds that the term “costs of AT&T” is vague and ambiguous and because the Interrogatory calls for speculation and incorrectly assumes that AT&T does not have comparable responsibilities under the JUA. AT&T also objects to this Interrogatory as overly broad and unduly burdensome because it seeks information dating back 44 years 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 FPL’s poles during the rental years at issue in AT&T’s Pole Attachment Complaint. AT&T further objects to this Interrogatory to the extent it misstates the terms and conditions of the JUA with respect to any applicable indemnification, surety bonds, or property insurance.

Interrogatory No. 10:

Fully describe and identify how AT&T, from 1975 to the present, would prepare a permit application and obtain a permit for each attachment to an FPL pole, including the time, expense and resources to do so, if the 1975 JUA did not relieve AT&T from any obligation or need to obtain such permits.

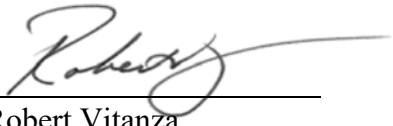
Objections:

AT&T objects to this Interrogatory because it calls for speculation and incorrectly assumes that AT&T does not have comparable responsibilities under the JUA. AT&T also objects to this Interrogatory as overly broad and unduly burdensome because it seeks information dating back 44 years 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 FPL’s poles during the rental years at

issue in AT&T's Pole Attachment Complaint. AT&T further objects to this Interrogatory to the extent it misstates the terms and conditions of the JUA with respect to any applicable permits or permit applications.

Respectfully submitted,

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

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

Dated: September 23, 2019

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

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2019, I caused a copy of the foregoing AT&T's Objections to Florida Power and Light 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)

Lisa B. Griffin
Lia Royle
Federal Communications Commission
Enforcement Bureau
Market Disputes Resolution Division
445 12th Street, SW
Washington, DC 20554
(by email)

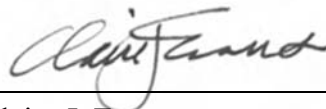
Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(by mail)

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
(by mail)

Charles A. Zdebski
Robert J. Gasner
William C. Simmerson
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW, 12th Floor
Washington, DC 20006
Counsel for Defendant
(by email)

Alvin B. Davis
Squire Sanders (US) LLP
200 South Biscayne Boulevard, Suite 300
Miami, FL 33131
(by email)

Joseph Ianno, Jr.
Maria Jose Moncada
Charles Bennett
Florida Power and Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(by mail)



Claire J. Evans