

Before the
Federal Communications Commission
Washington, DC 20554

_____)	
VERIZON FLORIDA LLC,)	
	)	File No.
Complainant,)	
)	
v.)	
	)	Related to
FLORIDA POWER AND LIGHT)	Docket No. 14-216
COMPANY,)	File No. EB-14-MD-003
)	
Respondent.)	
_____)	

POLE ATTACHMENT COMPLAINT

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POLE ATTACHMENT COMPLAINT

In accordance with the Enforcement Bureau’s Order of February 11, 2015, Verizon Florida LLC (“Verizon”) submits this Complaint with the supplemental information identified in the Bureau’s Order.¹ As shown below, this additional evidence further establishes that Verizon is entitled to pay the same properly calculated pole attachment rate that Florida Power and Light Company (“FPL”) may charge Verizon’s competitors.

This long-standing pole attachment dispute involves the continuing efforts of FPL to use a contractual evergreen clause to forever charge Verizon rental rates that are nearly four times the rates FPL may charge Verizon’s competitors – even though Verizon terminated the parties’ forty-year-old Joint Use Agreement nearly three years ago after repeated attempts to resolve the rate issue with FPL proved futile. In its February 11, 2015 Order, the Enforcement Bureau rejected the vast majority of FPL’s reasons for resisting Verizon’s ability to maintain pole

¹ *Verizon Florida LLC v. Florida Power and Light Company*, Memorandum Opinion and Order, Docket No. 14-216, File No. EB-14-MD-003 (EB Feb. 11, 2015) (“Mem. Op.” or “Order”).

attachments at the rates envisioned by the Commission's *Pole Attachment Order*.² In particular, the Bureau made clear that, since July 12, 2011, Verizon has been entitled to a just and reasonable rate from FPL for pole attachments. Mem. Op. ¶¶ 17-19.

The additional evidence that the Bureau requested in its Order, as shown herein, further confirms that Verizon is now and has long been attaching to FPL's poles based on terms and conditions that are at best comparable to those that FPL provides Verizon's cable and competitive telephone company competitors, and in many ways are even less advantageous than its competitors enjoy – and yet Verizon has been charged a far higher rental rate. The additional evidence provided here shows that the “expenses [Verizon] avoided under the Agreement” before its termination, *id.* ¶ 24, amount to an annual charge of only about \$0.96 per pole.³ Moreover, the “prospective value” of those benefits after termination of the Agreement, Mem. Op. ¶ 22, is even less – about \$0.30 per pole per year. *See* Ex. A ¶ 55 (Calnon 2015 Aff.). This modest amount pales in comparison to the *disadvantages* associated with Verizon's joint use relationship with FPL, which must also be accounted for in setting the just and reasonable rate. Mem. Op. ¶ 8. These disadvantages level the playing field and show that Verizon is comparably situated with its competitors and should receive the same rental rate.⁴

² *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff'd Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013) (“*Pole Attachment Order*” or “*Order*”).

³ Ex. A ¶ 51 (Affidavit of Mark S. Calnon, Ph.D. (Mar. 13, 2015) (“Calnon 2015 Aff.)).

⁴ In order to remove any doubt about Verizon's comparability, Verizon previously offered to attach to FPL's poles based on the rates, terms, and conditions in FPL's license agreement with Verizon's affiliate. *See* Pole Attachment Complaint ¶ 43, *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 14-216, File No. EB-14-MD-003 (Jan. 31, 2014) (“2014 Compl.”); Pole Attachment Complaint Reply at 9, *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 14-216, File No. EB-14-MD-003 (Apr. 24, 2014) (“2014 Reply”). That remains an acceptable solution, as the evidence cited in this Complaint shows that Verizon

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Even if Verizon enjoyed some material advantage under the Joint Use Agreement (which Verizon did not), Verizon has paid for that advantage several times over. For over a decade before the 2011 *Pole Attachment Order*, Verizon paid FPL \$10 to \$20 more per pole per year than its competitors paid. *See* Ex. A ¶ 8 (Calnon 2015 Aff.). This vast rate differential long ago more than covered all the one-time, non-recurring, nickel-and-dime charges that FPL cites to in an attempt to justify why Verizon should pay so much more than its competitors pay for attaching to the same poles.

Contrary to FPL's position, it cannot preserve in amber and profit forever from the exorbitant rates that it extracted during the very different competitive circumstances of the mid-1970s. Instead, the 2011 *Pole Attachment Order* and the Bureau's recent Order make clear that incumbent telephone companies are entitled to just and reasonable pole attachment rates just as their competitors are, and that ensuring such rates encourages broadband deployment and prevents distortions to competition.

The Commission should promptly reject the last barrier FPL has put up to stave off a reduction of its excessive rates, find that the rates that FPL has charged Verizon are unjust and unreasonable, and again reaffirm for the industry that all broadband providers, including incumbent telephone companies, are entitled to pay a reasonable and comparable rate under 47 U.S.C. § 224(b) for their pole attachments. Verizon will then charge FPL a proportionate rate to attach to Verizon's poles.⁵

has not, does not, and will not receive any benefits under the Joint Use Agreement that materially advantage it as against its competitors.

⁵ Verizon has not had an opportunity to take discovery regarding this Complaint, but the best data available to Verizon makes it abundantly clear that FPL's demanded rates are unjust and unreasonable as any alleged "unique benefit" that Verizon has been afforded under the Joint Use Agreement has been de minimis and paid for several times over. Should FPL respond to this Complaint with unsupported allegations or monetary claims, however, Verizon reserves the right

I. JURISDICTION AND PARTIES

1. The Commission has jurisdiction over this pole attachment dispute under the Communications Act of 1934, as amended, including, but not limited to, Section 224 thereof. *See* 47 U.S.C. § 224; *Pole Attachment Order*, 26 FCC Rcd at 5327-28 (¶¶ 202-03). Verizon brings this Complaint subject to Section 224 and Sections 1.1401-1.1424 of the Commission’s Rules. This Complaint is the continuation of *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 14-216, File No. EB-14-MD-003, which was filed on January 31, 2014 and dismissed on February 11, 2015 without prejudice to this refiling. *See* Mem. Op. ¶¶ 3, 25 n.88, 27. The Bureau’s Order stated that it viewed its dismissal without prejudice as “functionally equivalent” to “asking the complainant to supplement the record.” *Id.* ¶ 25 n.88. Verizon hereby supplements the record and incorporates by reference the pleadings and evidence that it filed in the prior complaint proceeding.

2. Verizon is a Florida limited liability company with a principal place of business at 610 Zack Street, 4th Floor, Tampa, Florida 33602. Verizon is an ILEC that provides telecommunications and other services in sections of Hillsborough, Pinellas, Manatee, Sarasota, Polk, and Pasco Counties in Florida. Verizon was formerly known as the General Telephone Company of Florida, which was an independent telephone company that relied primarily on utility poles owned by electric companies to provide service to these relatively small and then-developing geographic areas within Florida. Ex. D ¶ 2 (Affidavit of Steven R. Lindsay (Jan. 31, 2014), also attached to 2014 Compl. as Ex. A (“Lindsay 2014 Aff.”)).⁶

to seek discovery consistent with the Bureau’s Orders in other pending Pole Attachment Complaint proceedings. *See* Orders in File Nos. EB-13-MD-007, EB-14-MD-002, EB-14-MD-008 (Feb. 12, 2015).

⁶ Verizon has agreed to sell its local wireline operations in Florida to Frontier Communications Corporation. Completion of the transaction is subject to customary closing conditions, including

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3. FPL is a Florida corporation with a principal place of business at 700 Universe Boulevard, Juno Beach, Florida 33408. FPL is an electric utility that owns and controls facilities used to distribute electricity and that serves retail customers in Florida. *See* NextEra Energy, Annual Report 2013 at 4, 5 (Mar. 21, 2014), *available at* www.investor.nexteraenergy.com (last visited Mar. 12, 2015). FPL is, therefore, a “utility” within the meaning of Section 224(a)(1) of the Pole Attachment Act. FPL is not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

4. FPL is the largest electric utility in the state of Florida. It is a wholly-owned subsidiary of NextEra Energy, Inc., which is one of the largest electric power companies in North America, providing retail and wholesale electric services to nearly five million customers in twenty-six States and four Canadian Provinces. NextEra Energy, Annual Report 2013 at 4.

5. The State of Florida, including its political subdivisions, agencies and instrumentalities, has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments in the manner established by Section 224, which would preempt the jurisdiction of the Commission over pole attachments in Florida. *See Pole Attachment Order*, 26 FCC Rcd at 5371 (App. C).

6. FPL and Verizon were parties to a Joint Use Agreement entered by FPL and General Telephone Company of Florida on January 1, 1975.⁷ The rate provision in the Joint Use Agreement was most recently amended in a Supplemental Agreement entered by FPL and

obtaining appropriate regulatory approvals. The companies are aiming to complete the transaction in the first half of 2016. *See Verizon Sharpens Strategic Focus* (Feb. 5, 2015), *available at* <http://www.verizon.com/about/news/verizon-sharpens-strategic-focus-and-returns-value-investors-transactions-valued-1554-billion/> (last visited Mar. 12, 2015).

⁷ Ex. 1 (Joint Use Agreement Between Florida Power and Light Company and General Telephone Company of Florida (Jan. 1, 1975) (“Joint Use Agreement”)), also attached to 2014 Compl. as Ex. 1.

General Telephone Company of Florida on March 29, 1978.⁸ The parties also entered a Confidential Letter Agreement in 2007,⁹ which addresses costs related to FPL’s plan to replace and relocate existing poles with stronger poles in order to “benefit FPL customers during and after future storm events by reducing the extent of power outages.”¹⁰

7. Verizon gave FPL notice that it was terminating the parties’ Joint Use Agreement effective June 9, 2012.¹¹ However, as the Bureau held in its February 11, 2015 Order, Verizon “genuinely lacks the ability to terminate” the rental rate provision in the Joint Use Agreement. See Mem. Op. ¶¶ 13, 25 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216)); see also *infra*, Section II.A. FPL has “refused to lower the rate for Verizon’s existing attachments, relying on the Agreement’s evergreen clause,” Mem. Op. ¶ 13, which states that “applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination,” Ex. 1 at Art. XVI (Joint Use Agreement). The evergreen clause does not allow the parties to make attachments to new poles following termination, and there is no agreement between Verizon and FPL for the joint use of new poles.

8. FPL continues to own or control large numbers of poles used or designated, in whole or in part, for wire communication. Verizon currently has attachments on approximately

⁸ Ex. 2 (Supplemental Agreement Between Florida Power and Light Company and General Telephone Company of Florida (Mar. 29, 1978) (“Supplemental Agreement”)), also attached to 2014 Compl. as Ex. 2.

⁹ Ex. 3 (Confidential Letter Agreement Between Florida Power and Light Company and Verizon Florida LLC (Sept. 27, 2007)), also attached to 2014 Compl. as Ex. 3.

¹⁰ *Electric Infrastructure Hardening Plan for 2007-2009* ¶ 6 (May 7, 2007), available at www.psc.state.fl.us/library/FILINGS/07/03831-07/03831-07.PDF (“2007 Storm Hardening Plan”) (last visited Mar. 12, 2015).

¹¹ Ex. 10 (Letter from S. Lindsay, Staff Consultant, Verizon Network Engineering, to T. Kennedy, Principal Regulatory Affairs Analyst, FPL (Dec. 9, 2011) (“Dec. 2011 Letter”)), also attached to 2014 Compl. as Ex. 5.

67,000 distribution poles that FPL owns or controls. *See* Ex. 7 at 10 (2013 Invoice). FPL has attachments on approximately 7,000 poles owned by Verizon. *Id.*

9. On several occasions, Verizon has engaged in executive-level discussions with FPL in an attempt to resolve this pole attachment dispute. In 2011, Verizon mailed a certified letter to FPL outlining the allegations that form the basis of this Complaint, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute. Exs. D ¶ 12 (Lindsay 2014 Aff.); 10 (Dec. 9, 2011 Letter). In January 2012, the parties had in-person executive-level discussions, which included a discussion of FPL’s claim that Verizon has been advantaged over its competitors under the terms and conditions of the Joint Use Agreement. Ex. C ¶ 17 (Affidavit of Steven R. Lindsay (Mar. 12, 2015) (“Lindsay 2015 Aff.”)). The discussions failed to resolve the dispute. Ex. D ¶ 12 (Lindsay 2014 Aff.).¹² [REDACTED]

[REDACTED] In 2013, Verizon continued its negotiations with FPL, which abruptly concluded when FPL filed a lawsuit against Verizon in

¹² FPL has argued that the Commission’s rules require another round of executive-level meetings before this Complaint may be filed. Not so. The Bureau’s Order states that the dismissal of Verizon’s Complaint was “functionally equivalent” to asking Verizon to supplement the record. Mem. Op. ¶ 25 n.88. This Complaint does just that – it supplements the record regarding the same “pole attachment dispute” for which executive-level meetings were held. *See* 47 C.F.R. § 1.1404(k) (requiring executive-level discussions about “the pole attachment dispute”). In fact, Verizon and FPL have met time and again over the past four years to try to resolve this dispute. *See infra* ¶¶ 16-22. Moreover, those executive-level negotiations specifically included a discussion about FPL’s allegations that Verizon is afforded unique advantages under the Joint Use Agreement. Ex. C ¶ 17 (Lindsay 2015 Aff.). At that time, Verizon took the same position that it takes now – that Verizon has not been advantaged relative to FPL’s licensees and that, even if there were some material advantage provided by the Joint Use Agreement, Verizon has paid for it several times over. *Id.* Therefore, while Verizon would welcome further negotiations with FPL under the oversight of the Enforcement Bureau, Verizon is not required to engage in another set of executive-level discussions before filing this Complaint – just as the Frontier Complainants are not required to engage in executive-level discussions prior to supplementing the record in their disputes. *See* File Nos. EB-13-MD-007, EB-14-MD-002, EB-14-MD-008.

Florida state court, seeking to compel Verizon to pay its demanded rental rates. *Id.* ¶ 17. In 2014, the parties attended court-ordered mediation, but it ended in an impasse. *See* Ex. 15 (Mediator’s Report (Aug. 27, 2014)).

II. FACTS AND ARGUMENT

10. The *Pole Attachment Order* followed several years of investigation which showed that incumbent telephone companies had been forced to pay rates that were significantly higher than the rates available to their competitors because electric companies either (1) leveraged their greater market power to obtain a high rate or (2) refused to renegotiate outdated agreements with unreasonably high rates. *See* 26 FCC Rcd at 5330-31 (¶ 208). This case provides further support for the Commission’s finding. The evidence shows that FPL has leveraged its bargaining power to obtain rates four times higher than those applicable to Verizon’s competitors, that FPL has provided nothing of material value to Verizon in return for this significant rate disparity, and that FPL has refused to renegotiate the outdated Joint Use Agreement to reach a just and reasonable rate for Verizon’s attachments.

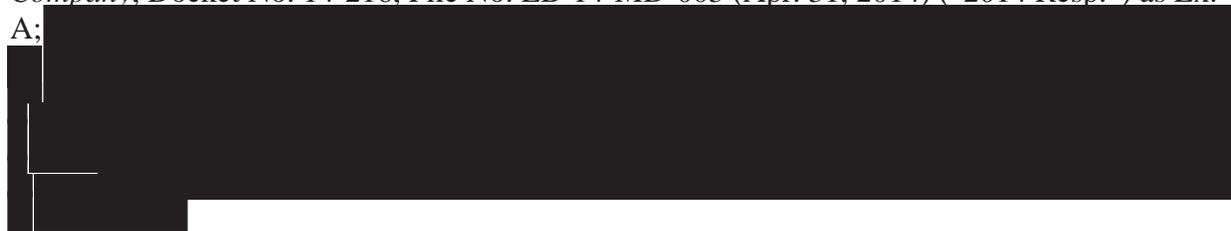
A. Verizon Is Entitled To Just And Reasonable Rates For All Of Its Attachments As Of July 12, 2011.

11. The Bureau’s Memorandum Opinion reinforced the Commission’s conclusion that incumbent telephone companies, including Verizon, are “entitled to pole attachment rates, terms and conditions that are just and reasonable pursuant to Section 224(b)(1)” for all attachments – including attachments made prior to the July 12, 2011 effective date of the *Pole Attachment Order*. Mem. Op. ¶¶ 17-19, 26. The Bureau further confirmed that Verizon specifically here is entitled to a determination of a just and reasonable rate for its attachments to FPL’s poles. *Id.* ¶¶ 25-26.

12. This Complaint focuses on Verizon’s existing attachments because FPL has confirmed on multiple occasions that it is willing to “lower the rate for future attachments,” Mem. Op. ¶ 13, by entering a new “pole attachment agreement similar to [Verizon’s] competitors for new attachments.”¹³ There can be no dispute that the new lower rate for any future attachments under a license agreement is the rate calculated using the Commission’s new telecommunications rate formula. As the Bureau confirmed, “[i]f an incumbent LEC entering into a new agreement demonstrates that it attaches on terms and conditions that leave it ‘comparably situated’ to competitive LEC or cable attachers, ‘competitive neutrality counsels in favor of affording incumbent LECs the same rate as the comparable provider,’ *i.e.*, the New Telecom Rate or the Cable Rate.” Mem. Op. ¶ 7 (citing *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)).

13. Verizon is also entitled to a competitively neutral rate for its existing attachments because Verizon “genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement.”¹⁴ As next detailed, nothing has changed since Verizon filed its first Complaint regarding this pole attachment dispute – in spite of Verizon’s best efforts, “market forces and independent negotiations” continue to “not be alone sufficient to ensure just and reasonable rates, terms and conditions for [Verizon’s] pole attachments.” *Pole Attachment Order*, 26 FCC Rcd at 5327 (¶ 199).

¹³ Declaration of Thomas J. Kennedy ¶ 46 (Apr. 4, 2014) (“Kennedy 2014 Decl.”), attached to Response to Pole Attachment Complaint, *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 14-216, File No. EB-14-MD-003 (Apr. 31, 2014) (“2014 Resp.”) as Ex. A;



¹⁴ *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216), quoted at Mem. Op. ¶ 25.

1. FPL Owns – And Has Always Owned – The Vast Majority Of Jointly-Used Poles.

14. “[I]n evaluating incumbent LEC pole attachment complaints, the Commission will consider the incumbent LEC’s evidence that it is in an inferior bargaining position to the utility against which it has filed the complaint.” *Id.* at 5334 (¶ 215). Here, Verizon has, and its predecessor had, inferior bargaining power in the sense that the Commission used the term.

15. FPL “has at all times relevant to this proceeding owned the vast majority of the parties’ joint use poles.” Mem. Op. ¶ 11. According to FPL’s most recent invoice, FPL owns 90 percent (or about 67,000) of the approximately 74,000 distribution poles jointly used by the parties. Ex. 7 at 10 (2013 Invoice). This pole ownership disparity – which is roughly 90 percent to 10 percent in FPL’s favor – is significantly greater than that noted in the *Pole Attachment Order*: “[t]oday, incumbent LECs as a whole appear to own approximately 25-30 percent of poles and electric utilities appear to own approximately 65-70 percent of poles.” 26 FCC Rcd at 5329 (¶ 206). It also matches the hypothetical 90 percent to 10 percent ownership disparity used by the Commission to illustrate why “incumbent LECs often may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations in some cases.” *Id.* at 5329 (¶ 206 and n.618).¹⁵

¹⁵ The Commission explained:

As a hypothetical illustration, if the electric company owned 90% of poles in an area and the incumbent LEC owned 10%, and if the best outside alternative for each party was deploying the remaining needed poles (and having the legal right to do so), the electric utility would face the cost of deploying 10% of poles, while the incumbent LEC would face the cost of deploying 90% of poles. As a result, the incumbent LEC would have less bargaining power than the electric utility.

Pole Attachment Order, 26 FCC Rcd at 5329 (¶ 206 n.618).

2. FPL Has Refused To Negotiate A Just And Reasonable Pole Attachment Rate For Verizon's Existing Attachments.

16. As detailed in Verizon's prior Pole Attachment Complaint, Verizon has tried unsuccessfully for years to obtain a just and reasonable rental rate from FPL for its existing attachments. 2014 Compl. ¶¶ 21-38. Verizon's effort began in June 2011, when it asked FPL to commence negotiations for a rate comparable to the rate that FPL charges Verizon's competitors provided Verizon attaches to FPL's "poles on terms and conditions comparable to those that apply" to Verizon's competitors. To determine comparability, Verizon asked for a copy of FPL's standard license agreement and information about any deviations from the standard license terms among FPL's licensees.¹⁶

17. FPL eventually shared a draft "Linear Facilities Pole Attachment Agreement" with Verizon – a document that shows FPL's starting point in its negotiations with prospective licensees.¹⁷ FPL did not provide any information about the terms and conditions in FPL's executed license agreements, but Verizon obtained copies of two license agreements between its affiliate and FPL.¹⁸ Verizon's review of the various agreements confirmed that Verizon had long been attaching to FPL's poles on terms and conditions that are comparable to Verizon's

¹⁶ Ex. 9 (Letter from S. Lindsay, Staff Consultant, Verizon Network Engineering, to T. Kennedy, Principal Regulatory Affairs Analyst, FPL (June 27, 2011)) ("June 2011 Letter"), also attached to 2014 Compl. as Ex. 8.

¹⁷ See Ex. 6 (Linear Facilities Pole Attachment Agreement Between ____ and Florida Power and Light Company, attached to Email from T. Kennedy, Principal Regulatory Affairs Analyst, FPL, to S. Lindsay, Staff Consultant, Verizon Network Engineering (Oct. 31, 2011) ("Draft License")).

¹⁸ See Exs. 4 (Attachment Agreement Between Metropolitan Fiber Systems of Florida, Inc. and Florida Power and Light Company (Oct. 7, 1994) ("MCI License")), 5 (Pole Attachment Agreement Between MCI Metro Access Transmission Services, Inc. and Florida Power and Light Company (Aug. 10, 1995) ("MCI Metro License")).

competitors but had been paying a significantly higher rental rate. Ex. C ¶ 10 (Lindsay 2015 Aff.).

18. Verizon met with FPL on numerous occasions in 2011 to try to negotiate a new agreement and rental rate. FPL consistently denied that the *Pole Attachment Order* provided Verizon any right to rate relief with respect to the facilities attached to FPL's poles before the July 12, 2011 effective date of the *Pole Attachment Order*. Ex. D ¶ 11 (Lindsay 2014 Aff.).

19. On December 9, 2011, Verizon requested in-person executive-level discussions. Ex. 10 at 2 (Dec. 9, 2011 Letter). Verizon also provided formal notice of termination of the Joint Use Agreement, effective six months later on June 9, 2012, but emphasized that it “remain[ed] willing to enter into a new agreement if the rate issue is resolved.” *Id.*

20. The parties' executives met on January 27, 2012, and the parties then continued informal negotiations. Ex. D ¶ 13 (Lindsay 2014 Aff.). Throughout, Verizon refuted FPL's claim that Verizon has been afforded some material advantage under the Joint Use Agreement that warrants the rate disparity between the rates FPL charges Verizon and Verizon's competitors. Ex. C ¶¶ 16-17 (Lindsay 2015 Aff.). To eliminate any doubt about its comparability, Verizon even offered to enter reciprocal license agreements under which the parties' attachments – existing and future – would be governed by rates, terms, and conditions comparable to those in FPL's executed license agreements. FPL refused, maintaining it was entitled to the same going-forward rental rate for Verizon's nearly 67,000 existing attachments. Exs. D ¶ 13 (Lindsay 2014 Aff.), C ¶¶ 16-17 (Lindsay 2015 Aff.).

21. On June 9, 2012, the Joint Use Agreement terminated. Ex. D ¶ 13 (Lindsay 2014 Aff.). FPL still “refused to lower the rate for Verizon's existing attachments, relying on the Agreement's evergreen clause.” Mem. Op. ¶ 13. That provision states that “notwithstanding any

such termination [of the Agreement], other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.” Ex. 1 at Art. XVI (Joint Use Agreement).

22. [REDACTED]

[REDACTED]

3. FPL Continues To Try To Extract Excessive Rental Rates Through State Court Litigation.

23. Negotiations came to an abrupt stop in April 2013 when FPL filed a Complaint against Verizon in Florida state court.²¹ During negotiations, Verizon paid FPL’s invoices “in full for the period up to the July 12, 2011 effective date of the *Pole Attachment Order*. For the period after that date, Verizon applied the New Telecom Rate formula and paid \$8.52 per pole.” Mem. Op. ¶ 14; Ex. D ¶¶ 18-19 (Lindsay 2014 Aff.). FPL’s lawsuit seeks to compel Verizon to

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ Complaint, *Florida Power and Light Company v. Verizon Florida LLC*, No. 13-14808 (Fla. 11th Cir. Ct. Apr. 23, 2013), attached to 2014 Compl. as Ex. 11.

pay the remainder of FPL's 2011 and 2012 invoices.²² FPL has since invoiced Verizon for 2013 attachments, and Verizon has paid the invoice at an \$8.52 rate. Exs. 7 at 10 (2013 Invoice), C ¶ 20 (Lindsay 2015 Aff.).

24. FPL's litigation strategy has been to seek enforcement of the rates it calculates under the Joint Use Agreement without regard to the *Pole Attachment Order*. FPL first opposed Verizon's request for a primary jurisdiction referral to the Commission,²³ arguing that its state court Complaint presents nothing but "a straightforward contract case" that asks the Court "to enforce the existing rate in the Joint Use Agreement."²⁴ After the Court declined Verizon's request for an FCC referral, FPL opposed any judicial determination of the just and reasonable rate, arguing that "[o]nly the FCC can calculate a rate that might impact the contract governing the parties here."²⁵ FPL argued that the Court's sole role should be one of finding that "Verizon must pay the rate set forth in the parties' Joint Use Agreement."²⁶

25. Nine days after the state court agreed that the FCC, and not the court itself, is the proper body to determine a just and reasonable rate applicable to Verizon's attachments, Verizon filed its Complaint.²⁷

²² The Complaint includes five counts, but three were voluntarily withdrawn. *See* Notice of Voluntary Dismissal of Counts IV and V of Complaint (Sept. 25, 2013) and Order Denying Mot. to Dismiss or Transfer Venue (Sept. 26, 2013), attached to 2014 Compl. as Exs. 14 and 15, respectively. Two counts remain – one alleging breach of contract based on Verizon's payment of the 2011 invoice, and one alleging breach of contract based on Verizon's payment of the 2012 invoice. *See* Complaint at 4-6, 7-8, attached to 2014 Compl. as Ex. 11.

²³ Mot. to Dismiss or Transfer (July 29, 2013), attached to 2014 Compl. as Ex. 12.

²⁴ FPL's Opp. to Am. Mot. to Dismiss at 6-7 (Aug. 13, 2013), attached to 2014 Compl. as Ex. 13.

²⁵ Mot. to Dismiss Counterclaim at 4 (Dec. 5, 2013), attached to 2014 Compl. as Ex. 18; *see also* Answer and Counterclaim (Oct. 16, 2013), attached to 2014 Compl. as Ex. 16.

²⁶ Mot. to Dismiss Counterclaim at 11 (Dec. 5, 2013), attached to 2014 Compl. as Ex. 18.

²⁷ Order on Mot. to Dismiss Counterclaim (Jan. 22, 2014), attached to 2014 Compl. as Ex. 21 (dismissing Verizon's request for declaratory relief of a just and reasonable rate in part because it

26. The pendency of Verizon’s Pole Attachment Complaint did not – and has not – changed FPL’s litigation strategy. Even though FPL concedes that a different rental rate set by the Commission would override any action taken by the state court in the meantime,²⁸ FPL has continued to argue for judgment in its favor because FPL “did not agree to accept less than the contract required. The Federal Communications Commission (‘FCC’) did not require FPL to accept less than the contract required. . . . Nothing remains but entry of judgment in FPL’s favor for the underpaid amount, with interest.” Ex. 14 at 1-2 (Mot. for Summ. J. (July 15, 2014)).

27. Court-ordered mediation in August 2014 was unsuccessful and the case proceeded toward a December 2014 trial date. Ex. 15 (Mediator’s Report (Aug. 27, 2014)). About a month before trial, the state court stayed all proceedings “pending resolution of Verizon’s pending matter before the FCC.” Ex. 16 (Order Deferring and Staying Matter (Nov. 3, 2014)). FPL quickly sought reconsideration, again arguing that “[t]his is a plain vanilla breach of contract case” and that the Court should “compel Verizon to make good on its underpayments.” Ex. 17 at 1-2 (FPL’s Mot. for Reconsideration (Nov. 11, 2014)). FPL discounted the FCC process, claiming that “the FCC may not rule for years.” *Id.* at 6.

28. FPL’s Motion was denied without prejudice to reconsideration in early February 2015. Ex. 18 (Order Denying Mot. for Reconsideration (Dec. 11, 2014)). On February 11, 2015, the Bureau issued its Order, reinforced Verizon’s right to just and reasonable rates for all of its attachments to FPL’s poles, and confirmed that the Commission is the proper forum for setting that rate. *See, e.g.*, Mem. Op. ¶¶ 3, 17-19, 25-26.

had not exhausted its remedies by filing a Pole Attachment Complaint with the FCC); *see also* 2014 Compl. (filed Jan. 31, 2014).

²⁸ *See, e.g.*, Ex. 13 at 2 (FPL’s Opp. to Mot. to Stay (Mar. 27, 2014)) (reasoning that if “the FCC determines . . . that Verizon is entitled to pay less” than an amount awarded by the Court, FPL could “reimburse Verizon for any overpayment resulting from th[e] Court’s ruling.”).

29. The day that the Bureau issued its Order, FPL asked the state court to set its case for trial. Ex. 19 (Request for Trial Setting (Feb. 11, 2015)). Verizon quickly informed FPL and the Court of its intention to refile this Complaint in early March. Ex. 20 (Opp. to Request for Trial Setting (Feb. 13, 2015)). FPL responded by again asking the state court to set its case for trial. Ex. 21 (Mot. for Trial Setting (Feb. 18, 2015)).

30. FPL has thus made it abundantly clear that, absent a decision from the Commission, it will continue to try to force Verizon to pay (as the Bureau characterized them) “the relatively high Agreement Rates” for Verizon’s existing attachments. *See* Mem. Op. ¶ 25. The Commission’s intervention is necessary because Verizon “genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement.” *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216).

B. The Rates FPL Has Billed And Continues to Demand From Verizon Far Exceed The Rates Charged Verizon’s Competitors.

31. For the 2011, 2012, and 2013 rental years, FPL invoiced Verizon annual per pole attachment rates of \$35.465, \$36.225, and \$37.155, respectively. Ex. 7 at 7-10 (Invoices). FPL calculated these rates based on its interpretation of a formula that allocates “one half of the average annual cost of joint use poles” to Verizon, even though Verizon is allocated less than half of the useable space on the pole and in fact occupies significantly less space than it is allocated.²⁹ In addition to these rental amounts, FPL collects and retains rent from third parties

²⁹ *See* Exs. 2 at § 1 (Supplemental Agreement) (defining the rental rate as “one half of the average annual cost of joint use poles for the next preceding year as determined by the party owning the majority of the jointly used poles”), 1 at § 1.1.7 (Joint Use Agreement) (allocating 4 feet of space to Verizon and 6 feet of space to FPL), D ¶ 9 (Lindsay 2014 Aff.) (representing that Verizon generally uses, at most, 1.25 feet of space on a joint use pole).

that attach in the space allocated to, but not used by, Verizon on the joint use poles.³⁰ FPL provides Verizon with no corresponding credit or reduction in rate, but instead double-dips in a manner that allows it to recover a disproportionate share of its pole costs from Verizon. Ex. B ¶ 14 (Affidavit of Mark S. Calnon Ph.D. (Jan. 31, 2014) (“Calnon 2014 Aff.”)).

32. The rates FPL demands are four times higher than the rates that FPL may charge competitors comparably situated to Verizon. For example, the 2011 rate that results from the Commission’s new formula for telecommunications carriers is \$8.52 per pole. *Id.* ¶¶ 3, 10.³¹

33. The demanded rates are higher still than the rates that Verizon charges its competitors to attach to its poles. *See* Mem. Op. ¶ 25 n.84 (requesting “evidence as to the rate Verizon charges cable companies and competitive LECs to attach to its poles”). The rates Verizon invoiced in Florida in 2011, 2012, and 2013 were calculated pursuant to the Commission’s formula for cable companies. Ex. C ¶ 7 (Lindsay 2015 Aff.). These invoiced rates were \$6.12, \$5.15, and \$5.16, respectively. *Id.*

C. Verizon Paid Several Times Over For Any “Unique Benefits” It Received Before The Joint Use Agreement Terminated.

34. In its February Order, the Bureau requested evidence from Verizon that would show that it did not receive benefits under the Joint Use Agreement that justified the much higher invoiced rates compared to the lower rates calculated under the new and pre-existing telecommunications formulas. Mem. Op. ¶ 24. As shown below, Verizon long ago paid FPL

³⁰ Exs. D ¶ 9 (Lindsay 2014 Aff.), E ¶ 22 (Affidavit of Bryan L. Lantz (Mar. 13, 2015) (“Lantz Aff.”)), F ¶ 4 (Affidavit of Matthew G. Dowell (July 30, 2014) (“Dowell Aff.”)).

³¹



significantly more than the monetary value, if any, associated with any unique benefits that FPL claims to have provided Verizon and has shouldered far higher costs than its competitors.³²

1. Verizon’s Access To FPL’s Poles Has Come At A High Price That Verizon’s Competitors Do Not Pay.

35. A just and reasonable rate for Verizon’s attachments must take into account the burdens that Verizon – uniquely – bears in order to access FPL’s poles. “A failure to weigh, and account for, the different . . . *responsibilities* in joint use agreements could lead to marketplace distortions.” Mem. Op. ¶ 8 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654)) (emphasis added).³³ Among Verizon’s unique responsibilities are those associated with “the fact that incumbent LECs still own many poles today.” *Id.*

36. Verizon’s pole ownership increases its price of access to FPL’s poles above that of its competitors. According to FPL’s Principal Regulatory Affairs Analyst, although “granting ILECs access is not required by law,” FPL grants Verizon access because it “must have access to Verizon’s essential facilities.” *See* Kennedy 2014 Decl. ¶ 46; 2014 Resp. at 24. Access thus comes at a unique cost for Verizon: it must provide FPL “access to Verizon’s percentage of the poles.” 2014 Resp. at 24. Verizon’s competitors need only attach.

37. FPL’s claimed reliance on Verizon’s poles does not give Verizon bargaining power, as FPL has previously contended. *See id.* Rather, the 90 to 10 percent pole ownership disparity in this case has left Verizon at a significant disadvantage. *See* Section II.A. FPL’s acknowledgment that Verizon must own poles in order to attach to FPL’s poles nonetheless

³² This section details the effect of the past rate disparity and establishes that Verizon did not “avoid” any expenses under the Agreement before it terminated. *See* Mem. Op. ¶ 24. The next section will discuss the post-termination period, when even fewer of the alleged unique benefits have value because Verizon cannot make attachments to additional FPL poles. *See* Section II.D.

³³ *See also* Ex. G ¶ 10 (Affidavit of Timothy J. Tardiff, Ph.D. (Mar. 13, 2015) (“Tardiff Aff.”)).

highlights a significant burden for Verizon that is not also shouldered by Verizon's competitors: Verizon bears the costs associated with ownership of approximately 7,000 joint use poles.

38. FPL has identified additional costs uniquely borne by Verizon. One “most important[]” difference between Verizon and its competitors, according to FPL, is that “the joint use agreement gives both parties responsibility for the safety and reliability of the joint use networks.” Kennedy 2014 Decl. ¶ 16. Indeed, Verizon incurs significant training, maintenance, and oversight costs in this regard, thus exacerbating the cost disparity between Verizon and its competitors. *See* Ex. E ¶ 4 (Lantz Aff.).

39. Also, for each and every alleged “benefit” that Verizon receives under the Joint Use Agreement, Verizon must provide FPL that same alleged “benefit.” *See* Kennedy 2014 Decl. ¶ 16. For example, just as FPL does not require Verizon to purchase insurance to attach to FPL's poles, *id.* ¶ 33, Verizon does not require FPL to purchase insurance to attach to Verizon's poles, even though Verizon has an insurance requirement in its own license agreements, Ex. C ¶ 15 (Lindsay 2015 Aff.). Verizon's competitors have not provided FPL a similar offsetting benefit in exchange for their access to FPL's poles.

2. FPL's Excessive Rates Have Cost Verizon Far More Than The Value Of Any “Unique Benefits” It Has Received

40. Not only has Verizon incurred unique costs associated with its access to FPL's poles, it has also significantly overpaid for any alleged “benefits” provided by FPL. Many of the “advantages” that FPL has claimed in this dispute (and which the Bureau cited, *see* Mem. Op. ¶¶ 21, 24) have not been competitive advantages at all.³⁴ And for those that have any

³⁴ As the Bureau noted, Verizon previously argued that the “advantages” alleged by FPL “are irrelevant.” Mem. Op. ¶ 24 n.83. Verizon then sought the most straightforward resolution of this dispute – one that would remove any doubt as to its competitive parity by basing its attachments to FPL's poles “on the terms and conditions of [FPL]'s license agreement with Verizon's [competitive] LEC affiliate.” *See id.* As detailed herein, the Bureau's requested

conceivable value, it has been minimal and paid for many times over. In sum, and as explained below, no alleged advantage exists to justify the decades of excessive rental payments that FPL has received from Verizon – nor is there any advantage that can justify carrying those rates into the future.

(a) Permitting New Attachments

41. FPL claims that “Verizon was not required to file a permit application, pay an initial fee, or wait for approval from [FPL] before attaching.” Mem. Op. ¶ 21. The “initial fee” is a one-time, non-recurring \$7.95 administrative application fee that FPL’s licensees pay when they seek to make an attachment to an additional FPL pole. *See* Ex. 11 at 12 (Permit Manual). This fee, which FPL must show does not double recover for costs included in its annual rate calculation,³⁵ amounts to about 7 cents per pole when spread across the poles on which Verizon pays rent. Ex. A ¶¶ 21, 23 (Calnon 2015 Aff.). It only applies where an attachment is being made to a new pole – and between 1995 and the Agreement’s termination in 2012, Verizon attached to an average of 522 new poles per year. *Id.* ¶ 19. A \$7.95 fee for 522 new attachments, but paid as a 7-cent per-pole charge on tens of thousands of poles, does not amount to a “material” advantage.

analysis of the alleged “advantages” confirms Verizon’s position that any alleged advantages do not come near to justifying the “significant rate disparity” at issue in this dispute, which “puts Verizon at a competitive disadvantage and is untenable.” *See* 2014 Compl. at 2.

³⁵ *See Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4387, 4393 (¶ 44) (1987) (“A separate charge or fee for items such as application processing or periodic inspections of the pole plant is not justified if the costs associated with these items are already included in the rate”); *Cavalier Tel., LLC v. Va. Elec. and Power Co.*, 15 FCC Rcd 9563, 9574 (¶ 22) (2000), vacated by settlement, 17 FCC Rcd 24414 (2002) (“Because Respondent provided no explanation that the administrative costs associated with permit application processing are not otherwise included in the carrying charges, we find that the fees are an unjust and unreasonable rate, term, or condition.”).

42. FPL also relies on process differences that provide no better competitive advantage to Verizon. FPL’s licensees participate in a permit process “to ensure that third-party attachments do not compromise the safety and reliability of the electric distribution infrastructure.”³⁶ Verizon works with FPL’s engineers to obtain the same objective.³⁷ And it does so because it is FPL’s preference. *See* Ex. 8 (Email from T. Kennedy, Principal Regulatory Affairs Analyst, FPL to S. Lindsay, Staff Consultant, Verizon Network Engineering (Feb. 8, 2008) (“Feb. 2008 Email”) (“I don’t think it is necessary for Verizon to go through a permitting process to attach to FPL poles” because of the coordination of the companies’ engineers).

43. Contrary to FPL’s assertion, the process followed by Verizon is comparable in terms of the time taken to make an attachment. *See* 2014 Resp. at 27. Verizon – like its competitors – cannot attach until it surveys the pole, ensures that adequate clearances exist for it to attach, engineers for proper structural strength, and adheres to pole loading and safety requirements. *See* Kennedy 2014 Decl. ¶ 23; Ex. E ¶ 7 (Lantz Aff.). Verizon is “responsible to assure the new attachments meet the minimum design requirements for that pole line.” Ex. 8 (Feb. 2008 Email).³⁸ Because the required tasks are the same, the required time to attach is necessarily comparable.

³⁶ Reply Comments of the Florida Investor-Owned Electric Utilities at 23, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51 (Oct. 4, 2010) (“Oct. 2010 Reply Comments of the Florida IOUs”).

³⁷ *See* Kennedy 2014 Decl. ¶¶ 21-23; *see also* 2014 Resp. at 29 (“Verizon has direct access to FPL’s local engineer to articulate its attachment needs . . .”).

³⁸ *See also* Ex. 1 § 3.4 (Joint Use Agreement) (“Each party, regardless of pole ownership, shall be responsible for determining the proper pole strength and arranging for any necessary guying of a joint pole where a requirement therefore is created by the addition or alteration of attachments thereon by such party.”).

44. FPL claims that it may require its licensees to “wait up to 148 days before installing their attachments.” *See* 2014 Resp. at 27.³⁹ It does not claim that it *does* require them to wait 148 days, but instead boasts of its ability to complete projects timely and in as few as 27 days.⁴⁰ FPL’s exclusive permitting contractor reports that attaching to FPL’s poles is as “simple as 1-2-3-4,” Ex. 11 at 8 (Permit Manual), and FPL “rarely receives complaints about the length of time taken to complete a make-ready job.”⁴¹ FPL also points to others as the cause for any delay, explaining that the “vast majority of the time frame during which a project can be completed lies exclusively within the control of the attacher or other third-party attachers.”⁴² That is no less true for Verizon.

45. There also is no material difference in the paperwork required of Verizon. FPL contends that its licensees submit a permit application and a measurement worksheet showing proper pole loading. *See* 2014 Resp. at 27; Kennedy 2014 Decl. ¶ 23. Verizon also notifies FPL of attachments to new poles. Exs. C ¶ 11 (Lindsay 2015 Aff.), E ¶ 12 (Lantz Aff.). And FPL “reserves the right to review [Verizon’s] analysis” of pole loading measurements. *See* Ex. 8 (Feb. 2008 Email).

³⁹ *See Pole Attachment Order*, 26 FCC Rcd at 5244 (¶ 8) (“The Order establishes a four-stage timeline for attachment to poles, with a maximum timeframe of up to 148 days for completion of all four stages.”).

⁴⁰ Declaration of Thomas J. Kennedy, P.E. ¶ 17 (Aug. 16, 2010) (“Kennedy Decl.”), attached to Comments of the Florida Investor-Owned Electric Utilities, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51 (Aug. 16, 2010) (“Aug. 16, 2010 Comments of the Florida IOUs”).

⁴¹ Second Declaration of Thomas J. Kennedy, P.E. ¶ 4 (Apr. 22, 2008) (“Kennedy Decl.”), attached to Reply Comments of Florida Power and Light, Tampa Electric, and Progress Energy Florida, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Apr. 22, 2008) (“Apr. 22, 2008 Reply Comments of the Florida IOUs”).

⁴² Kennedy Decl. ¶ 9, attached to Aug. 16, 2010 Comments of the Florida IOUs.

(b) Post-Installation Inspections

46. FPL claims that “Verizon’s attachments were not subject to [FPL] inspection at the time of installation, and Verizon was not required to pay an inspection fee.” Mem. Op. ¶ 21. FPL does not allege that it *cannot* inspect Verizon’s attachments; rather it does not “*routinely* check Verizon’s attachments after installation.” Kennedy 2014 Decl. ¶ 24 (emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]

47. If it is true that FPL has inspected Verizon’s attachments on fewer occasions than its competitors, then it is FPL – not Verizon’s competitors – that has benefited from that practice. FPL reduces its own costs by relying on the experience, practices, and quality of Verizon’s engineers to implement “the design of [Verizon’s] facilities,” which “is incorporated within FPL’s design under the joint use agreement.” *See* Kennedy 2014 Decl. ¶ 24; Ex. G ¶ 9 (Tardiff Aff.). But Verizon and its competitors remain comparably situated.

48. The inspection fees cited by FPL also offer no competitive advantage because Verizon’s competitors can avoid them completely: A \$9.95 fee is paid *only* if a licensee does not notify FPL within thirty days of an attachment, a \$24.95 fee is paid *only* if the attachments do not comply with National Electrical Safety Code (“NESC”) or FPL design standards, and a \$9.95 fee is paid *only* if re-inspection is required to confirm that the violation was corrected. *See* Ex. 11 at 12, 105 (Permit Manual).

43 [REDACTED]

49. An analysis of competitive neutrality must assume that FPL’s licensees avoid the fees by properly making and timely reporting their attachments. Otherwise, Verizon’s rate would set Verizon on par with a negligent licensee – *i.e.*, one that incurs each and every fee each and every time – even if no licensee, in fact, incurs inspection fees. This is not only unjust, but would give Verizon’s competitors an additional opportunity to get ahead – they could reduce their annual exposure by avoiding fees. Verizon would have no similar opportunity, as the fees would be embedded in its annual rental rate.

50. There is also no indication that Verizon would incur inspection fees. Verizon is not presently required to report new attachments – the parties instead agreed to adjust their records following a “joint field check” every five years (or as mutually agreed upon). Ex. 1 § 10.9 (Joint Use Agreement). Verizon nonetheless reports its new attachments to FPL. Exs. E ¶ 12 (Lantz Aff), C ¶ 11 (Lindsay 2015 Aff.). Were Verizon *required* to do so, it can only be assumed that it would. Verizon also devotes significant effort to ensuring the safety and reliability of its system, and conducts its own quality checks to ensure compliance with its own standards, as well as those of the NESC and FPL. Ex. E ¶ 4 (Lantz Aff.). FPL would not forego routine inspections of Verizon’s facilities were there some pattern of non-compliance that would trigger post-installation inspection fees had Verizon been a licensee.

51. In any event, Verizon has paid far more in rent than it ever could have paid in post-installation inspection fees. Even if Verizon had incurred every fee every time (an unfounded assumption), it would amount to an annual per-pole charge of about 37 cents when spread across the poles on which Verizon pays rent. Ex. A ¶ 28 (Calnon 2015 Aff.).

(c) Location of Facilities on FPL’s Poles

52. FPL claims that “[t]he Agreement granted Verizon access to the lowest four feet of usable space on each pole, which is easier to access than the space used by competitors

between Verizon's and [FPL]'s attachments. This reduces Verizon's installation and maintenance costs." Mem. Op. ¶ 21.

53. Contrary to FPL's argument, Verizon's position on FPL's poles increases its costs and sets it at a competitive *disadvantage*. Verizon's facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards. Ex. E ¶ 19 (Lantz Aff.). Verizon also receives more requests to raise its cables in order to accommodate oversize loads, such as house and equipment moves, which exceed standard vertical clearance requirements. *Id.* ¶ 20.

54. Verizon's facilities are harmed more often by those that work above its facilities. *Id.* ¶ 19. Verizon has experienced damage from gaffs, ladders, and bucket trucks; it has had holes poked in its cables and support wires broken because of its lowest location on the pole. *Id.*

55. Verizon incurs increased pole transfer costs because it must be the last company to transfer its facilities to a replacement pole. *Id.* ¶ 21. Verizon often makes more than one trip to the replacement pole because others have not completed their transfers as scheduled. *Id.*

56. Verizon has higher pole replacement costs because it is more likely to learn that its attachment will not maintain appropriate vertical clearance. *Id.* ¶ 10. Verizon then faces the delay and cost associated with replacing the pole with a taller pole that accommodates its facilities. *Id.*; 2014 Resp. at 28.

57. The increased costs associated with Verizon's lowest pole position are not offset by any alleged benefit in "easy access." *See* Kennedy 2014 Decl. ¶ 28. There is little measurable difference between the time and effort required to work at the lowest location on a pole and at the location just above. *See* Ex. E ¶ 17 (Lantz Aff.). The same safety measures and preparation are required regardless of the location of the attachment. *Id.* And any minimal

benefit is offset by the benefit provided to Verizon’s competitors because Verizon is lowest on the pole. Verizon’s location is the result of standard construction practices that pre-date third-party attachers. *See id.* ¶ 16.⁴⁴ Maintaining that pole location eliminates ambiguity about the ownership of particular facilities on the pole and ensures that communications facilities do not crisscross mid-span. *Id.*⁴⁵

(d) Pole Height

58. FPL claims that, “[t]o accommodate the four feet of space allotted to Verizon, [FPL] installed taller poles at increased cost.” Mem. Op. ¶ 21. The facts belie any claim that Verizon benefited more than its competitors from the height of FPL’s poles.

59. *First*, FPL bases its claim on an improper comparison of poles “required to serve FPL’s own customers” and those required to also “accommodate Verizon’s needs.” *See* 2014 Resp. at 16. The competitive neutrality inquiry must instead compare poles required to accommodate Verizon with poles required to accommodate Verizon’s competitors – not FPL, which does not compete with communications providers.⁴⁶ *See* Ex. G ¶¶ 7-8, 18 (Tardiff Aff.). The proper comparison eliminates FPL’s claim of a benefit because the communications space

⁴⁴ *See also* Apr. 22, 2008 Reply Comments of the Florida IOUs at 17 n.56 (noting that the Blue Book – Manual of Construction Procedures “show[s] that telephone attachments are made at the lowest point on a pole”).

⁴⁵ *See also id.* (“NESC encourages utilities to create a uniform order of attachment to facilitate identification of attachers.”)

⁴⁶ *See, e.g.*, Initial Comments of Florida Power and Light, Tampa Electric, and Progress Energy Florida Regarding Safety and Reliability at 20, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Mar. 7, 2008) (“Mar. 7, 2008 Comments of the Florida IOUs”) (“Unlike ILEC pole owners, the Florida IOUs are not in competition with CATV and CLEC attachers . . .”).

and safety space that FPL faults for its pole height is needed by Verizon's competitors.⁴⁷ "Every pole with both communications and electric facilities must have safety space (usually 40 inches)" and communications space.⁴⁸

60. FPL's analysis confirms that it would install the same height pole regardless of whether Verizon or one of Verizon's competitors was attached. For Verizon, FPL would install "100 inches of additional height" in order to provide "the four feet of space required by the agreement plus 40 inches of communications worker safety space." Kennedy 2014 Decl. ¶ 17. This additional height provides five additional feet of usable space, meaning that either (1) any additional space at all – whether one foot for a licensee or four feet for Verizon – causes FPL to round up to five feet because "poles are only sold in five-foot increments," *see id.*, or (2) FPL adds one foot of space in addition to that allocated to Verizon so that Verizon's competitors can also attach to the pole. Either way, Verizon's competitors are equally benefitted by the additional pole height.

61. *Second*, FPL improperly implies that Verizon has not already paid far more than its competitors for any additional costs associated with the height and installation of FPL's poles. While Verizon's competitors have paid FPL rates calculated using the cable and pre-existing telecommunications formulas, Verizon has paid rates nearly three times the rate that results from the pre-existing telecommunications formula and four times the rate that results from the new

⁴⁷ *See, e.g.*, Kennedy 2014 Decl. ¶ 17 (The "additional height comes from the [communications space] plus 40 inches of communications worker safety space."); Declaration of Thomas J. Kennedy, P.E. ¶ 15 ("Kennedy Decl."), attached to Mar. 7, 2008 Comments of the Florida IOUs ("But for joint use (and the agreements which establish joint use) . . . [t]here would be no additional communication space and no communication worker safety space.").

⁴⁸ Oct. 2010 Reply Comments of the Florida IOUs at 46; *see also* Ex. E ¶ 15 (Lantz Aff.).

telecommunications formula, which “approximate[s] the cable rate.”⁴⁹ The Commission has held that “the new telecom rate, and the cable rate each are fully compensatory to utilities.” *Pole Attachment Order*, 26 FCC Rcd at 5321 (¶ 183). If those rates are fully compensatory, then Verizon’s rates—which are three to four times greater—more than compensated FPL for the space allocated to Verizon. FPL also acknowledges that where it replaces a pole “in order to accommodate Verizon . . . FPL pays the cost of the new pole *and then invoices Verizon when the work is complete.*” 2014 Resp. at 28 (emphasis added).

62. *Third*, Verizon has not been advantaged by the allocation of four feet of space because FPL has “allowed third parties to attach to its poles ‘in the 4 feet of space reserved for the exclusive use of Verizon and has collected and retained rent from the third parties’” without offset to Verizon.⁵⁰ *See* Exs. 1 § 1.1.7 (allocating 4 feet of space to Verizon’s “exclusive use”); F ¶ 4 (Dowell Aff.).⁵¹ FPL cannot show that Verizon has ever used, on average, four feet of space on its poles – the allocation instead reflects an antiquated practice of dividing usable space between the only two attaching entities for rate-setting purposes. *See, e.g.*, Kennedy 2014 Decl., Ex. B at Art. I.A (dividing space between the power and telephone utilities) (1961 Joint Use Agreement). FPL has conceded that Verizon has long “want[ed] a new rate based only on the

⁴⁹ *Pole Attachment Order*, 26 FCC Rcd at 5305 (¶ 149); *see also* Exs. B ¶¶ 3, 10 (Calnon 2014 Aff.) (calculating the 2011 new telecommunications rate as \$8.52 per pole and pre-existing telecommunications rate as \$12.91 per pole); D ¶ 18 (Lindsay 2014 Aff.) (stating that Verizon paid a \$35.465 per pole rate for the first six months of 2011).

⁵⁰ Mot. to Dismiss at 4 (Mar. 27, 2014), attached to 2014 Reply as Ex. 1 (citation omitted).

⁵¹ FPL has instructed its licensees to place their attachments within one foot of Verizon’s cable regardless of where Verizon’s cable is located on the pole. *See* Ex. 11 at 25, 40, 54, 68, 84, 101 (Permit Manual);

actual space it occupies on a pole.”⁵² FPL has denied Verizon a rate based on space used, while collecting from Verizon’s competitors for their use of Verizon’s space at a rate that is based on the space they use.

63. FPL has tried to impute more space usage to Verizon by arguing that “Verizon still has copper cable on the poles,” which “sags 1 to 2 feet lower than the cable used by other attachers.” *See* Kennedy 2014 Decl. ¶ 36. It is, however, “the vertical dimension of the wire that determines how much space is occupied on the pole” – not the weight or wind load of that wire mid-span.⁵³ More telling still, FPL bases its claim on nearly obsolete heavy copper cables. Over a decade ago, Verizon stopped installing heavy copper cables and began an aggressive campaign to remove them from its system. Ex. E ¶ 23 (Lantz Aff.). To date, Verizon has replaced the vast majority of its old cables with the same light-weight copper and fiber optic cables that its competitors use. *Id.* Verizon’s modernization effort continues, meaning that the relatively few old heavy cables that are being used today will not be in service much longer. *Id.* As a result, the space required by virtually all of Verizon’s cables – even if measured improperly at mid-span – has long been the same as the space required by its competitors.

64. *Fourth*, any advantage to Verizon from FPL’s decision to install taller and stronger poles for its own benefit is shared by Verizon’s competitors. And there can be no doubt that FPL has chosen to install taller and stronger poles irrespective of whether Verizon will use the pole. A 40-foot pole is not required in every case to accommodate FPL’s and Verizon’s attachments. *Id.* ¶ 14. The Joint Use Agreement defines a “normal joint use pole” to include “a 35 foot class 5 wood pole,” Ex. 1 § 1.1.5, and data from FPL’s 2011 survey show that about one-

⁵² Mot. to Dismiss at 9 (Mar. 27, 2014), attached to 2014 Reply as Ex. 1.

⁵³ *In re Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6470-72 (¶¶ 27-30) (2000); *see also In re Amendment of Commission’s Rules and Policies Governing Pole Attachments*, 16 FCC Rcd. 12103, 12142 (¶¶ 77-78) (2001).

third of FPL's poles to which Verizon is attached are 35 foot poles or shorter. Ex. G ¶ 22 (Tardiff Aff.).

65. FPL has financial incentive to install taller and stronger poles, as they allow FPL to increase its rental revenues. When the Joint Use Agreement was entered and amended, FPL shared its poles primarily with Verizon and cable providers.⁵⁴ More recently, FPL has taken advantage of the opportunity to lease space to cable providers, competitive telephone companies, wireless providers, and governmental entities.⁵⁵

66. FPL also has incentive to install stronger poles “because the resulting storm resilience will be especially beneficial to FPL’s customers.”⁵⁶ FPL’s recent pole hardening projects, which are designed to “most benefit FPL’s customers,”⁵⁷ have centered on areas outside Verizon’s service territory in Manatee and Sarasota counties.⁵⁸ Verizon has received little

⁵⁴ See, e.g., S. Rep. 95-580, 95th Cong., 1st Sess. 1977, 1978 U.S.C.C.A.N. 109, 120 (“It is the general practice of the cable television (CATV) industry in the construction and maintenance of a cable system to lease space on existing utility poles for the attachment of cable distribution facilities . . .”). The Commission advised the Legislature that by 1977 there were “over 7,800 CATV pole attachment agreements in effect” and that “[a]pproximately 95 percent of all CATV cables [were] strung above ground on utility poles.” *Id.*

⁵⁵ Kennedy Decl. ¶¶ 5-7, attached to Aug. 16, 2010 Comments of the Florida IOUs; see also Kennedy Decl. ¶ 19, attached to Mar. 7, 2008 Comments of the Florida IOUs (“FPL’s distribution system has about 1.14 million distribution poles and approximately 1.16 million second and third party attachments (excluding governmental attachments . . .)”).

⁵⁶ 2007 Storm Hardening Petition ¶ 7.

⁵⁷ Petition for Approval of *Electric Infrastructure Storm Hardening Plan for 2010-2012* ¶ 13 (May 3, 2010), available at <http://www.psc.state.fl.us/library/FILINGS/10/03687-10/03687-10.pdf> (“2010 Storm Hardening Plan”) (last visited Mar. 12, 2015).

⁵⁸ In FPL’s 2007 Storm Hardening Plan, four of FPL’s seventy identified critical infrastructure and community projects were in Manatee and Sarasota Counties; in FPL’s 2010 Plan, five of forty-four were; and in FPL’s 2013 Plan, six of ninety-one were. See 2007 Storm Hardening Plan at 50-51; 2010 Storm Hardening Plan at 36-37; *Electric Infrastructure Storm Hardening Plan for 2013-2015* at 42 (May 1, 2013), available at <http://www.psc.state.fl.us/library/FILINGS/13/02408-13/02408-13.pdf> (last visited Mar. 12, 2015).

benefit from these hardening efforts, although FPL has continued to demand increasing pole rental rates calculated from the higher costs associated with FPL's desired poles.

67. Most importantly for purposes of establishing the just and reasonable rate here, even if Verizon were somehow advantaged over its competitors because of FPL's installation of 40 foot poles instead of 35 foot poles (which it is not), Verizon has already paid for that benefit several times over. [REDACTED]

[REDACTED] Pole height does not justify the \$10 to \$20 premium FPL has imposed on Verizon in the past – or the near \$30 premium FPL demands going forward.

(e) Pole Replacements

68. FPL argued that “[t]he Agreement requires [FPL] to replace poles in certain circumstances to accommodate Verizon; none of Verizon's competitors receive this benefit.” Mem. Op. ¶ 21. FPL's reliance on pole replacements required to expand capacity – and thereby provide space for an additional attacher – is also misplaced. *See* 2014 Resp. at 28.

69. *First*, FPL argues that it “has the legal right to refuse to replace a pole and expand capacity” for one of Verizon's competitors, *id.*, but ignores the fact that it has a similar right under the Joint Use Agreement.⁵⁹

70. *Second*, FPL claims only the “legal right to refuse.” 2014 Resp. at 28. FPL does not assert that it, in fact, refuses to replace poles to provide room for Verizon's competitors. And

⁵⁹ *See* Ex. 1 § 2.2 (Joint Use Agreement) (“Each party reserves the right to exclude from joint use those poles . . . which, in the judgement of Owner, (a) are required for the sole use of the Owner, (b) would not readily lend themselves to joint use because of interference, hazards or similar impediments, present or future, or (c) have been installed primarily for the use of a third party.”).

it would make no sense for FPL to refuse to do so because by agreeing to expand capacity, FPL becomes the owner of a newer, stronger, taller pole that is paid for by the attaching entity, and obtains an additional rental stream from the new attacher. *See id.* (“If FPL does decide to expand capacity and accommodate one of Verizon’s competitors, that company must pay for the pole change out in advance.”). Verizon is not advantaged by the existence of a legal right that FPL does not choose to exercise.

71. Even FPL’s theoretical ability to exercise its “legal right” is rare in practice. If FPL can accommodate an attachment through “a range of practices, such as line rearrangement, overlashing, boxing, and bracketing,”⁶⁰ then FPL cannot refuse to replace a pole based on lack of capacity. FPL’s 2011 survey data show that, in its western service area, about two-thirds of FPL’s poles are 40 and 45 foot poles. Ex. G ¶ 22 (Tardiff Aff.). These pole heights can accommodate Verizon and its competitors. Ex. E ¶ 14 (Lantz Aff.). Thus, there is little indication that FPL can or does refuse to accommodate Verizon’s competitors, which are statutorily entitled to access.

72. *Finally*, FPL fails to point to any measurable monetary difference between Verizon and its competitors with respect to these pole replacements. According to FPL, where Verizon is concerned, “FPL pays the cost of the new pole and then invoices Verizon when the work is complete.” 2014 Resp. at 28. A licensee, on the other hand, “must pay for the pole change out in advance.” *Id.* In other words, FPL’s claim is based on an approximately three-

⁶⁰ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11872 (¶ 16) (2010); *see also Pole Attachment Order*, 26 FCC Rcd at 5341 (¶ 232) (“capacity is not insufficient where a request can be accommodated using traditional methods of attachment”).

month time difference in its receipt of payment for the pole. Were that time difference material (and it is not),⁶¹ Verizon's excessive rental rates have more than compensated FPL for it.

(f) Insurance and Indemnification

73. FPL claims that, “[u]nlike competitive LECs, Verizon is not required to purchase its own insurance, list [FPL] as an insured, or indemnify [FPL].” Mem. Op. ¶ 21. This claim of advantage is baseless. Verizon already has insurance in greater amounts than those required of FPL's competitors. Ex. A ¶ 36 (Calnon 2015 Aff.).⁶² And any “advantage” to Verizon because it was not required to purchase or list FPL as an insured on its policy has been directly offset by the reciprocal “advantage” provided to FPL, [REDACTED]

74. With respect to indemnification, Verizon has been subjected to a less favorable liability regime.⁶⁴ [REDACTED]

[REDACTED] Verizon instead

⁶¹ See Ex. A ¶ 35 (Calnon 2015 Aff.). In the rental context, FPL has itself unilaterally delayed Verizon's invoice for three months or longer. Compare Ex. 7 at 1-7 (2008-2011 Invoices) (issued in January and February) with Ex. 7 at 8-10 (2012-2013 Invoices) (issued in April and May).

⁶² [REDACTED]

⁶³ [REDACTED] see also Ex. A ¶ 36 (Calnon 2015 Aff.).

⁶⁴ See Ex. 1 at Art. XIII (Joint Use Agreement); [REDACTED]

⁶⁵ [REDACTED]

has unbounded responsibility for (1) all damages caused by Verizon’s sole negligence, (2) all damages to Verizon property or employees caused by Verizon’s and FPL’s concurrent negligence or “causes which cannot be traced to the sole negligence” of FPL, and (3) half of all third-party damages caused by Verizon’s and FPL’s concurrent negligence or “causes which cannot be traced to the sole negligence” of FPL. Ex. 1 at Art. XIII (Joint Use Agreement).

75. FPL implies that its licensees indemnify FPL for FPL’s own misconduct,⁶⁶ but the evidence shows otherwise. Under Florida law, an indemnification provision [REDACTED]

[REDACTED] cannot impose liability on the licensee for FPL’s wrongful conduct.⁶⁷ [REDACTED]

[REDACTED] The Enforcement Bureau previously considered a similar clause, found it unreasonable, ordered the power company to “cease and desist” from enforcing it, and stated that it could “not discern any rational basis to support those contractual provisions.”⁶⁹

⁶⁶ See Kennedy 2014 Decl. ¶ 33 (“Under the joint use agreement, liability is allocated based on responsibility. Other attachers are required to indemnify FPL . . .”).

⁶⁷ See *Cox Cable Corp. v. Gulf Power Co.*, 591 So. 2d 627, 629 (Fla. 1992) (emphasis added) (quoting *Charles Poe Masonry, Inc. v. Spring Lock Scaffolding Rental Equip. Co.*, 374 So. 2d 487, 489 (Fla. 1979)). The Florida Supreme Court held that the following indemnification provision – “The LESSEE assumes all responsibility for claims asserted by any person whatever growing out of the erection and maintenance, use or possession of said equipment, and agrees to hold the COMPANY harmless from all such claims” – could not require a cable company to indemnify a power company for damages caused by the power company.

⁶⁸ [REDACTED]

⁶⁹ *Cable Television Ass’n of Ga. v. Ga. Power Co.*, 18 FCC Rcd 16333, 16346 (¶ 31), 16349 (¶ 40) (2003); see also *In the Matter of Petition for Declaratory Ruling of Mediacom Commc’ns Corp.*, Petition for Decl. Ruling, WC Docket No. 14-52 (Feb. 19, 2014).

76. In any event, FPL has failed to identify or quantify the extent of damages that it has caused and imposed on a licensee pursuant to an indemnification clause. FPL has, on the other hand, detailed the measures that it takes to ensure the safety and reliability of its network. *See, e.g.*, Kennedy 2014 Decl. ¶¶ 16, 23. It must therefore be assumed that any damages that FPL has caused are minimal and were covered by FPL as required by Florida and Bureau precedent. Verizon has not been advantaged over its competitors.

(g) Make-Ready Costs

77. FPL alleges that, “[f]or its 67,000 attachments, Verizon was not required to pay make-ready costs.” Mem. Op. ¶ 24. FPL’s claim relates solely to make-ready work in the power space, as “FPL does not perform communications make-ready work in the communications space.”⁷⁰ And there is rarely a need for make-ready work in the power space because FPL’s 2011 survey data show that about two-thirds of poles to which Verizon and FPL are attached are 40 and 45 foot poles. Ex. G ¶ 22 (Tardiff Aff.). There should be no need to rearrange power facilities on these poles, as the existing communications space can accommodate several attaching entities. Ex. E ¶ 14 (Lantz Aff.).

78. FPL estimates that “[t]he percentage of FPL poles which require electric supply space make ready is approximately 10%.”⁷¹ At most, then, Verizon has not paid FPL make-ready for about 52 of its 522 average new attachments each year. Ex. A ¶ 39 (Calnon 2015 Aff.). FPL says that the price of that make-ready “can vary depending on countless unique factors” because it “is priced based on the specific tasks, materials, and equipment required for the specific location.”⁷² In Verizon’s experience, make-ready costs average about \$300 per pole. *Id.*

⁷⁰ Kennedy Decl. ¶ 12, attached to Aug. 16, 2010 Comments of the Florida IOUs.

⁷¹ Kennedy Decl. ¶ 2, attached to Oct. 2010 Reply Comments of the Florida IOUs.

⁷² Kennedy Decl. ¶ 15, attached to Aug. 16, 2010 Comments of the Florida IOUs.

Even doubling that amount, and adding a \$108 engineering fee, *see* Ex. 11 at 12 (Permit Manual), results in a per pole charge of only 59 cents when allocated across the poles on which Verizon pays rent. Ex. A ¶ 39 (Calnon 2015 Aff.).

3. FPL’s Excessive Rates Have Cost Verizon Far More Than The Value Of The Additional “Benefits” FPL Has Alleged.

79. All told, the benefits alleged by FPL and cited in the Bureau’s Memorandum Opinion amount to a per pole charge of about 66 cents (an application charge of about 7 cents and a make-ready charge of about 59 cents). *Id.* ¶¶ 21, 39. This immaterial amount does not account for the increased costs that Verizon has incurred to maintain its own poles for FPL’s attachments and provide reciprocal benefits to FPL. *See* Section II.C.1; *see also* Ex. A ¶¶ 12-16 (Calnon 2015 Aff.). Verizon nonetheless paid FPL rates that were \$10 to \$20 higher than its competitors paid. Ex. A ¶ 8 (Calnon 2015 Aff.). As next detailed, this premium is not justified even when the additional “benefits” that FPL has pointed to are considered.

80. Ground bonding. FPL claims that its grounding bond is sufficient for Verizon, but that “[i]f other attachers require bonding that is not currently on the pole, they are required to reimburse FPL for the necessary work.” Kennedy 2014 Decl. ¶ 32. But every attacher on a pole must attach to the same ground bond so that all facilities have the same ground potential and eliminate the risk of electric shock. Ex. E ¶ 13 (Lantz Aff.); [REDACTED]

81. Easements and rights-of-way permits. FPL claims that Verizon’s competitors must “obtain their own rights-of-way,” *see* Kennedy 2014 Decl. ¶ 27, but the evidence shows that FPL’s rights nearly always extend to its attachers. Most utility poles are covered by municipal right-of-way use permits, general platted utility easements, or condominium green

space covenants that apply to all utilities. Ex. E ¶ 11 (Lantz Aff.). Any remaining poles on private property are generally covered by non-exclusive easements that also apply to all attachers. *Id.*; *see also* Ex. 12 (Easement) (granting FPL rights “[t]ogether with the right to permit any other person, firm, or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communications purposes”).

82. Identification of additional attachments during surveys. Fees for so-called “unauthorized attachments” are entirely avoidable by Verizon’s competitors and therefore Verizon does not benefit by avoiding those fees. It cannot be assumed that Verizon—if required to report all new attachments—would fail to do so when Verizon already reports its attachments promptly without such a requirement. Exs. E ¶ 12 (Lantz Aff); C ¶ 11 (Lindsay 2015 Aff.).⁷³ Equally importantly, there is no evidence that FPL could have treated Verizon materially differently from its competitors with respect to unreported attachments.

83. Under the Joint Use Agreement, Verizon was invoiced for back rent, pro-rated to the date of the last survey, regardless of when the additional attachment was made.⁷⁴ This “unauthorized” attachment penalty was shared by at least some of Verizon’s competitors in Florida, which were subject to license agreements that addressed unauthorized attachments by “requir[ing] payment of back rent (plus interest), payment of penalties, *or* some combination of the two.”⁷⁵ For any remaining competitors, the attempt to impose fees in addition to back rent was unenforceable.

⁷³ *See also Pole Attachment Order*, 26 FCC Rcd at 5290-91 (¶ 114) (finding that unauthorized attachment fees provide “incentive for attachers to follow authorization processes”).

⁷⁴ *See* Ex. 1 § 10.9 (Joint Use Agreement) (“The adjustment and the number of attachments shall be deemed to have been made equally over the years elapsed since the preceding inventory. Unless otherwise agreed upon, retroactive billing for the pro-rated adjustment will be added to the normal billing for the year following completion of the field inventory.”).

⁷⁵ Mar. 7, 2008 Comments of the Florida IOUs at 12 (emphasis added).

84. Historically, Commission precedent prohibited “penalties for unauthorized attachments [that] ‘exceed an amount approximately equal to the annual pole attachment fee for the number of years since the most recent inventory or five years, whichever is less, plus interest.’”⁷⁶ The Commission changed course with the *Pole Attachment Order*, but only for “new agreements, or amendments to existing agreements, executed after the effective date of this Order,”⁷⁷ which for this purpose was June 8, 2011.⁷⁸ There can therefore be no unauthorized attachment fees that Verizon “avoided” absent evidence of a new license agreement entered, and fees imposed, in the year between the *Pole Attachment Order*’s effective date and the June 9, 2012 termination date of the Joint Use Agreement. That such evidence exists is unlikely; FPL did not invoice Verizon for the results of its most recent survey until April 2013. Ex. 7 at 8-9 (2012 Invoice).⁷⁹

⁷⁶ *Pole Attachment Order*, 26 FCC Rcd at 5290 (¶ 113) (citing *Order, Mile Hi Cable Partners, L.P. v. Public Serv. Co. of Colo.*, 15 FCC Rcd 11450 (Cable Serv. Bur. 2000), review denied, 17 FCC Rcd 6268 (2002), review denied sub nom. *Public Serv. Co. of Colo. v. FCC*, 328 F.3d 675 (D.C. Cir. 2003)); see also *Salsgiver Commc’ns, Inc. v. N. Pittsburgh Tel. Co.*, 22 FCC Rcd 20536, 20545 (¶ 28) (2007) (striking a “penalty charge” for unauthorized attachments, which was in addition to back rent, as unreasonable).

⁷⁷ *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 114).

⁷⁸ See *A National Broadband Plan for Our Future*, 76 FR 26620 (May 9, 2011) (setting June 8, 2011 effective date for the *Pole Attachment Order*, except for revisions to 47 C.F.R. §§ 1.1420, 1.1422 and 1.1424).

The revisions to 47 C.F.R. § 1.1424 provided incumbent telephone companies the right to seek rate reform from the Commission effective July 12, 2011, so Verizon seeks relief from that date forward. See *infra* ¶¶ 109-112; *A National Broadband Plan for Our Future*, 76 FR 40817 (July 12, 2011).

⁷⁹ Moreover, even if fees were imposed on Verizon’s competitors during that year, they should not be counted against Verizon because the attacher had two opportunities to avoid the fees – first, by reporting its attachment and second, by submitting a plan to correct the violation, or a notice that it had been corrected. See *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115) (defining the opportunity that should be provided “for attachers to avoid sanctions”).

85. In any event, the magnitude of the fees involved is small. Even if an unauthorized attachment fee of “five times the current annual rental fee”⁸⁰ was imposed for each of Verizon’s new attachments identified during FPL’s most recent survey, the resulting fee, when pro-rated across the five-year survey period, would amount to an annual per pole charge of about 20 cents. Ex. A ¶ 45 (Calnon 2015 Aff.).

86. Pole replacements required by the Department of Transportation. Noticeably absent from FPL’s claim that it replaces poles “without contribution from Verizon” when “the Department of Transportation forces relocation of the pole for roadwork,” is any claim that FPL seeks contribution from Verizon’s competitors in the same situation. Kennedy 2014 Decl. ¶ 20. It would be highly unusual if FPL did. In similar circumstances, Verizon replaces the pole without contribution from FPL or any other attacher. Ex. E ¶ 5 (Lantz Aff.).

87. Abandoned poles. There is no difference because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

88. Time of rental payment. FPL invoices Verizon annually, in arrears, and Verizon’s competitors semi-annually, in advance. See Kennedy 2014 Decl. ¶ 30; Ex. B ¶ 14

⁸⁰ See *id.* (“[G]oing forward, we will consider contract-based penalties for unauthorized attachments to be presumptively reasonable if they do not exceed . . . [a]n unauthorized attachment fee of five times the current annual rental fee per pole if the pole occupant does not have a permit and the violation is self-reported or discovered through a joint inspection”).

⁸¹ See Ex. 1 § 9.1 (Joint Use Agreement); [REDACTED]

[REDACTED]

(Lindsay 2015 Aff.); [REDACTED]

[REDACTED] The difference means that FPL delays its receipt of rentals from Verizon by about nine months.⁸² This delay is not a material advantage; FPL has itself delayed sending Verizon an invoice for three to four months.⁸³ At most, the delay provides Verizon the time-value of its money, which – at Florida’s statutory interest rate – amounts to about 30 cents per pole. Ex. A ¶ 48 (Calnon 2015 Aff.).

89. Performance bond or letter of credit. Finally, FPL alleges that its licensees need to provide a performance bond or letter of credit to serve as security for removal costs in the event the licensee goes out of business. 2014 Resp. at 29; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. Even were Verizon required to provide the performance bond or letter of credit [REDACTED] it could do so for about \$19,000 per year – an amount that translates into a per pole charge of about 30 cents. Ex. A ¶ 48 (Calnon 2015 Aff.). That modest cost would have to be reduced by the savings that Verizon has provided to FPL by not requiring FPL to post a similar performance bond or letter of credit. Verizon’s \$10 to \$20 rental premium has more than compensated FPL.

⁸² Exs. C ¶ 14 (Lindsay 2015 Aff.) (stating that FPL has invoiced Verizon’s affiliate for the following six months’ rent in December and June), 7 at 5-6 (2010 Invoice) (showing that FPL has invoiced Verizon for the prior twelve months’ rent in January); G ¶ 30 (Tardiff Aff.).

⁸³ Compare Ex. 7 at 1-7 (2008-2011 Invoices) (issued in January and February) with *id.* at 8-10 (2012-2013 Invoices) (issued in April and May).

D. Because The Agreement Has Terminated, Few “Unique Benefits” Can Properly Be Considered In Setting Verizon’s Rental Rate.

91. In the end, the total monetary value of any “expenses [Verizon] avoided under the Agreement” before its termination amounts to an annual per pole charge of about \$0.96 (an application charge of 7 cents, a make-ready charge of 59 cents, and an interest payment of 30 cents). *Id.* ¶¶ 21, 39, 48. This amount must be reduced by the increased costs that Verizon incurred to maintain its own poles for FPL’s attachments. *See* Section II.C.1. But even assuming that the benefits had a value of \$0.96, they were paid for, several times over, through Verizon’s payment of rental rates that were \$10 to \$20 higher than its competitors. *See, e.g.*, Exs. A ¶ 8 (Calnon Aff.), G ¶¶ 31-34 (Tardiff Aff.).

92. This case also involves the time period after the June 9, 2012 termination of the Joint Use Agreement, when Verizon’s existing attachments are governed by the terms and conditions of the terminated Joint Use Agreement, but Verizon cannot make attachments to new poles. *See* Mem. Op. ¶ 12, 22. Verizon directed all affected employees in May 2012 to make no further attachments to FPL poles not already in use. Ex. C ¶ 18 (Lindsay 2015 Aff.).

93. Without the right to attach to new poles, the alleged “benefits” that survive the termination of the Joint Use Agreement are few because the vast majority of the “benefits” alleged by FPL are provided when an attachment is first made to an FPL pole. For example, the following theoretical benefits alleged by FPL and cited by the Bureau in its Order have no prospective value and should not be considered in setting a post-termination rate for Verizon’s existing attachments:

- “Verizon was not required to file a permit application, pay an initial fee, or wait for approval from [FPL] *before attaching.*” Mem. Op. ¶ 21 (emphasis added).⁸⁴

84



- “Verizon’s attachments were not subject to [FPL] inspection *at the time of installation*, and Verizon was not required to pay an inspection fee.” Mem. Op. ¶ 21 (emphasis added).⁸⁵
- “To accommodate the four feet of space allotted to Verizon, [FPL] *installed* taller poles at increased cost.” Mem. Op. ¶ 21 (emphasis added). Existing attachments are on poles that are, by definition, already installed.
- “The Agreement requires [FPL] to replace poles in certain circumstances to accommodate Verizon; none of Verizon’s competitors receive this benefit.” Mem. Op. ¶ 21. There is no longer a need “to replace a pole and expand capacity” in order to accommodate Verizon. *See* Resp. at 28. According to FPL, “[a]s of that date [of termination], Verizon relinquished its contractual right to have FPL install poles tall enough to avoid make-ready work when Verizon intends to attach.” Kennedy 2014 Decl. ¶ 43.
- “For its 67,000 attachments, Verizon was not required to pay make-ready costs” Mem. Op. ¶ 24. Make-ready work, when required, is only required for when an attachment is first made to an FPL pole.⁸⁶

94. Similarly, the following alleged benefits alleged by FPL cannot properly be considered in setting a post-termination rate for Verizon’s existing attachments because they also are provided, if ever, when the attachment is first made to an FPL pole:

- Ground bonding. *See* Kennedy 2014 Decl. ¶ 32. Attachers ground their equipment to the pole bond when the attachment to the pole is made.⁸⁷
- Easements and rights-of-way permits. *See* Kennedy 2014 Decl. ¶ 27. Permission must exist before an entity “attach[es] wires to any facilities . . . for communications purposes.” *See* Ex. 12 (Easement).
- Identification of additional attachments during surveys. *See* Kennedy 2014 Decl. ¶ 25. Absent an error in the last survey, there should be no additional poles discovered during an upcoming survey.

85 [REDACTED]

86 [REDACTED]

87 [REDACTED]

95. The only alleged benefits that could have prospective value—because they continue to apply to existing attachments—have an annual per pole value of about 30 cents:

- “The Agreement granted Verizon access to the lowest four feet of usable space on each pole, which is easier to access than the space used by competitors between Verizon’s and [FPL]’s attachments. This reduces Verizon’s installation and maintenance costs.” Mem. Op. ¶ 21. Although FPL alleges a reduction in “maintenance costs,” as detailed at paragraphs 52-57 above, any possible reduction is far offset by the increased costs associated with the lowest position on the pole.
- “Unlike competitive LECs, Verizon is not required to purchase its own insurance, list [FPL] as an insured, or indemnify [FPL].” Mem. Op. ¶ 21. However, as detailed above at paragraphs 73-76, there is no material difference between Verizon and its competitors with respect to the insurance and indemnification they must provide, especially because Verizon has offset any possible “benefit” by providing the same “benefit” to FPL.
- Pole replacements required by the Department of Transportation. *See* Kennedy 2014 Decl. ¶ 20. As detailed above at paragraph 86, there is no indication that FPL invoices Verizon or its competitors when roadwork requires a pole replacement.
- Abandoned poles. *See* Kennedy 2014 Decl. ¶ 31. As detailed above at paragraph 87, [REDACTED]
- Time of rental payment. *See* Kennedy 2014 Decl. ¶ 30. At most, this accounts for an interest charge of 30 cents per pole. *See* Ex. A ¶ 48 (Calnon 2015 Aff.).
- Performance bond or letter of credit. *See* Kennedy 2014 Decl. ¶ 34. As detailed above in paragraph 89, [REDACTED]

96. Overshadowing this possible prospective annual value of about 30 cents per pole are the ongoing costs associated with Verizon’s ownership of poles. As detailed in Section II.C.1, Verizon – unlike its competitors – bears the cost of ownership of about 7,000 joint use poles and provides FPL reciprocal and offsetting benefits in order to access FPL’s poles. These responsibilities continue to carry prospective costs, which must be weighed and accounted for in

the rate analysis. Mem. Op. ¶ 8 (citing *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654)). See also Ex. A ¶¶ 12-16 (Calnon 2015 Aff.).

E. The Commission Should Set Verizon’s Just And Reasonable Rate Effective July 12, 2011.

1. Verizon Should Be Charged The New Telecommunications Rate Because It Is Comparably Situated To FPL’s Other Attachers.

97. Verizon has paid several times over for any alleged benefits that it received under the Joint Use Agreement, and it will receive far less in the way of any such benefits going forward. FPL’s attempt to “force Verizon to pay the relatively high Agreement rates for as long as its attachments remain on [FPL]’s poles,” Mem. Op. ¶ 25, must be rejected. The demanded rates are not just and reasonable.

98. Instead, the claimed benefits provided to Verizon are so minimal that the Commission should conclude that Verizon is “attaching to [FPL’s] poles on terms and conditions that are *comparable* to those that apply to a telecommunications carrier or cable operator,” such that the just and reasonable rate is “*the same rate as the comparable provider.*” *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217) (emphasis added). In this case, the comparable rate that results from the new telecommunications formula is \$8.52 per pole. Ex. B ¶ 10 (Calnon 2014 Aff.).⁸⁸

99. FPL has argued that the new telecommunications formula results in a far higher \$37.48 rate for 2011 attachments. 2014 Resp. at 35. FPL’s calculated rate suffers from two principal flaws. *First*, FPL inflates its calculation by misusing the four feet of space *allocated* to Verizon

⁸⁸ For simplicity, Verizon has calculated the rate that results from the new telecommunications formula for the 2011 rental year, as it provides a basis for resolving the issues relevant to FPL’s rate calculations for that same year. See 2014 Resp. at 33-35. Verizon reserves the right to supplement its Complaint should the Commission seek additional rental rate calculations for each disputed rental year.

under the agreement. *See* Resp. at 23, 33-35. The FCC’s rate methodology looks to the space *occupied*, not *allocated*.⁸⁹ Here, there is no dispute that Verizon generally does not *occupy* four feet of space on FPL’s poles,⁹⁰ so the space occupied input should be no more than 1.25 feet.⁹¹ FPL then compounds its error by multiplying the rate it calculates by four. This turns the Commission’s per pole rate methodology into a per foot rate methodology⁹² that would let FPL charge Verizon for four times the proper amount of unusable space on the pole.⁹³

100. *Second*, FPL increased its calculated rate by \$0.79 per pole (from \$8.52 to \$9.31) through use of the Commission’s presumed 37.5 foot pole height, rather than the 41 foot pole height reflected in its rate documents.⁹⁴ FPL admits that the “rate calculation worksheet provided by FPL to Verizon” establishes a 41-foot pole input, but contends that this worksheet was only a “snapshot” of FPL’s data. 2014 Resp. at 35. If FPL has data showing that “the correct average pole height should be the presumptive height of 37.5 feet,” *id.*, it should produce the data. Because it has not, the Commission should look to the data that was provided rather than FPL’s unsupported pole height assertion. *See, e.g., Teleport Commc’ns Atlanta, Inc. v.*

⁸⁹ 47 C.F.R. §§ 1.1409(e), 1.1418.

⁹⁰ *See, e.g.,* Mot. to Dismiss at 4-5 (Mar. 27, 2014), attached to 2014 Reply as Ex. 1 (noting the availability of Verizon’s space for third party attachments).

⁹¹ Ex. D ¶ 9 (Lindsay 2014 Aff.).

⁹² *Amendment of Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12122 (¶ 31) (2001) (describing formula “to determine the maximum just and reasonable rate *per pole*”) (emphasis added).

⁹³ Unusable space must be allocated *equally* among attaching entities. 47 U.S.C. § 224(e)(2) (requiring “an equal apportionment of such costs among all attaching entities”); 47 C.F.R. § 1.1417(a) (requiring that “unusable space . . . be allocated to such entity under an equal apportionment of such costs among all attaching entities”).

⁹⁴ *See* 2014 Compl., Ex. 7 at Ex. E; *see also* Ex. B ¶ 11 (Calnon 2014 Aff.).

Georgia Power Co., 17 FCC Rcd 19859, 19866 (¶ 18) (2002) (“[A]s with all our presumptions, either party may rebut this presumption with a statistically valid survey or actual data.”).

101. Verizon is entitled to pay a just and reasonable attachment rate. In this case, the just and reasonable rate is the rate that complies with the Commission’s rate formula for telecommunications carriers and reflects FPL’s actual data. Verizon is entitled to the \$8.52 rate it paid FPL following the effective date of the *Pole Attachment Order*.

2. At Most, Verizon Should Attach At A Rate Calculated Pursuant To The Commission’s Prior Telecommunications Formula.

102. Alternatively, even if Verizon were found to be materially advantaged as compared to its competitors, the just and reasonable rate should be no higher than the rate calculated using the Commission’s prior telecommunications formula. The evidence confirms that the prior telecommunications formula produces a rate that is a valid (indeed, high) “reference point” for determining the just and reasonable rate where a new agreement – or in this case, an existing agreement – “includes provisions that materially advantage the incumbent LEC *vis a vis* a telecommunications carrier or cable operator.” *See Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218). It is “a higher rate than the regulated rate available to telecommunications carriers and cable operators,” and it more than “account[s] for particular arrangements that provide net advantages to incumbent LECs relative to cable operators or telecommunications carriers.” *Id.*

103. The rate that results from the Commission’s prior telecommunications formula is \$12.91 per pole. Ex. B ¶¶ 3, 10 (Calnon 2014 Aff.).⁹⁵ This \$12.91 rate is \$4.39 higher than the

⁹⁵ As with the new telecommunications rate, Verizon has calculated the rate that results from the prior telecommunications formula for the 2011 rental year. Verizon reserves the right to supplement its Complaint should the Commission seek additional rental rate calculations for each disputed rental year.

\$8.52 rate results from the new telecommunications formula. *See id.* The alleged “benefits” provided to Verizon during all relevant periods have had a value far less than \$4.39 per pole. During the pre-termination period (July 12, 2011 through June 9, 2012), their value amounted to an annual charge of about \$0.96 per pole, and during the post-termination period (June 10, 2012 to present), they amount to an annual charge of about \$0.30 per pole.

104. Therefore, even if Verizon were materially advantaged, the just and reasonable and competitively neutral rate for Verizon’s attachments would be (1) a per pole rate that is \$0.96 higher than the rate calculated using the new telecommunications formula for the July 12, 2011 through June 9, 2012 period, and (2) a per pole rate that is \$0.30 higher than the rate calculated using the new telecommunications formula for the post-June 9, 2012 period. In no event should Verizon’s rate exceed the rate properly calculated using the Commission’s prior telecommunications formula.

III. COUNT I – UNJUST AND UNREASONABLE POLE ATTACHMENT RATES

105. Verizon incorporates paragraphs 1 through 104 of this Complaint as if set forth fully herein.

106. The Commission has authority to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions.” 47 U.S.C. § 224(b)(1).

107. The rate that FPL charges its licensees is a just and reasonable rate for Verizon because Verizon attaches to FPL’s poles on terms and conditions that are comparable to those that apply to competing attachers. *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217). For the 2011 rental year, this comparable rate should be \$8.52. FPL’s refusal to offer Verizon a rental

rate properly calculated pursuant to the FCC's new telecommunications formula has denied Verizon a just and reasonable rate in violation of 47 U.S.C. § 224.

108. Alternatively, if Verizon attaches to FPL's poles on terms and conditions that are materially not comparable to FPL's other attachers, Verizon is still entitled to a just and reasonable rate no higher than the rate calculated pursuant to the FCC's pre-existing telecommunications formula. *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218). For the 2011 rental year, this reference point rate should be \$12.91. Under these alternative circumstances, FPL's refusal to offer Verizon a rental rate that is not higher than the rate properly calculated pursuant to the FCC's pre-existing telecommunications formula has denied Verizon a just and reasonable rate in violation of 47 U.S.C. § 224.

IV. RELIEF REQUESTED

109. Verizon respectfully requests that the Commission order that the unjust and unreasonable rate provision in the parties' Joint Use Agreement, as amended, is terminated effective July 12, 2011, the effective date of the *Pole Attachment Order*.

110. Verizon respectfully requests that the Commission prescribe the rate that is properly calculated in accordance with the Commission's new telecommunications formula, using actual data where available, as the just and reasonable rate in a new agreement that applies to Verizon's existing and future attachments.

111. Alternatively, if the Commission concludes that the terms and conditions of the parties' Joint Use Agreement, as amended, provide Verizon a net material advantage relative to its competitors, then Verizon requests that the Commission prescribe as the just and reasonable rate for Verizon's existing attachments: (a) a rate \$0.96 higher than the rate that is properly calculated in accordance with the Commission's new telecommunications formula, using actual data where available, for the July 12, 2011 through June 9, 2012 period, and (b) a rate \$0.30

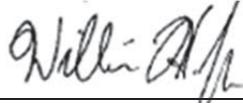
PUBLIC VERSION

higher than the rate that is properly calculated in accordance with the Commission's new telecommunications formula, using actual data where available, for the June 9, 2012 period forward. Under these alternative circumstances, Verizon's just and reasonable rate for existing attachments should not exceed the rate that is properly calculated in accordance with the Commission's prior telecommunications formula, using actual data where available.

112. Verizon respectfully requests that the Commission order FPL to refund any amounts paid in excess of a just and reasonable rate following the July 12, 2011 effective date of the *Pole Attachment Order* and grant Verizon such other relief as the Commission deems just, reasonable, and proper.

Respectfully submitted,

VERIZON FLORIDA LLC

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Attorneys for Verizon Florida LLC

Kathleen M. Grillo
Of Counsel

Dated: March 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2015, I caused a copy of the foregoing Complaint, exhibits and affidavits in support thereof, to be served on the following (service method indicated):

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Federal Communications Commission
Office of the Secretary
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Room TW-A325
Washington, DC 20554
(original and four copies of confidential version by hand delivery;
public version by ECFS)

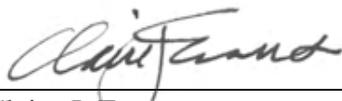
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Claire J. Evans

PUBLIC VERSION

Before the
Federal Communications Commission
Washington, DC 20554

_____)	
VERIZON FLORIDA LLC,)	
	)	File No.
Complainant,)	
)	
v.)	
	)	Related to
FLORIDA POWER AND LIGHT	)	Docket No. 14-216
COMPANY,	)	File No. EB-14-MD-003
)	
Respondent.)	
_____)	

Affidavits

- A. Second Affidavit of Mark S. Calnon, Ph.D. (Mar. 13, 2015).
- B. Affidavit of Mark S. Calnon, Ph.D (Jan. 31, 2014), submitted in Docket No. 14-216, File No. EB-14-MD-003.
- C. Second Affidavit of Steven R. Lindsay (Mar. 12, 2015).
- D. Affidavit of Steven R. Lindsay (Jan. 31, 2014), submitted in Docket No. 14-216, File No. EB-14-MD-003.
- E. Affidavit of Bryan L. Lantz (Mar. 13, 2015).
- F. Affidavit of Matthew G. Dowell (July 30, 2014), submitted in *Florida Power and Light Company v. Verizon Florida LLC*, No. 13-14808 (Fla. 11th Cir. Ct.) (“*FPL v. Verizon*”).
- G. Affidavit of Timothy J. Tardiff, Ph.D. (Mar. 13, 2015).

Exhibits

- 1. Joint Use Agreement Between Florida Power and Light Company and General Telephone Company of Florida (Jan. 1, 1975).
- 2. Supplemental Agreement Between Florida Power and Light Company and General Telephone Company of Florida (Mar. 29, 1978).
- 3. Confidential Letter Agreement Between Florida Power and Light Company and Verizon Florida LLC (Sept. 27, 2007).

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4. Attachment Agreement Between Metropolitan Fiber Systems of Florida, Inc. and Florida Power and Light Company (Oct. 7, 1994).
5. Pole Attachment Agreement Between MCI Metro Access Transmission Services, Inc. and Florida Power and Light Company (Aug. 10, 1995).
6. “Linear Facilities Pole Attachment Agreement Between ____ and Florida Power and Light Company,” attached to Email from T. Kennedy, Principal Regulatory Affairs Analyst, Florida Power and Light Company, to S. Lindsay, Staff Consultant, Verizon Network Engineering (Oct. 31, 2011).
7. Invoices from Florida Power and Light Company to Verizon Florida for 2008 through 2013 pole rentals.
8. Email from T. Kennedy, Principal Regulatory Affairs Analyst, Florida Power and Light Company to S. Lindsay, Staff Consultant, Verizon Network Engineering (Feb. 8, 2008).
9. Letter from S. Lindsay, Staff Consultant, Verizon Network Engineering, to T. Kennedy, Principal Regulatory Affairs Analyst, Florida Power and Light Company (June 27, 2011).
10. Letter from S. Lindsay, Staff Consultant, Verizon Network Engineering, to T. Kennedy, Principal Regulatory Affairs Analyst, Florida Power and Light Company (Dec. 9, 2011).
11. FPL Directory and Permit Application Process Manual for use by CATV Companies and Non-LEC Telecom Companies, *available at* <http://alpinecomcorp.com/downloads/PermitManual.pdf> (downloaded Mar. 12, 2015).
12. Florida Power and Light Company Easement (June 3, 2011).
13. Opposition to Motion to Stay, *FPL v. Verizon* (Mar. 27, 2014) (exhibits omitted).
14. Motion for Summary Judgment, *FPL v. Verizon* (July 15, 2014) (exhibits omitted).
15. Mediator’s Report, *FPL v. Verizon* (Aug. 24, 2014).
16. Order Deferring and Staying Matter, *FPL v. Verizon* (Nov. 3, 2014).
17. Motion for Reconsideration, *FPL v. Verizon* (Nov. 11, 2014) (exhibits omitted).
18. Order Denying Motion for Reconsideration, *FPL v. Verizon* (Dec. 11, 2014).
19. Request for Trial Setting, *FPL v. Verizon* (Feb. 11, 2015) (exhibits omitted).
20. Opposition to Request for Trial Setting, *FPL v. Verizon* (Feb. 13, 2015).
21. Motion for Trial Setting, *FPL v. Verizon* (Feb. 18, 2015) (exhibits omitted).

Exhibit A

Before the
Federal Communications Commission
Washington, DC 20554

<hr/>)	
VERIZON FLORIDA LLC,)	
		)	File No.
Complainant,)	
)	
v.)	
		)	Related to
FLORIDA POWER AND LIGHT)	Docket No. 14-216
COMPANY,)	File No. EB-14-MD-003
)	
Respondent.)	
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SECOND AFFIDAVIT OF MARK S. CALNON, PH.D.

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF BUCKS)

I, MARK S. CALNON, being sworn, depose and say:

1. I am a Senior Consultant in the Telecom Finance Group of Verizon Services Corporation. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Florida LLC (“Verizon”) against Florida Power and Light Company (“FPL”). I also filed an Affidavit regarding this same pole attachment dispute on January 31, 2014.¹ I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

¹ See Complaint Ex. B (Affidavit of Mark S. Calnon, Ph.D. (Jan. 31, 2014) (“2014 Affidavit”), also attached as Exhibit B to Pole Attachment Complaint, *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 14-216, File No. EB-14-MD-003 (Jan. 31, 2014) (“2014 Complaint”).

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2. I have a Bachelor of Arts degree in Economics from St. Michaels College and a Ph.D., also in Economics, from the University of Colorado. My professional experience began over 30 years ago and spans economic and regulatory policy issues in telecommunications and energy markets domestically and internationally. My specific areas of expertise include demand analysis, strategic planning, pricing and policy analysis focused primarily on the regulated product and service offerings of incumbent telecom and electric distribution companies. My responsibilities have included estimating the demand for wireline telephone service, the demand for the various jurisdictional usage classifications of the wireline network (local, intraLATA toll, interLATA toll and switched access) as well as the demand for various new / advanced service offerings. My work in the area of pricing and costing has included the design of methodologies to determine the proper price levels and rate relationships between the wholesale provision of access services (switched and special) and retail toll and private line offerings. I have also developed pricing methodologies consistent with the market-opening requirements of the Telecommunications Act of 1996 (TA96). Following passage of TA96, I have also been responsible for developing studies documenting the level of competition in various market areas and advocating market-appropriate levels of regulatory relief. I have also provided economic analysis supporting litigation in the areas of damage claims regarding alleged delays in provisioning new services and claims of unreasonable discrimination relating to the pricing and costing practices associated with third party make-ready costs and pole rental rates.

3. Over the course of my career I have participated in over 30 regulatory proceedings before 20 state commissions. My responsibilities in these proceedings have included the development and filing of written testimony, participation in industry workshops, settlement conferences and *ex-parte* presentations for Commissioners and their staff.

A. Introduction

4. The purpose of this Affidavit is to provide the Commission with additional information relevant to the determination of a just and reasonable rate for Verizon's existing attachments to FPL's utility poles. In particular, the Enforcement Bureau's February 11, 2015 Memorandum Opinion and Order in this pole attachment dispute requested information about certain alleged advantages that FPL claims to have provided to Verizon but not to Verizon's competitors. Specifically, the Bureau asked (1) whether the monetary value of the alleged advantages is less than the difference between the rates paid by Verizon and by Verizon's competitors over time and (2) what prospective value the alleged advantages have following the June 9, 2012 termination of the parties' Joint Use Agreement.²

5. As detailed herein, I conclude that Verizon never received any unique benefit from FPL that provided it a material monetary advantage over its competitors, but that it has incurred unique costs that have disadvantaged it as compared to its competitors. In particular, I conclude that (1) Verizon's unreasonably high rental rate paid several times over for the unique advantages FPL claims to have provided under the Joint Use Agreement, and (2) the prospective value of the alleged advantages is so small (approximately \$0.30) that it cannot be said to render Verizon materially advantaged over its competitors, particularly when the offsetting unique disadvantages associated with Verizon's joint use of FPL's poles are considered.

6. In my prior Affidavit, I explained that, for the 2011 rental year, the proper application of the Commission's new telecommunications formula results in an \$8.52 per pole rate and the proper application of the Commission's prior telecommunications formula results in

² *Verizon Florida LLC v. Florida Power and Light Company*, Memorandum Opinion and Order ¶¶ 22, 24, Docket No. 14-216, File No. EB-14-MD-003 (EB Feb. 11, 2015) ("Mem. Op." or "Order").

a \$12.91 per pole rate.³ In this Affidavit, I conclude that the new telecommunications rate is the just, reasonable, and fully compensatory rate for Verizon's attachments to FPL's poles because the terms and conditions of the Joint Use Agreement are, and have been, comparable to the terms and conditions provided by FPL to Verizon's competitors. I further conclude that if Verizon is found to be materially advantaged over its competitors, under a proper analysis of competitive neutrality, the alleged advantages before termination of the Joint Use Agreement have a per pole monetary value of approximately \$0.96 and the alleged advantages after termination of the Joint Use Agreement have a per pole monetary value of approximately \$0.30. Therefore, the pre-existing telecom rate is a reasonable upper bound on any rental rate charged Verizon because the monetary value of the alleged advantages does not exceed the \$4.39 per pole difference between the 2011 rates that I have calculated using the telecommunications and prior telecommunications formulas.

7. I have relied on the best data available to Verizon in reaching the opinions expressed in this Affidavit. I reserve the right to supplement or revise this Affidavit upon review of data and information provided by FPL.

B. Verizon's Rental Rates Overpaid FPL For The Advantages FPL Claims To Have Provided Under The Joint Use Agreement.

8. The following table includes the rate information that is available to Verizon. It shows the differential between the rates paid to FPL by Verizon and Verizon's CLEC affiliate from 1998 through the July 12, 2011 effective date of the *Pole Attachment Order*.⁴ This table

³ Complaint Ex. B ¶ 10 (2014 Affidavit).

⁴ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 26 FCC Rcd 5240 (2011), *aff'd Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013) ("*Pole Attachment Order*").

PUBLIC VERSION

shows that Verizon paid, on average, a premium of \$18.46 per pole per year for 13.5 years before the effective date of the *Pole Attachment Order*.

	Verizon	Verizon's CLEC affiliate	Rate differential
1998	\$ 28.81	\$ 18.97	\$ 9.84
1999	\$ 29.90	\$ 19.02	\$ 10.88
2000	\$ 30.50	\$ 19.02	\$ 11.48
2001	\$ 31.82	\$ 11.09	\$ 20.73
2002	\$ 32.90	\$ 11.47	\$ 21.43
2003	\$ 34.04	\$ 12.15	\$ 21.89
2004	\$ 30.52	\$ 11.74	\$ 18.78
2005	\$ 31.17	\$ 12.09	\$ 19.08
2006	\$ 32.24	\$ 13.30	\$ 18.94
2007	\$ 33.14	\$ 14.57	\$ 18.57
2008	\$ 33.81	\$ 14.13	\$ 19.68
2009	\$ 34.13	\$ 13.84	\$ 20.29
2010	\$ 34.83	\$ 14.12	\$ 20.71
2011	\$ 35.47	\$ 9.31	\$ 26.16
Average	\$ 32.38	\$ 13.92	\$ 18.46

9. FPL has anecdotally mentioned potential sources of value attributable to the terms and conditions of joint use, which it claims are sufficient to justify this historical rate disparity and to widen the disparity following the effective date of the *Pole Attachment Order*. The following table includes the rates that FPL has invoiced Verizon and Verizon's affiliate since the July 12, 2011 effective date of the *Pole Attachment Order*.

	Verizon	Verizon's CLEC affiliate ⁵	Rate differential
2011	\$ 35.47	\$ 9.31	\$ 26.16
2012	\$ 36.23	\$ 9.67	\$ 26.56
2013	\$ 37.16	\$ 9.70	\$ 27.46
Average	\$ 36.29	\$ 9.56	\$ 26.73

10. This table shows that FPL seeks to increase the differential paid by Verizon to, on average, \$26.73 per pole per year after the effective date of the *Pole Attachment Order*, even though Verizon has the right to a just, reasonable, and competitively neutral rate and no longer has the right to make attachments to additional FPL poles.

11. As next detailed, it is my conclusion that FPL has not provided Verizon any unique competitive advantage that warrants the historical rate disparity between Verizon and its competitors, or justifies increasing that rate disparity moving forward.

1. Verizon's Unique and Continuing Burdens of Joint Pole Ownership

12. Any analysis of competitive neutrality must consider both burdens and benefits associated with the use of FPL's poles. As the Commission explained, "[a] failure to weigh, and account for, the different rights and responsibilities in joint use agreements could lead to marketplace distortions." *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654), quoted at Mem. Op. ¶ 8.

13. FPL and the Enforcement Bureau have acknowledged that Verizon bears unique burdens that are not shared by its competitors. The February Order notes that "incumbent LECs still own many poles today." *Id.* Because of this pole ownership, FPL states that it has granted

⁵



Verizon access to its poles.⁶ It has also imposed on Verizon unique “responsibility for the safety and reliability of the joint use networks.”⁷

14. FPL also acknowledges that Verizon bears unique offsetting burdens under the Joint Use Agreement.⁸ Unlike licensees, Verizon must provide FPL every alleged “benefit” that FPL provides Verizon. In some cases, such as with insurance requirements, the alleged “benefit” is not tied to the number of poles to which a party is attached. In such cases, the cost of any “advantage” to Verizon of providing the alleged benefit is directly offset by the cost of the “disadvantage” to Verizon for not receiving the alleged benefit from FPL. The offset eliminates any net advantage to Verizon as compared to its competitors.

15. The proper calculation must consider the net difference between potential unique benefits an incumbent local exchange carrier (“ILEC”) receives and potential and actual unique burdens an ILEC bears in a joint use relationship. FPL, therefore, must show that Verizon historically received a **net** benefit worth over \$18 per pole per year and currently receives a **net** benefit of over \$26 per pole per year in order to rationalize the rates it seeks to impose on Verizon.

16. As shown in the remainder of this Affidavit, FPL cannot even come close to satisfying this burden on a **gross** basis where only the potential benefits to Verizon are quantified using reasonable assumptions and Verizon’s knowledge of the operational and engineering activities associated with the establishment and maintenance of communications infrastructure. Because the actual and potential burdens associated with FPL’s use of Verizon’s joint use poles

⁶ Response to Pole Attachment Complaint at 24, *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 14-216, File No. EB-14-MD-003 (Apr. 4, 2014) (“2014 Response”).

⁷ Declaration of Thomas J. Kennedy ¶ 16, attached as Ex. A to 2014 Response (“Kennedy 2014 Declaration”).

⁸ *Id.*

must also be included in the analysis, it is clear that the monetary value of any alleged benefits is far “less than the difference between the Agreement rates and the New or Old Telecom Rates over time.” *See* Mem. Op. ¶ 10. There are no “expenses [that Verizon] avoided under the Agreement.” *Id.* ¶ 24.

2. Verizon Paid Several Times Over For Any Alleged “Benefits” It Received Before the Joint Use Agreement Terminated.

17. I will first review the value, if any, associated with the seven benefits alleged by FPL and cited by the Enforcement Bureau before the Joint Use Agreement terminated on June 9, 2012. My review is based on the best information available to Verizon, including the draft license agreement provided by FPL, *see* Complaint Ex. 6, two license agreements that FPL entered with Verizon’s CLEC affiliate, *see* Complaint Exs. 4 and 5, and the Affidavits and other evidence attached to this Pole Attachment Complaint.

18. The terms of the draft license agreement are to a limited degree relevant to an analysis of competitive neutrality. A draft agreement, by definition, contains a party’s starting point in negotiations, and is therefore not evidence of the actual negotiated terms adopted by the contracting parties. The draft license agreement remains relevant to the analysis, however, because the terms of the agreement provide an upper bound on any analysis by evidencing the terms and conditions that FPL considers most favorable.

(a) “Verizon was not required to file a permit application, pay an initial fee, or wait for approval from Florida Power before attaching.”

19. The differences alleged by FPL are operational differences that are incurred, if ever, when an attaching party is making attachments to new poles. This occurs far more frequently when a party is building its network than when it is making marginal additions to an established network. As shown in the following table, much of the build out of Verizon’s

network in FPL’s service territory in Sarasota and Manatee counties was completed over 20 years ago. This followed the general population trend in these two counties.

Verizon Attachments on FPL Distribution Poles⁹				
Time Period	Beginning Value	Ending Value	Average Change Per Year	Compound Annual Growth Rate (CAGR)
1960 – 1995	18,466	58,128	1,133	3.33%
1995 – 2012	58,128	66,999	522	0.84%
Source: 1961 Joint Use Agreement, Verizon records, 2012 Invoice				
Population Changes in Sarasota and Manatee Counties				
Time Period	Beginning Value	Ending Value	Average Change Per Year	Compound Annual Growth Rate (CAGR)
1960 – 1995	146,063	541,758	11,306	3.82%
1995 – 2012	541,758	722,450	10,629	1.71%
Source: Census data (2012 data interpolated between 2010 and 2013 est.)				

20. For my analysis of this and other operational differences identified by FPL, I rely on the best data available to Verizon, which relates to the time period following 1995. I conclude that it is reasonable to rely on this post-1995 data because these operational benefits are primarily, if not entirely, associated with the process of establishing new attachments. This 17-year period provides a reasonable timeframe for assessing the alleged past benefits relating to new attachments under the real-life slow-growth conditions within Verizon’s service area and overstates the growth experienced by Verizon in recent years. The following table breaks the 1995 – 2012 timeframe into two sub-periods 1995 – 2008 and 2008 – 2012 and shows that the growth in attachments in the early period was greater than the average for the entire period and the growth in the more recent years was much slower than average. In fact the average number of new attachments per year in the most recent period is less than 60% of the 1995 – 2008 average.

⁹ These numbers do not include “special poles” or “transmission poles,” which are invoiced at a different rental rate.

Verizon Attachments on FPL Distribution Poles ¹⁰				
Time Period	Beginning Value	Ending Value	Average Change Per Year	Compound Annual Growth Rate (CAGR)
1995 - 2008	58,128	65,635	577	0.94%
2008 – 2012	65,635	66,999	341	0.52%

Source: Verizon records, 2008 and 2012 Invoices

My analysis of the value of any alleged operational benefits for the period before the Joint Use Agreement's termination will therefore be based on the average of 522 attachments to new FPL poles per year made between 1995 and the termination of the Joint Use Agreement on June 9, 2012.

21. FPL appears to impose a \$7.95 per pole administrative application fee on its licensees.¹¹ Under FPL's license agreements, permitting occurs before a licensee makes its attachment to FPL's pole.¹² As a result, Verizon could only have incurred this fee an average of 522 times per year between 1995 and the Joint Use Agreement's termination in 2012. On a base of 62,564 (the average number of poles to which Verizon was attached over the 1995 – 2012 period), this cost is equivalent to a 7 cent per pole charge.¹³

22. FPL has not identified any additional permitting benefits with monetary value. It has instead simply identified a different process followed by a licensee as compared to Verizon. FPL has not in any justifiable manner made the case that the difference in activity implies a difference in cost, value, or burden. Rather, as detailed in the Affidavit of Mr. Lantz, Verizon's process requires comparable tasks and therefore comparable time. For example, Verizon must

¹⁰ These numbers do not include "special poles" or "transmission poles," which are invoiced at a different rental rate.

¹¹ See Complaint Ex. 11 at p. 12 (Permit Manual - Alpine Communications Corporation).

¹² See Kennedy 2014 Decl. ¶ 22.

¹³ $522 * \$7.95 = \$4,149.90$; $\$4,149.90 / 62,564 = \0.066 , which rounds to \$0.07

also survey the pole, ensure that adequate clearances exist for Verizon's attachments, and engineer for proper structural strength. Similarly, Verizon also ensures proper pole loading and notifies FPL of attachments to new poles.¹⁴

23. As a result, I conclude that in 2012, the per pole value associated with FPL's alleged permitting benefits amounted to 7 cents.

(b) "Verizon's attachments were not subject to Florida Power inspection at the time of installation, and Verizon was not required to pay an inspection fee."

24. FPL's alleged differences regarding post-installation inspections also involve one-time non-recurring costs that may apply when an attachment to a new pole is made.¹⁵ As a result, Verizon could only have incurred these costs an average of 522 times per year between 1995 and the Joint Use Agreement's termination in 2012.

25. However, it does not appear that Verizon would have been required to incur any different costs under a license agreement. *First*, FPL has the right to inspect, or not inspect, Verizon's facilities [REDACTED]

[REDACTED] The Joint Use Agreement does not prohibit post-installation inspections, [REDACTED]

[REDACTED] It may benefit FPL to rely on

¹⁴ See Complaint Ex. E ¶¶ 6-12 (Affidavit of Bryan L. Lantz (Mar. 13, 2015) ("Lantz Affidavit")).

¹⁵ [REDACTED]

¹⁶ [REDACTED]

Verizon's engineers and forego inspections of Verizon's facilities, but that benefit to FPL does not set Verizon apart from its competitors.

26. *Second*, Verizon has not been advantaged by the fees cited by FPL because they are entirely avoidable by Verizon's competitors. According to FPL's permit manual, a \$9.95 fee applies only if an attachment is not reported within 30 days, a \$24.95 fees applies only if the attachments do not comply with NESC or FPL design standards, and a \$9.95 fee applies only if a subsequent re-inspection is necessary.¹⁷

27. It is unreasonable to situate Verizon so that it is competitively neutral with an entity that incurs avoidable fees. Doing so would set Verizon at a disadvantage to its competitors, as they would retain the right to avoid fees while Verizon, with equivalent charges embedded in its rental rate, would not. It is also unreasonable to assume that Verizon, if operating under the same post-inspection fee regime, would not avoid the fees.

28. In any event, making the extreme assumption that all three fees ($\$9.95 + \$24.95 + \$9.95 = \44.85) would have applied to all of Verizon's 522 average annual attachments to new poles, the fees would amount to an average of 37 cents over the 1995 – 2012 period.¹⁸ Given that a proper analysis of competitive neutrality should not make these extreme assumptions, I have allocated a zero value to this item in my summary table below.

¹⁷ Complaint Ex. 11 at pp. 12, 105 (FPL's Permit Manual - Alpine Communications Corporation).

¹⁸ $\$44.85 * 522 = \$23,412.00$; $\$23,412.00 / 62,564 = \0.37

- (c) **“The Agreement granted Verizon access to the lowest four feet of usable space on each pole, which is easier to access than the space used by competitors between Verizon’s and Florida Power’s attachments. This reduces Verizon’s installation and maintenance costs.”**

29. The Affidavit of Mr. Lantz details the increased risks and costs associated with Verizon’s position as the lowest attacher on FPL’s poles. These costs relate to Verizon’s increased exposure to damage from oversized vehicles, vandalism, and others working on the pole and increased pole transfer and replacement costs.¹⁹ I have not made an effort to quantify these increased costs, because it is apparent that they far exceed any measurable savings associated with access to the lowest position on the pole. Moreover, the maintenance of standard construction practices, which locate Verizon at the bottom of the pole, operates to the benefit of all attaching entities by facilitating identification of facilities and eliminating the crossing of cables mid-span.²⁰

- (d) **“To accommodate the four feet of space allotted to Verizon, Florida Power installed taller poles at increased cost.”**

30. FPL makes a false comparison when it compares the height of poles required to service FPL’s customers to the height of poles required to service FPL’s and Verizon’s customers.²¹ When judging competitive neutrality, the inquiry instead must compare the height of poles required to service FPL’s and Verizon’s competitors’ customers to the height of poles required to service FPL’s and Verizon’s customers. Because the same additional space for communications equipment and safety is required irrespective of whether FPL shares a pole with

¹⁹ Complaint Ex. E ¶¶ 18-21 (Lantz Affidavit).

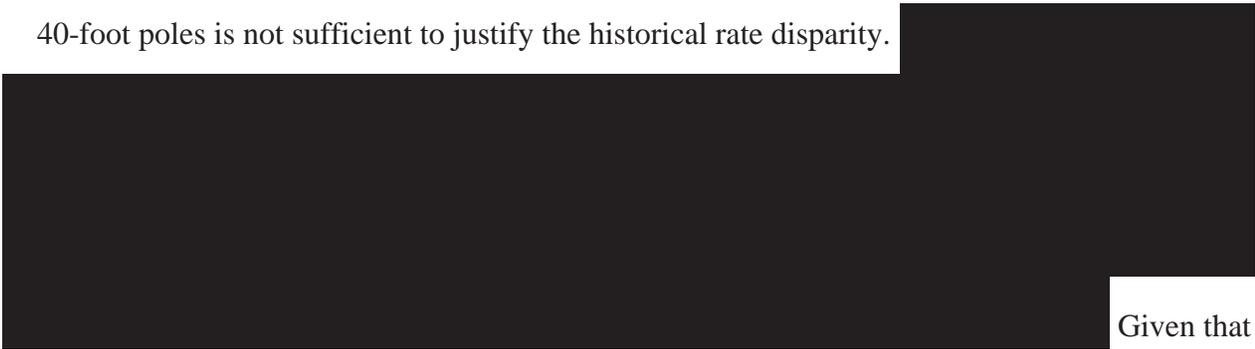
²⁰ *Id.* ¶¶ 16-17.

²¹ *See* 2014 Response at 16.

Verizon or with one of Verizon’s competitors,²² FPL has not identified a competitive difference between Verizon and its competitors.

31. Moreover, Verizon has already paid FPL for any additional costs associated with the height and strength of FPL’s poles. The rates that result from the Commission’s new telecommunications formula and cable formula are fully compensatory rates.²³ Before the effective date of the *Pole Attachment Order*, Verizon paid a rate far higher. *See supra* ¶ 8. Verizon has also incurred the cost of a new pole where it is required to accommodate its attachments.²⁴

32. Finally, FPL’s pole costing data show that the price differential between 35- and 40-foot poles is not sufficient to justify the historical rate disparity.



Given that a

proper analysis of competitive neutrality should not attribute even these amounts to Verizon, I have allocated a zero value to this item in my summary table below.

²² Complaint Ex. E ¶ 15 (Lantz Affidavit).

²³ *See Pole Attachment Order*, 26 FCC Rcd at 5321 (¶ 183) (“the new telecom rate, and the cable rate each are fully compensatory to utilities”).

²⁴ *See* 2014 Response at 28; Complaint Ex. E ¶ 10 (Lantz Affidavit).

²⁵ [Redacted]

²⁶ [Redacted]

(e) **“The Agreement requires Florida Power to replace poles in certain circumstances to accommodate Verizon; none of Verizon’s competitors receive this benefit.”**

33. FPL claims that it has the right to refuse to replace poles in order to increase capacity that will accommodate Verizon’s competitors, but does not claim that it exercises that right. A proper analysis of competitive neutrality must necessarily consider the actual conduct and performance of parties, not actions or conduct that might be permissible. Therefore, the existence of a right that is not exercised does not create a competitive advantage. That is particularly true here because the Joint Use Agreement also gives FPL the right to exclude certain poles from joint use.²⁷

34. It does not make economic sense for FPL to refuse to replace poles in order to increase capacity. As acknowledged by FPL and stated in the Affidavit of Mr. Lantz, under the terms of the Joint Use Agreement, Verizon pays for pole replacements that are necessary to accommodate its attachments.²⁸ FPL’s licensees apparently have the same obligation.²⁹ This means that if FPL agrees to increase capacity, it obtains ownership of a taller, stronger, and newer pole paid for by the attaching entity requiring it. Verizon is not provided a benefit relative to a licensee.

35. FPL alleges that there is a timing difference related to payment for these pole replacements, stating that where Verizon is concerned, “FPL pays the cost of the new pole and then invoices Verizon when the work is complete,” but that licensees “must pay for the pole

²⁷ Complaint Ex. 1 § 2.2 (Joint Use Agreement) (“Each party reserves the right to exclude from joint use those poles . . . which, in the judgement of Owner, (a) are required for the sole use of the Owner, (b) would not readily lend themselves to joint use because of interference, hazards or similar impediments, present or future, or (c) have been installed primarily for the use of a third party.”).

²⁸ 2014 Response at 28; Complaint Ex. E ¶ 10 (Lantz Affidavit).

²⁹ 2014 Response at 28.

change out in advance.”³⁰ I have approximated the monetary value of that time difference by using the average cost of FPL’s pole placements from 1995 through 2012,

[REDACTED]

the time value of prepayment would be a fraction of a penny.³³

(f) **“Unlike competitive LECs, Verizon is not required to purchase its own insurance, list Florida Power as an insured, or indemnify Florida Power.”**

36. Verizon’s existing insurance coverage meets or exceeds the insurance requirements that FPL has imposed on its licenses.³⁴ Verizon has not been required to list FPL as an insured on its policy, but any “benefit” associated with this exception is directly offset by Verizon’s providing the same “benefit” to FPL

[REDACTED]

Under the Joint Use Agreement, FPL is not required to purchase insurance or list Verizon as an insured on its policy.

37. The liability clause for property and bodily injury damages within the Joint Use Agreement allocates responsibility based primarily on fault. It requires Verizon to pay, without a

³⁰ 2014 Response at 28.

31 [REDACTED]
32 [REDACTED]
33 [REDACTED]
34 [REDACTED]
35 [REDACTED]

cap, for (1) all damages caused by Verizon’s sole negligence, (2) all damages to Verizon property or employees caused by Verizon’s and FPL’s concurrent negligence or “causes which cannot be traced to the sole negligence” of FPL, and (3) half of all third-party damages caused by Verizon’s and FPL’s concurrent negligence or “causes which cannot be traced to the sole negligence” of FPL.³⁶

[REDACTED]

As a result, the draft license includes a more favorable clause and I do not attribute any monetary value to this difference.

(g) “For its attachments, Verizon was not required to pay make-ready costs.”

38. Make-ready refers to the activities that may be necessary to prepare a pole for a new attachment. It is my understanding that the vast majority of make-ready required by Verizon is in the communications space on a utility pole and that FPL does not complete make-ready in the communications space.³⁸ As a result, Verizon cannot have required FPL to complete any significant amount of make-ready on its behalf. This is particularly true in light of the many 40 and 45 foot poles in FPL’s system. It is my understanding that Verizon and its competitors could attach to a 40 or 45 foot pole without requiring any make-ready work in the power space.³⁹

³⁶ Complaint Ex. 1 at Art. XIII (Joint Use Agreement).

³⁷ [REDACTED]

³⁸ Declaration of Thomas J. Kennedy, P.E. ¶ 12 (Aug. 16, 2010), attached as Exhibit C to the Comments of the Florida Investor-Owned Electric Utilities, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51 (Aug. 16, 2010); Complaint Ex. E ¶ 9 (Lantz Affidavit).

³⁹ Complaint Ex. E ¶ 14 (Lantz Affidavit).

39. FPL has itself stated that make-ready work is only required on roughly 10% of poles.⁴⁰ The average annual increase in Verizon's attachments since 1995 is 522. *See supra* ¶ 20. By FPL's own estimate, make ready would potentially be required on approximately 52 poles / year (10% of 522 = 52.2). While Verizon does not know the typical charges for make-ready work performed by FPL's technicians currently or historically, Verizon performs make-ready for third party attachers on its poles. Based on 2014 data, the average cost for Verizon to transfer or move a cable is approximately \$300.⁴¹ Recognizing the potential differences in make-ready work for FPL compared to Verizon because of the difference posed by power lines, I will double the average cost in my analysis. Adding the engineering fee of \$108.00 per pole charged by FPL's contractor Alpine Communication Corporation, I have estimated the average cost of a make-ready job to be \$708.00 ($\$300.00 * 2 + \108.00).⁴² The estimated cost of 52 make-ready jobs would therefore be \$36,816 per year ($52 * \$708.00 = \$36,816.00$). This cost is equivalent to a per pole charge of \$0.59 over the 1995 – 2012 period.⁴³

40. I will next review the value, if any, associated with the seven additional benefits alleged by FPL before the Joint Use Agreement terminated on June 9, 2012.

⁴⁰ Second Declaration of Thomas J. Kennedy, P.E. ¶ 2 (Oct. 4, 2010), attached to Reply Comments of the Florida Investor-Owned Electric Utilities, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51 (Oct. 4, 2010).

⁴¹ Verizon does not maintain this data for its Florida service area, so I calculated this average based on data for Verizon East, which excludes Florida, California and Texas.

⁴² Complaint Ex. 11 at p. 12 (FPL's Permit Manual - Alpine Communications Corporation). The \$7.95 make-ready application administration fee \$7.95 is accounted for in the discussion of permit fees above. *See supra* ¶ 21.

⁴³ $\$36,816.00 / 62,564 = \0.59

(a) Ground bonding.

41. According to the Affidavit of Mr. Lantz, all facilities must attach to the same ground bond for safety purposes.⁴⁴ I therefore assign this difference no value in the competitive neutrality analysis.

(b) Easements and rights-of-way permits.

42. According to the Affidavit of Mr. Lantz, it is not clear that there is any difference between the way that Verizon and Verizon's competitors have obtained the right to attach to FPL's poles on public or private property.⁴⁵ Absent evidence that FPL has, in fact, negotiated an easement that permits Verizon's use of property but not its competitors, I assign this difference no value in the competitive neutrality analysis.

(c) Identification of additional attachments during surveys

43. FPL has received payment from Verizon for attachments to new poles identified in a survey in the form of back rent that is pro-rated to the date of the last survey, regardless of when the attachment was made.⁴⁶ It is my understanding that comparable compensatory relief is the sole relief lawfully available to FPL with respect to Verizon's competitors unless FPL has entered a new agreement, or amended an agreement, after the June 8, 2011 effective date of the *Pole Attachment Order* that includes a clause permitting its recovery of "five times the current annual rental fee" for so-called unauthorized attachments.⁴⁷

⁴⁴ Complaint Ex. E ¶ 13 (Lantz Affidavit).

⁴⁵ *Id.* ¶ 11.

⁴⁶ See Complaint Ex. 1 § 10.9 (Joint Use Agreement) ("The adjustment and the number of attachments shall be deemed to have been made equally over the years elapsed since the preceding inventory. Unless otherwise agreed upon, retroactive billing for the pro-rated adjustment will be added to the normal billing for the year following completion of the field inventory.").

⁴⁷ *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115).

44. An analysis of competitive neutrality should consider only those fees that a power company is lawfully allowed to impose. Moreover, even if the fees could be imposed, it would be unreasonable to situate Verizon so that it is competitively neutral with an entity that incurs them, because they are avoidable. *See supra* ¶ 27. Verizon has therefore been comparably situated with its competitors.

45. Even if unauthorized attachment fees were proper, they would not amount to a significant per pole rental charge in Verizon's case. The most recent audit identified 1,608 attachments that were not previously invoiced. Assuming all of these would have been subject to an additional unauthorized attachment fee if Verizon were a licensee, the cost would be \$42.60 (the new telecommunications rate of $\$8.52 * 5 = \42.60) times the number of new attachments captured by the audit spread over the 5 year audit interval. The impact on the rental rate would be a \$0.20 per pole charge.⁴⁸ Given that a proper analysis of competitive neutrality should not make this extreme assumption, I have allocated a zero value to this item in my summary table below.

(d) Pole replacements required by the Department of Transportation.

46. I have not seen anything that suggests that FPL charges Verizon's competitors for pole replacements required by the Department of Transportation. According to the Affidavit of Mr. Lantz, Verizon makes such replacements without charging any entity attached to its poles.⁴⁹ I therefore assign this difference no value in the competitive neutrality analysis.

⁴⁸ $1,608 * \$42.60 / 5 / 66,999 = \0.20

⁴⁹ Complaint Ex. E ¶ 5 (Lantz Affidavit).

(e) Abandoned poles

47.

[REDACTED] I therefore assign this difference no value in the competitive neutrality analysis.

(f) Time of rental payment

48. FPL apparently invoices its licensees semi-annually in advance and Verizon annually in arrears.⁵¹ The difference between a semi-annual invoice in advance and an annual invoice in arrears is equivalent to a 9-month invoicing differential. The time-value of a nine-month delay in invoicing on a 2012 invoice for 66,999 attachments at an \$8.52 per pole rate would be calculated using Florida's statutory interest rate of 4.75%,⁵² and would amount to an annual benefit of \$0.30 on a per pole charge.⁵³

(g) Performance bond or letter of credit

49. FPL alleges that its licensees need to post a performance bond or irrevocable letter of credit.⁵⁴ It is not clear that any of FPL's licensees, in fact, have agreed to post such a bond or letter of credit [REDACTED] FPL has not produced any executed license agreements imposing such an obligation.

⁵⁰ See Complaint Ex. 1 § 9.1 (Joint Use Agreement); [REDACTED]

⁵¹ See Complaint Ex. B ¶ 14 (Second Affidavit of Steven R. Lindsay (Mar. 12, 2015)).

⁵² Fla. Stat. § 55.03; Judgment Interest Rates, available at <http://www.myfloridacfo.com/Division/AA/Vendors/#.VQHjO454rYg> (last visited Mar. 12, 2015).

⁵³ $\$8.52 * 66,999 = \$570,831.48$; $\$570,831.48 * 0.0475 * .75 = \$20,335.87$; $\$20,335.87 / 66,999 = \0.30 .

⁵⁴ 2014 Response at 29.

⁵⁵ [REDACTED]

50. If FPL shows that it has imposed such a requirement on its licensees, the difference between Verizon and its competitors is not significant.⁵⁶ Based on research undertaken by Verizon’s Risk Management Group at my request, Verizon could obtain a similar performance bond or line of credit for approximately \$19,000. This cost is equivalent to a per pole charge of \$0.30.⁵⁷ Because I have not seen any evidence that FPL’s licensees have posted this bond or letter of credit, I have allocated a zero value to this item in my summary table below.

51. The following table summarizes my estimates of the potential per pole value that, under a proper construction of competitive neutrality, could be assigned to the alleged unique advantages FPL claims to have provided Verizon under the Joint Use Agreement in 2012:

Permit Applications and Fees	\$ 0.07
Post-Installation Inspections	--
Location on Pole	--
Height and Strength of Poles	--
Pole Replacements to Increase Capacity	--
Insurance and Indemnification	--
Make-Ready Costs	\$ 0.59
Ground Bonding	--
Easements and Rights-of-Way Permits	--
Identification of Additional Attachments	--
Pole Replacements Required for Roadwork	--
Abandoned Poles	--
Time of Rental Payment	\$ 0.30
Performance Bond or Letter of Credit	--
Total	\$ 0.96

⁵⁶ [REDACTED]

⁵⁷ \$19,000 / 62,564 = \$0.30

52. This analysis should be regarded as conservative as I have not calculated any offset to the potential benefits accruing to Verizon to reflect the burden resulting from its obligation to provide certain services to FPL on a reciprocal basis.

53. My analysis confirms that the monetary value of any alleged benefits that Verizon received before termination of the Joint Use Agreement was far “less than the difference between the Agreement rates and the New or Old Telecom Rates over time.” *See* Mem. Op. ¶ 10. There are no “expenses [that Verizon] avoided under the Agreement.” *Id.* ¶ 24.

C. The Prospective Value Of The Alleged Advantages Is Minimal.

54. The prospective value of the advantages alleged by FPL is even smaller because I understand that Verizon no longer has the right to make attachments to new FPL poles.⁵⁸ As a result, the values that I attributed to permitting and make-ready during the pre-termination period do not apply following termination because they are incurred when an attaching party is making attachments to new poles. Similarly, prospective value should not be given to alleged benefits involving post-installation inspections, installation of poles, replacement of poles to create capacity in order for Verizon to attach, ground bonding, easements and rights-of-way permits, and identification of attachments to new poles during surveys because I understand that each involves one-time, non-recurring activity that is performed only when an attachment is being made to a new pole.

55. The following table summarizes my estimates of the potential per pole prospective value that, under a proper construction of competitive neutrality, could be assigned to the alleged unique advantages FPL claims to have provided Verizon after termination of the Joint Use Agreement:

⁵⁸ Complaint Exs. C ¶ 18 (Second Affidavit of Steven R. Lindsay (Mar. 12, 2015)), 1 at Art. XVI (Joint Use Agreement).

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Location on Pole	--
Insurance and Indemnification	--
Pole Replacements Required for Roadwork	--
Abandoned Poles	--
Timing of Rental Payment	\$ 0.30
Performance Bond or Letter of Credit	--
Total	\$ 0.30

56. This analysis should be regarded as conservative as I have not calculated any offset to the potential benefits accruing to Verizon to reflect the burden resulting from its obligation to provide certain services to FPL on a reciprocal basis.

D. Summary

57. As summarized in the table below, even conservative estimates of the gross benefit to Verizon never rationalized or justified more than a fraction of the differential in the rate FPL seeks to impose on Verizon compared to the just and reasonable rate paid by Verizon's competitors. The value of the alleged benefits is so low that Verizon is, in my opinion, comparably situated to its competitors and should receive the same rental rate.⁵⁹

⁵⁹ My analysis also demonstrates the validity of the Commission's assertion that the rate resulting from its prior telecommunications formula provides an upper bound on the rate that is just and reasonable for an incumbent telephone company that attaches on materially advantageous terms. The value of the alleged benefits in this case do not exceed the \$4.39 difference between the properly calculated new telecommunications rate of \$8.52 and the properly calculated prior telecommunications rate of \$12.91.

Impact Summary

	January - June 9, 2012 (Pre-Termination of the JUA)	June 10 – December 31, 2012 (Post-Termination of the JUA)
Potential benefit	\$ 0.96	\$ 0.30
CLEC rate	\$ 8.52	\$ 8.52
CLEC rate adjusted for potential benefits	\$ 9.48	\$ 8.82
2012 rate demanded of Verizon	\$ 36.23	\$ 36.23
Additional amount demanded of Verizon	\$ 26.75	\$ 27.41

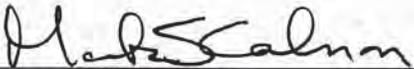
58. This quantification demonstrates that any alleged benefit that Verizon derives by the different terms and conditions of joint use relative to a license agreement account for only about 3.5% of the historical rate burden and 1% of the prospective rate burden imposed on Verizon by FPL.⁶⁰ My analysis shows that FPL demands that Verizon pay an annual premium that was \$26.75 in 2012 and has increased each year thereafter as Verizon's rental rates increased at a higher rate than the rates of its CLEC competitors.

59. Looking forward, absent substantive relief from the demanded rate and the establishment of a just and reasonable rate, Verizon will continue to pay more than \$27 more than any value associated with the joint use terms and conditions. The Commission should consider this value estimate as conservative, as my analysis focuses only on quantifying the

⁶⁰ For 2012, the difference between the demanded rate and the rate applicable to Verizon's competitors is \$27.71. ($\$36.23 - \$8.52 = \27.71). The historical value associated with the Joint Use Agreement relative to a license agreement was \$0.96, or about 3.5% of this \$27.71 rate burden. ($\$0.96 / \$27.71 = 3.46\%$). The prospective value associated with the Joint Use Agreement relative to a license agreement is \$0.30, or about 1.1% of the rate burden ($\$0.30 / \$27.71 = 1.08\%$).

potential benefits conferred to Verizon even though Verizon also has burdens and obligations that licensees do not incur.

60. My previous Affidavit in this proceeding quantified the annual financial burden imposed by FPL on Verizon to be in excess of \$1.8 million annually and expressed this burden in terms of the volume of potential labor hours and dedicated engineering support that would be required to rationalize the rental rate demanded by FPL.⁶² My more granular review of the alleged unique benefits put forward by FPL has not undermined my prior conclusion that the extraordinary rate disparity between Verizon and its competitors imposes a significant burden on Verizon that is not justified by any difference in the terms and conditions upon which they attach.

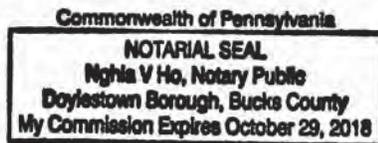


Mark S. Calnon, Ph.D.

Sworn to before me on
this 13th day of March, 2015



Notary Public



⁶² Complaint Ex. B ¶ 15 (2014 Affidavit).

Exhibit B

Before the
Federal Communications Commission
Washington, DC 20554

_____)	
VERIZON FLORIDA LLC,)	
)	
Complainant,)	
)	
v.	)	File No.
)	
FLORIDA POWER AND LIGHT)	
COMPANY,)	
)	
Defendant.)	
_____)	

AFFIDAVIT OF MARK S. CALNON PH.D.

COMMONWEALTH OF PENNSYLVANIA)
	) ss.
COUNTY OF BUCKS)

I, MARK S. CALNON, being sworn, depose and say:

1. I am a senior consultant in the Telecom Finance Group of Verizon Services Corporation. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Florida LLC (“Verizon”) against Florida Power and Light Company (“FPL”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have a Bachelor of Arts degree in Economics from St. Michaels College and a Ph.D., also in Economics, from the University of Colorado. My professional experience began over 30 years ago and spans economic and regulatory policy issues in telecommunications and energy markets domestically and internationally. My specific areas of expertise include demand analysis, strategic planning, pricing and policy analysis focused primarily on the regulated

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product and service offerings of incumbent telecom and electric distribution companies. My responsibilities have included estimating the demand for wireline telephone service, the demand for the various jurisdictional usage classifications of the wireline network (local, intralata toll, interlata toll and switched access) as well as the demand for various new / advanced service offerings. My work in the area of pricing and costing has included the design of methodologies to determine the proper price levels and rate relationships between the wholesale provision of access services (switched and special) and retail toll and private line offerings. I have also developed pricing methodologies consistent with the market-opening requirements of the Telecommunications Act of 1996 (TA96). Following passage of TA96, I have also been responsible for developing studies documenting the level of competition in various market areas and advocating market-appropriate levels of regulatory relief. I have also provided economic analysis supporting litigation in the areas of damage claims regarding alleged delays in provisioning new services and claims of unreasonable discrimination relating to the pricing and costing practices associated with third party make-ready costs and pole rental rates.

Over the course of my career I have participated in over 30 regulatory proceedings before 20 state commissions. My responsibilities in these proceedings have included the development and filing of written testimony, participation in industry workshops, settlement conferences and ex-parte presentations for Commissioners and their staff.

3. The purpose of this Affidavit is to describe the calculations that yield the presumptively just and reasonable pole rental rate that FPL was permitted to charge for the 2011 and 2012 calendar years under the Commission's new and prior telecommunications formulae.¹

¹ These calculations are based in part on 2010 data provided to Verizon Florida by FPL. These data were not provided with fully documented supporting workpapers and Verizon Florida

My calculations are based on the guidance contained within the FCC’s *Pole Attachment Order*.²

I conclude that the new telecommunications formula results in a rental rate of \$8.52 and that the prior telecommunications formula results in a rental rate of \$12.91. As discussed in greater detail below, these rates are substantially lower than the rates invoiced and demanded by FPL for 2011 and 2012 calendar years. A more detailed table with my accounting inputs, sources, and calculations is attached to this Affidavit as Exhibit C-1.

4. The FCC’s prior and new telecommunications formulae have two basic components: (1) the annual cost of pole ownership and (2) the percentage of that annual cost that is assigned to the telecommunications provider, which reflects the direct space occupied by the telecommunications provider and a share of the unusable space on the pole.³

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[\begin{array}{c} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{array} \right]$$

$$\text{Where Space Factor} = \left[\frac{\left(\begin{array}{c} \text{Space} \\ \text{Occupied} \end{array} \right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

5. The new telecommunications formula differs from the prior telecommunications formula because it includes an additional multiplier applied to the annual cost of pole ownership. This case involves urbanized areas under the Commission’s regulations because FPL and Verizon’s overlapping service area includes the cities of Bradenton and Sarasota, Florida, which

reserves the right to make adjustments to these inputs at such time as the data can be reviewed and validated or as new data are made available.

² Report and Order and Order on Reconsideration, *In the Matter of Implementation of Section 224 of the Act*, 26 FCC Rcd 5240 (2011), *aff’d*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183, 185 (D.C. Cir.), cert denied, 134 S.Ct. 118 (2013) (“*Pole Attachment Order*”).

³ 47 C.F.R. § 1.1409(e).

have populations greater than 50,000.⁴ The appropriate multiplier, therefore, is 0.66.⁵ When the annual pole costs used in the prior formula are multiplied by 0.66, the resulting rate should be approximately equal to the rate produced by the Commission’s rate methodology for cable television providers.⁶

6. The net cost of a bare pole is determined by using the following calculation:

$$\text{Annual Pole Cost} = \frac{(\text{Net Pole Investment} \times \text{Appurtenances Factor})}{\text{Number of Poles}} \times \text{Carrying Charge Rate}$$

where net pole investment is the result of reducing gross investment assigned to the poles account by the amount of the depreciation and deferred tax reserves assigned (or allocated) to these accounts as well as a 15 percent reduction to eliminate investment in non-pole appurtenances.⁷

7. [REDACTED]

⁴ *Pole Attachment Order* at ¶ 149 n. 449 (“An urbanized service area has 50,000 or higher population, while a non-urbanized service area has under 50,000 population.”); Affidavit of Steven R. Lindsay ¶ 2 (Jan. 31, 2014) (stating that the overlapping service area includes Bradenton and Sarasota, Florida); State and County QuickFacts: Bradenton, Florida, U.S. Census Bureau, *available at* <http://quickfacts.census.gov/qfd/states/12/1264175.html> (population of 50,672); State and County QuickFacts: Sarasota, Florida, U.S. Census Bureau, *available at* <http://quickfacts.census.gov/qfd/states/12/1207950.html> (population of 52,811).

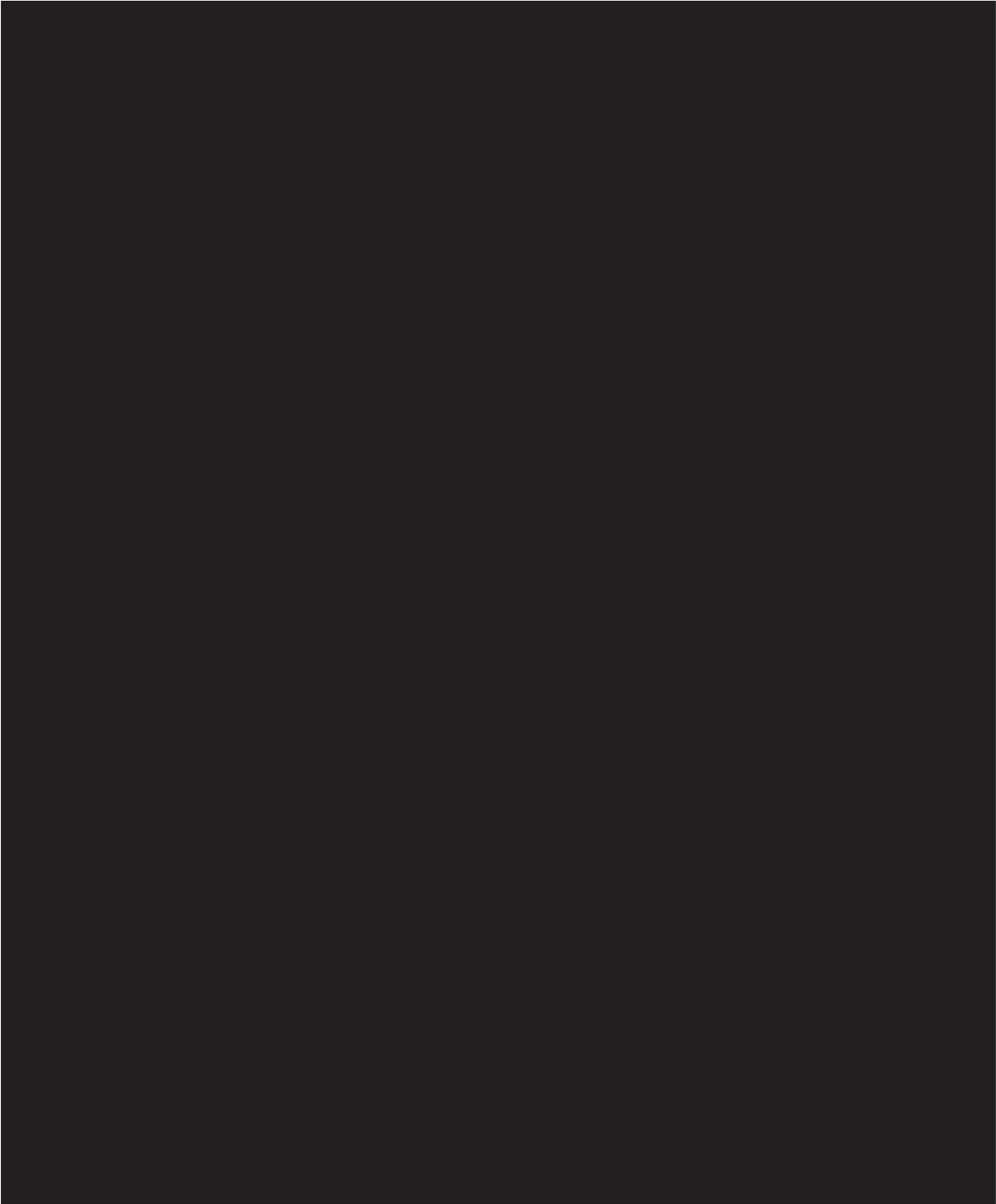
⁵ *Pole Attachment Order* at ¶ 149.

⁶ *Id.* at ¶¶ 149, 151.

⁷ Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the *Telecommunications Act of 1996*, CS Docket No. 97-98; CC Docket No. 97-151, Consolidated Order on Reconsideration, 16 FCC Rcd 12103 ¶¶ 32, 121 (2001).

[REDACTED]

⁹ The formula presented in ¶ 6 requires that depreciation reserve and deferred taxes be subtracted from gross pole investment along with a 15% appurtenance factor. The calculations above



remove only depreciation and the appurtenance allowance. It is my understanding that this is consistent with Florida's regulatory requirements (at least as they apply to FPL).



- [Redacted]
- [Redacted]
- [Redacted]

12. The rates FPL has invoiced and demanded for Verizon – \$35.465 and \$36.225 for 2011 and 2012¹³ – are significantly greater than the rates produced by either the new or prior telecommunications formula. These rates are almost 3 times greater than the rate produced under the prior telecommunications formula and over 4 times greater than the rate produced under the current formula. For purposes of this Affidavit, I will round these rate demands to \$35.47 and \$36.23.

13. Straightforward comparisons highlight the unreasonableness of FPL’s rate demand relative to the rates applicable to third party attachers and attachments by FPL. 



¹³ Affidavit of Steven R. Lindsay ¶¶ 18-19 (Jan. 31, 2014) (stating that FPL invoiced and demanded rates of \$35.465 and \$36.225 for 2011 and 2012 rent, respectively).

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15. The rates calculated in ¶ 10 using the current and prior telecommunications formulas establish a zone of reasonableness that is significantly lower than the rate demanded and invoiced by FPL. The differential between the invoiced rate and the rate established by the new telecommunications formula provides a basis for evaluating the unreasonable burden FPL seeks to continue to impose on Verizon. The \$36.23 rate demanded and invoiced by FPL for 2012²² results in Verizon's payment of \$27.71 more per pole compared to similarly situated attaching entities ($\$36.23 - \$8.52 = \$27.71$). Since Verizon is attached to 67,003 FPL distribution poles, the excessively high attachment rate invoiced and demanded by FPL imposes an unreasonable financial burden on Verizon of \$1.86 million annually. This premium, assuming a loaded labor rate of \$100 / hour, would equate to more than 18,500 hours of work done on an annual basis for Verizon's benefit (that is not similarly performed for Verizon's

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

²² Affidavit of Steven R. Lindsay ¶ 19 (Jan. 31, 2014).

competitors) – or roughly 9 full time technicians entirely dedicated to Verizon’s attachments on FPL’s poles. Verizon, however, has not received a benefit in exchange for this premium, as it has made virtually no new attachments in recent years. Its attachments are, therefore, subject solely to the same maintenance that is provided to its competing attachers on the same utility poles. This calculation thus exposes the unreasonable burden that FPL seeks to impose on Verizon currently and the excessiveness of the payments that Verizon has made to FPL historically.

16. It is my opinion that the unreasonably high rental demands from FPL have been possible because of the insufficient bargaining power held by Verizon and its predecessor, General Telephone Company of Florida. A reasonable benchmark for determining the negotiating power of each party is the number of poles each party occupies in the common operational serving area. In 2012, Verizon occupied 67,003 FPL distribution poles whereas FPL occupied only 7,010 Verizon poles.²³ Verizon’s pole ownership has not changed significantly over time.²⁴ Verizon, and General Telephone Company of Florida which negotiated the now-terminated Joint Use Agreement, thus owned less than 10% of the poles jointly used by the parties. This disparity clearly demonstrates that General Telephone Company of Florida was in an inferior position to negotiate fair rates and that Verizon is in an inferior position to renegotiate those unfair rates. It is my opinion that the facts of this case confirm the FCC’s finding that “[d]ue to the local monopoly in ownership and control of poles, the legislative record indicated that some utilities had abused their superior bargaining position by demanding exorbitant rental

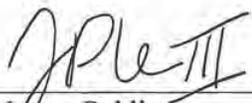
²³ These counts are based upon 2012 billing records issued by FPL.

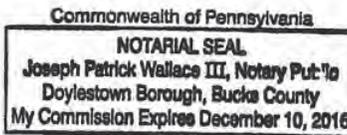
²⁴ *See Pole Attachment Complaint Ex. 7 at 5.*

fees.”²⁵ Additionally, I conclude that the FCC’s statement applies fully here that “[t]he record demonstrates that incumbent LECs own fewer poles now than in the past, and this relative change in pole ownership may have left incumbent LECs in an inferior bargaining position to other utilities. As a result, at least in some circumstances, market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates, terms and conditions for incumbent LECs pole attachments.”²⁶


Mark S. Calnon

Sworn to before me on
this 31st day of January, 2014


Notary Public



²⁵ Commission’s Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the *Telecommunications Act of 1996*, CS Docket No. 97-98; CC Docket No. 97-151, Consolidated Order on Reconsideration, 16 FCC Rcd 12103 ¶ 21 (2001).

²⁶ *Pole Attachment Order* at ¶ 199.

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Exhibit C - 1

Entire Exhibit May Be Confidential

Exhibit C

Verizon's service areas in Florida. These include Verizon's agreements with FPL, true and correct copies of which are attached to Verizon's Pole Attachment Complaint as Exhibits 1-3.

3. I have personal knowledge of Verizon's negotiations with FPL for a just and reasonable pole attachment rental rate. I also have access to information maintained by Verizon's competitive local exchange carrier ("CLEC") affiliate in Florida, MCImetro Access Transmission Services LLC.

A. FPL's Unjust And Unreasonable Rates

4. FPL charges Verizon a much higher pole attachment rate than FPL charges Verizon's competitors that also attach to FPL's poles. True and correct copies of FPL's invoices for 2008 through 2013 rent are attached to Verizon's Pole Attachment Complaint as Exhibit 7.

5. The invoices show that, for periods before the July 12, 2011 effective date of the *Pole Attachment Order*, FPL charged Verizon rental rates that ranged from \$33.81 for 2008 attachments to \$35.465 for 2011 attachments. During that same period, records show that FPL charged Verizon's CLEC affiliate rates that ranged from \$14.13 for 2008 attachments to \$9.31 for 2011 attachments.

6. Since the effective date of the *Pole Attachment Order*, FPL has demanded rental rates from Verizon of \$35.465, \$36.225, and \$37.155 for 2011, 2012, and 2013 attachments, respectively. For 2011, 2012, and 2013 attachments, records show that FPL invoiced Verizon's CLEC affiliate rates of \$9.31, \$9.67, and \$9.70, respectively.

7. The only rates that Verizon invoiced in Florida for 2011, 2012, and 2013 attachments by licensees on Verizon's poles were rates calculated pursuant to the Commission's formula for cable companies. The 2011, 2012, and 2013 rates that Verizon invoiced to licensees on its poles in Florida were \$6.12, \$5.15, and \$5.16, respectively.

B. Verizon's Comparability To Its Competitors

8. As I stated in my prior Affidavit, on June 27, 2011, I sent a letter on behalf of Verizon to FPL in which I asked FPL to begin negotiations for a rental rate reduction in light of the Commission's *Pole Attachment Order*. A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 9. In the letter, I asked FPL for a copy of its standard license agreement for CLECs and cable companies, along with information detailing any deviations from the standard license terms in licenses that FPL had entered with CLECs and cable companies.

9. On October 31, 2011, Thomas Kennedy emailed me a document titled Linear Facilities Pole Attachment Agreement Between _____ and Florida Power & Light Company ("draft license agreement"). A true and correct copy of Mr. Kennedy's email, with the draft license agreement attached, is attached to Verizon's Pole Attachment Complaint as Exhibit 6.

10. The draft license agreement represents terms most favorable to FPL because it represents the starting point in FPL's negotiations with licensees. My review of the proposed license terms nonetheless confirmed my understanding that Verizon should receive the same rental rate as its competitors. That understanding was further confirmed upon my review of two license agreements that FPL entered with Verizon's CLEC affiliate ("MCI license agreements"). True and correct copies of the MCI license agreements are attached to Verizon's Pole Attachment Complaint as Exhibits 4 and 5.

11. Based on my review of scores of pole attachment agreements throughout my career, it is my opinion that the terms and conditions in FPL's draft license agreement and the MCI license agreements are comparable to the terms and conditions in the Joint Use Agreement. Many terms and conditions are the same. Others have no practical difference. For example, licensees are directed to notify FPL before placing an attachment on a new pole. Verizon,

PUBLIC VERSION

although not required to do so, has notified FPL of new attachments monthly and through Form P-58s, which are completed by field personnel when the new attachment is made. Similarly, as set forth in Mr. Lantz's Affidavit, FPL's easements and right-of-way permits generally cover both Verizon and FPL's licensees. A true and correct copy of an easement obtained by FPL is attached to Verizon's Pole Attachment Complaint as Exhibit 12.

12. Other differences reflect FPL's preference. For example, FPL's Principal Regulatory Analyst, Thomas Kennedy, informed me that FPL does not think that Verizon should follow the same permitting process as Verizon's competitors. A true and correct copy of the February 8, 2008 email that I received from Mr. Kennedy is attached to Verizon's Pole Attachment Complaint as Exhibit 8.

13. Certain differences have such minimal value that they cannot be considered material differences. For example, the Permit Manual available on the website of FPL's exclusive contractor for permitting, Alpine Communications Corporation, states that a small one-time, non-recurring fee of \$7.95 applies when a licensee seeks to attach to FPL's poles. Verizon has had so few attachments to new poles in recent years that this fee would have little effect on Verizon's per pole rental rate. A true and correct copy of the Permit Manual downloaded from FPL's contractor's website on March 12, 2015 is attached to Verizon's Pole Attachment Complaint as Exhibit 11.

14. I also do not consider any difference in the time of payment material. It is my understanding that FPL invoices Verizon's CLEC affiliate for the following six months' rent in December and June. FPL may instead invoice Verizon for the prior twelve months' rent in January. At least some delay in invoicing must not be material to FPL, because it delayed sending Verizon's invoices for 2012 and 2013 rent for three to four months.

PUBLIC VERSION

15. Any differences between the license agreements and Joint Use Agreement reflect the reciprocity of a joint use relationship. Unlike Verizon's competitors, which do not own poles to which FPL is attached, Verizon provides FPL all of the same terms and conditions to attach to its poles that FPL provides to Verizon to attach to FPL's poles. For example, FPL includes an insurance requirement in its license agreements, but does not require Verizon to purchase insurance to attach to its poles. Similarly, Verizon includes an insurance requirement in its license agreements, but does not require FPL to purchase insurance to attach to its poles. These reciprocal terms and conditions do not set Verizon at a "net" advantage over its competitors, who do not provide FPL a similar arrangement.

16. I met with FPL on numerous occasions in 2011 to try to negotiate a new rental rate. At that time, we discussed the terms and conditions that FPL continues to allege provide Verizon an advantage over its competitors. I explained to FPL why I did not consider the alleged benefits to provide Verizon a material advantage over its competitors. Because the terms of FPL's license agreements are so comparable to the Joint Use Agreement, I offered to enter into reciprocal license agreements for Verizon's and FPL's existing attachments. FPL informed me that it was not interested in modifying the Joint Use Agreement.

17. On December 9, 2011, I sent FPL a certified letter in which I outlined the allegations that form the basis of this Complaint, invited a response within a reasonable period of time and offered to hold executive-level discussions regarding the dispute. A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 10. Executive-level discussions followed on January 27, 2012, where we further discussed FPL's claim that Verizon has been afforded unique advantages under the Joint Use Agreement. I explained then, as I had before, that Verizon has not been advantaged relative to FPL's third party attachers, and

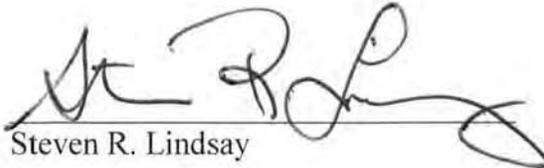
even if there were some material advantage provided by the Joint Use Agreement, Verizon has paid for it several times over. The discussions failed to resolve the dispute.

18. I continued to try to negotiate a new agreement with FPL, but my efforts proved futile. In May 2012, the appropriate Verizon operations, construction, and engineering employees were alerted to the June 9, 2012 termination of the Joint Use Agreement and were instructed not to make any additional attachments to FPL poles that were not in use by the parties on June 9, 2012.

19. My prior affidavit details the negotiations and litigation conducted by the parties since the Joint Use Agreement terminated. True and correct copies of additional pleadings from the state court litigation are attached to Verizon's Pole Attachment Complaint as Exhibits 13 through 21.

C. Verizon's Invoice Payments

20. In my prior Affidavit, I explained that Verizon paid FPL at an annual rental rate of \$8.52 per pole for the July 2011 through December 2011 time period, and for the 2012 rental year, each of which followed the effective date of the *Pole Attachment Order*. FPL has since invoiced Verizon for its 2013 attachments at an annual rental rate of \$37.155 per pole. Consistent with its prior payments, Verizon paid FPL at a just and reasonable \$8.52 rental rate for attachments attributable to the 2013 rental period.


Steven R. Lindsay

Sworn to before me on
this 12th day of March, 2015

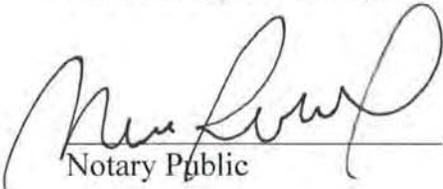

Notary Public



Exhibit D

Before the
Federal Communications Commission
Washington, DC 20554

_____)	
VERIZON FLORIDA LLC,)	
)	
Complainant,)	
)	
v.	)	File No.
)	
FLORIDA POWER AND LIGHT)	
COMPANY,)	
)	
Defendant.)	
_____)	

AFFIDAVIT OF STEVEN R. LINDSAY

STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

I, STEVEN R. LINDSAY, being sworn, depose and say:

1. I am a Consultant – Contract Management in the Centralized Engineering Support and Major Project Implementation Division of Verizon Florida LLC (“Verizon Florida”). I am executing this Affidavit in support of Verizon’s Pole Attachment Complaint against Florida Power and Light Company (“FPL”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. Verizon is a limited liability company incorporated in Florida with a principal place of business at 610 Zack Street, 4th Floor, Tampa, Florida 33602. Verizon is an incumbent local exchange carrier (“ILEC”) that provides telecommunications and other services in sections of Hillsborough, Pinellas, Manatee, Sarasota, Polk, and Pasco Counties in Florida. Verizon’s

overlapping service area with FPL includes Sarasota and Bradenton, Florida. One of Verizon's predecessors was the General Telephone Company of Florida, which was an independent telephone company that relied primarily on utility poles owned by electric companies to provide service to these relatively small and then-developing geographic areas within Florida.

3. Through a corporate merger, Verizon became the party to the Joint Use Agreement entered by FPL and General Telephone Company of Florida on January 1, 1975, as amended by the Supplemental Agreement entered by FPL and General Telephone Company of Florida on March 29, 1978. A true and correct copy of the Joint Use Agreement is attached to Verizon's Pole Attachment Complaint as Exhibit 1. A true and correct copy of the Supplemental Agreement is attached as Exhibit 2.

4. In my role as Consultant – Contract Management, I am responsible for the negotiation and implementation of joint use agreements and pole attachment agreements in Verizon's serving areas in Florida. I have personal knowledge of Verizon's negotiations with FPL for a just and reasonable pole attachment rental rate.

5. I have reviewed the allegations made in the Pole Attachment Complaint and the Exhibits submitted with the Pole Attachment Complaint. I verify that they are true and correct to the best of my knowledge, information and belief.

A. FPL's Unjust And Unreasonable Rates

6. FPL charges Verizon a much higher pole attachment rate than its competitors that also attach to FPL's poles. True and correct copies of FPL's invoices for 2011 and 2012 rent are attached to Verizon's Pole Attachment Complaint as Exhibits 6 and 10, respectively.

7. Although Verizon is charged much more for its attachments on FPL's poles, its attachments are comparable to those of its competitors. Like its competitors, Verizon's

attachments support communications network facilities and related equipment and are used to provide voice, broadband and video services.

8. Also, Verizon owns so few poles to which FPL has attached its facilities that Verizon is less like a pole owner and more like its competitors that attach as licensees. Verizon has made very few new attachments to FPL's poles in recent years. For example, FPL billed Verizon for fewer pole attachments in 2012 than it billed Verizon for in 2007.

9. The rental rates charged by FPL are especially unjust and unreasonable relative to the much lower rates charged competing attachers. Under the Supplemental Agreement (¶ 1), one-half of FPL's average annual cost of joint use poles is allocated to Verizon, even though the Joint Use Agreement (§ 1.1.7) allocates four feet of useable space on the pole to Verizon (less than half of the useable space). Recent audits of Verizon's facilities in Florida and elsewhere confirm that Verizon's facilities occupy on average not more than 1.25 feet of space on a joint use pole. Nevertheless, FPL collects and retains rent from third parties that attach in the space allocated to, but not used by, Verizon on the joint use poles, thereby increasing its overcompensation.

B. Negotiations with FPL

10. On June 27, 2011, I sent a letter on behalf of Verizon to FPL in which I requested that FPL begin negotiations for a rental rate reduction in light of the Commission's *Pole Attachment Order*. A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 4. In the letter, I informed FPL that Verizon was open to continuing the joint use relationship through a new joint use agreement, a new amendment to the parties' existing Joint Use Agreement, as amended, or reciprocal license agreements. As negotiations progressed, I clarified that Verizon's preference was for a reciprocal license

arrangement, with Verizon attaching to FPL's poles at the rate that FPL is permitted to charge Verizon's competitors.

11. I met with FPL on numerous occasions in 2011 to try to negotiate a new rental rate. FPL consistently denied that federal law provided Verizon any right to rate relief with respect to the facilities that Verizon had attached to FPL's poles prior to the July 12, 2011 effective date of the ILEC protections in the *Pole Attachment Order*. FPL refused to negotiate in good faith to reach a just and reasonable rental rate.

12. On December 9, 2011, I sent FPL a certified letter in which I outlined the allegations that form the basis of this Complaint, invited a response within a reasonable period of time and offered to hold executive-level discussions regarding the dispute. A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 5. Executive-level discussions followed on January 27, 2012, but failed to resolve the dispute.

13. I continued to try to negotiate a new agreement with FPL through informal negotiations. On several occasions, I told FPL that Verizon would agree to enter an attachment agreement that contains comparable rates, terms and conditions to those that FPL has agreed to with comparable competing attachers. FPL refused to negotiate in good faith, maintaining it was entitled under the Agreement and the FCC *Order* to the same going forward rental rate for its existing attachments to FPL's poles. On June 9, 2012, the Joint Use Agreement, as amended, terminated without a new agreement in place for the joint use of new poles.

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

17. While negotiations were pending, FPL filed a Complaint against Verizon in state court, seeking to compel Verizon to pay the unjust and unreasonable rental rates that FPL invoiced under the parties' terminated Agreement. True and correct copies of pleadings from the state court litigation are attached to Verizon's Pole Attachment Complaint as Exhibits 11 through 21.

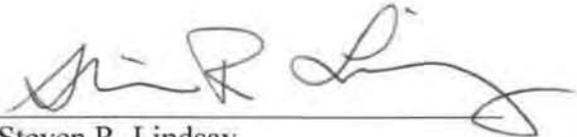
C. Verizon's Invoice Payments

18. FPL invoiced Verizon for its 2011 attachments at an annual rental rate of \$35.465 per pole. On or about July 23, 2012, Verizon submitted a payment to FPL that reflected (1) the invoiced rate for January through June 2011 attachments that preceded the effective date of the *Pole Attachment Order*, and (2) a just and reasonable rental rate of \$8.52 per pole for July through December 2011 attachments that were entitled to rate relief under the *Order*. The \$8.52 rate was calculated using the Commission's new telecommunications rate formula and the best data then available.

19. FPL invoiced Verizon for its 2012 attachments at an annual rental rate of \$36.225 per pole. The invoice also included a number of adjustments to 2008 through 2011 pole counts based on a recently completed field audit. On or about June 13, 2013, Verizon submitted a

PUBLIC VERSION

payment to FPL. Consistent with its prior payment, Verizon paid FPL at the full invoiced rate for attachments attributable to the 2008 through June 2011 period, and at a just and reasonable \$8.52 rental rate for attachments attributable to the July 2011 through December 2012 period that followed the effective date of the FCC's *Pole Attachment Order*.


Steven R. Lindsay

Sworn to before me on
this 31st day of January, 2014


Notary Public



Kyle Rappley
Notary Public
State of Florida
My Commission Expires 06/27/17
Commission No. FF 31838

Exhibit E

Before the
Federal Communications Commission
Washington, DC 20554

_____)	
VERIZON FLORIDA LLC,)	
	)	File No.
Complainant,)	
)	
v.)	
	)	Related to
FLORIDA POWER AND LIGHT	)	Docket No. 14-216
COMPANY,	)	File No. EB-14-MD-003
)	
Respondent.)	
_____)	

AFFIDAVIT OF BRYAN L. LANTZ

STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

I, BRYAN L. LANTZ, being sworn, depose and say:

1. I am a Rights of Way and Municipal Affairs Manager – Network Field Operations in the Network and Technology Service Delivery and Assurance Group of Verizon Florida LLC (“Verizon”). I am executing this Affidavit in support of Verizon’s Pole Attachment Complaint against Florida Power and Light Company (“FPL”). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have twenty-nine years of experience in the telecommunications industry and have worked for Verizon (known until 2000 as GTE Florida) for twenty-seven years. I began my career working with telecommunications facilities and utility pole infrastructure as an installer and repairman. I was promoted to construction manager, where my job responsibilities

included oversight of line crews in Sarasota and Bradenton, where Verizon and FPL jointly use utility poles. For the last twenty years, I have held management level jobs supporting Verizon's engineering and special projects. In my present job, I provide permitting and technical support to Verizon's engineering staff and manage all right-of-way and municipal affairs issues within Verizon's service areas in Florida. I am also Chairman of the Florida Utilities Coordinating Committee ("FUCC"), which is the primary resource for bringing stakeholders together in an effort to coordinate utility infrastructure projects Statewide. In 2011, I was honored to be selected as the John J. Farkas Liaison Person of the Year by the FUCC, an award that is presented to an individual who demonstrates commitment to the betterment of utility coordination through actions and leadership.

3. I have personal knowledge of the practices and procedures surrounding the use of utility poles in Verizon's overlapping service area with FPL in Florida. My knowledge includes the operational practices that are generally accepted and followed by Verizon, cable companies, competitive telephone companies, and FPL. It is my opinion that Verizon does not have any advantage over its competitors – cable companies and competitive telephone companies – with respect to the attachment and maintenance of its facilities on FPL's utility poles.

A. Safety And Reliability Of The Joint Use Network

4. As a pole owner, Verizon shares in the responsibility for ensuring the safety and reliability of its joint use network with FPL. Verizon's construction, operations, and engineering employees are well-versed in the wind loading and safety standards of FPL and the National Electrical Safety Code ("NESC"), which apply to the installation, operation, and maintenance of communications lines and equipment. I attended a formal multi-week training class on topics that included facility and pole design, wind loading and pole strength, safety, and outside plant reliability. Verizon also has its own safety, reliability, and quality standards, which its engineers

and line crews are directed to follow. Verizon's line crew supervisors conduct random quality-of-work inspections in order to ensure compliance with Verizon's, FPL's, and NESC standards.

5. As a pole owner, Verizon has responsibility for replacing its poles when they pose a safety hazard because of damage from car accidents, routine storms, and the like. Verizon also must replace its poles if they are found to be unreasonably interfering with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor. In both cases, Verizon pays for the new pole and does not ask any other attaching entity (which includes cable companies, competitive telephone companies, and FPL) to contribute to the cost of the pole.

B. Comparability Of Verizon's Attachment Process

6. Verizon has followed a process similar to the process that I understand is followed by Verizon's competitors in order to attach to FPL's poles. Verizon's engineers have a greater role in the process than its competitors, as Verizon's engineers often coordinate with FPL's engineers regarding proper pole design and engineering. FPL and Verizon (but not all of Verizon's competitors) are members of the FUCC, which coordinates large utility projects Statewide. I understand that when Verizon's competitors seek to attach to FPL's poles, they submit paperwork to FPL's contractor, Alpine Communications Corporation, which is responsible for reviewing permit requests from FPL's licensees in order to ensure compliance with FPL's design standards.

7. The same tasks must be completed before Verizon, or one of its competitors, attaches facilities to an FPL-owned pole. For example, Verizon must survey the pole, complete a pole sounding test, look for base rot, measure the new attachment's effect on the wind loading for all facilities on the pole, ensure that there will be the required vertical clearance between the

ground and Verizon's cable, and comply with any other minimum design and structural stability requirements for the pole.

8. The amount of time required to plan and install facilities depends on several factors, including the type of attachment being made. The attachment of a main cable will generally require more time than the attachment of a service drop, which is a thin cable that connects a utility pole to a customer's house. The amount of time required for a particular type of attachment, however, should be comparable among communications companies.

9. Most delay associated with a company's first installation of facilities on a pole results from (1) the need for make-ready so that facilities can fit on the existing pole, or (2) the need for a pole change-out to increase capacity. Make-ready work is required if rearrangement of the existing attachments would accommodate a company's attachments. The time required for make-ready, which is generally required only in the communications space, depends on the response time of the entities that already have facilities on the pole. As a result, the time required for make-ready should not differ based on whether it is Verizon, or one of Verizon's competitors, that seeks to make the attachment. The amount of make-ready that Verizon required in the decade before the Joint Use Agreement terminated in June 2012 was minimal.

10. Pole change-outs require more time because of the logistics involved in replacing the pole and waiting for each entity to transfer its facilities to the new pole. Pole change-outs are more often required when Verizon seeks to make its first attachment to a pole (than when its competitors seek to make their first attachment) because Verizon's facilities are at the lowest location on the utility pole, meaning that they are more often impacted by state and local vertical clearance requirements. If Verizon cannot attach to the pole and maintain the required vertical clearance, Verizon must request, and pay for, a taller replacement pole so that it can attach its

facilities and maintain the appropriate clearance between the ground and Verizon's cable.

Although pole change-outs are required more often when Verizon (rather than its competitors) seeks to attach, they were not regularly required in the decade before the Joint Use Agreement terminated in June 2012.

11. Like its competitors, Verizon must have an easement or right-of-way permit to use a utility pole on private or public land. It is my understanding that Verizon's competitors obtain these permissions in essentially the same way that Verizon does. Utility poles on public land are generally covered by municipal rights-of-way permits that apply to all power and communications providers. Many utility poles on private lands are covered by general platted utility easements or condominium green space covenants, which are issued when an area is being developed to determine the placement of the utility infrastructure. These also apply to all power and communications providers. Many poles on private property are placed at the request of the property owner. For the few additional poles – in my estimation, about one percent of all poles – it is standard for the pole owner to enter a non-exclusive easement that also allows all utilities to use the pole for power or communications purposes.

12. After a new attachment is made, it is Verizon's practice to submit to FPL a Form P-58, which includes information about the location of the pole and the addition of Verizon's facilities. It is my understanding that FPL uses the information provided in the P-58 to begin invoicing Verizon for rent on the additional pole.

C. Pole Design And Facility Location

13. Every utility pole should be installed with a ground wire that runs from the top to bottom. Each company on a pole attaches its facilities to this same ground wire. The NESC requires common bonding of all facilities on a pole, regardless of owner, so that all facilities have the same ground potential. Common bonding is essential to pole safety. Because of the

PUBLIC VERSION

electric facilities on the utility pole, a differential of potential created by separate bonding would create a grave safety risk from electric shock.

14. In appropriate circumstances, a 30- and 35-foot pole can accommodate the facilities of FPL, Verizon, and other communications companies. I am aware that Verizon is attached to many 30- and 35-foot poles owned by FPL, many of which also contain attachments of Verizon's competitors. Most of FPL's poles are taller 40- and 45-foot poles, which have room to accommodate the facilities of FPL, Verizon, and multiple other communications companies.

15. Any pole that contains the facilities of a power company and a communications company must include communications space and 40 inches of space that separates the communications and power facilities. This space is therefore required for FPL to share a pole with one of Verizon's competitors even if Verizon is not also attached to the pole.

16. Verizon's facilities have the lowest location on FPL's poles, consistent with standard construction practices that pre-date third-party attachers. The consistency of Verizon's position is important for all communications companies because it ensures that all companies can quickly identify the ownership of facilities on the pole. It also prevents the crossover of facilities that could occur mid-span if facilities were located in different locations on different poles.

17. In my experience, there is not any material difference between the time and effort required to work on Verizon's facilities and on its competitor's facilities. The same safety measures and preparation are required to work on the pole. Verizon's facilities may be slightly easier to access, but that ease of access does not provide any real measurable benefit.

18. At the same time, Verizon's location on the pole increases Verizon's costs.

19. *First*, Verizon's facilities are harmed more frequently because they are the lowest on FPL's poles. They are exposed to more damage from oversized vehicles, vandalism, and

similar hazards. They also are damaged by contractors who work in the space above Verizon's facilities. Verizon's facilities have been damaged from above by gaffs, ladders, and bucket trucks. Typical damage includes punctured cables and broken support wires.

20. *Second*, Verizon receives more requests to raise its cables to accommodate oversize loads, such as house and equipment moves, because of its position on the pole. Standard vertical clearance requirements range from 15.5 feet to 18 feet. In many cases, an oversize load is taller and requires Verizon, as the lowest attacher, to temporarily move its facilities.

21. *Third*, Verizon often makes more trips to a pole location to complete a pole transfer. It is standard practice that facilities are transferred from top to bottom, which means that Verizon must wait for all other facilities to be moved before it can transfer its facilities. Verizon regularly arrives at a pole transfer location and learns that all facilities have not been transferred as scheduled. When that happens, Verizon cannot transfer its facilities. It must return at a later time to determine whether the pole is ready for it to complete the transfer.

22. It is my understanding that Verizon's Joint Use Agreement with FPL allocates four feet of space to Verizon. FPL does not, however, reserve the four feet of space for Verizon's exclusive use. FPL instead treats the space as general communications space and regularly rents it to other communications companies for their facilities.

23. Verizon's cables do not require four feet of space on a pole. For over a decade, Verizon has only installed the same light-weight copper and fiber optic cables that its competitors use. Verizon has also engaged in an aggressive campaign to remove old heavy cables from its system. Over the last decade, Verizon has replaced the vast majority of its old heavy copper cables with new light-weight cables. This effort to modernize Verizon's system

continues, with the goal of removing all heavy copper cables from Verizon's Florida service areas.


Bryan L. Lantz

Sworn to before me on
this 13th day of March, 2015


Sam Wasmundt
Notary Public

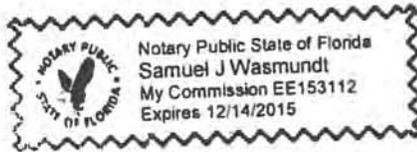


Exhibit F

**IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE
COUNTY, FLORIDA**

**Complex Business Litigation Section
Case No. 13-014808-CA-01**

FLORIDA POWER & LIGHT CO.,

Plaintiff,

v.

VERIZON FLORIDA LLC,

Defendant.

_____ /

**AFFIDAVIT OF MATTHEW G. DOWELL
IN OPPOSITION TO FPL'S MOTION FOR SUMMARY JUDGMENT**

STATE OF FLORIDA)
) ss.
COUNTY OF SARASOTA)

I, Matthew G. Dowell, being sworn, depose and say:

1. I am an Engineering Specialist in the Wireline Network Service Delivery and Assurance Division of Verizon Florida LLC ("Verizon"). I am executing this Affidavit in support of Verizon's Opposition to Florida Power and Light Company's ("FPL") Motion for Summary Judgment. I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

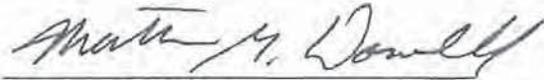
2. I have personal knowledge of the overlapping service areas of Verizon and FPL in Florida. I am aware that the Joint Use Agreement between Verizon and FPL reserves the lowest four feet of usable space on a utility pole for Verizon's exclusive use.

3. To provide proper vertical clearance, the lowest attachment on a utility pole typically must be eighteen feet above ground. This means that, under Verizon's agreement with



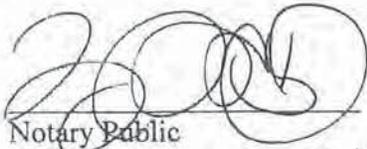
FPL, Verizon should have the only attachment in the four feet of space on the utility pole that is located from eighteen to twenty two feet above ground.

4. FPL has allowed other entities to place attachments in the four feet of space that is reserved for Verizon's exclusive use. Attached hereto as Exhibit A are true and correct copies of photographs of utility poles taken in FPL and Verizon's overlapping service area. Each photograph shows a pole owned by FPL that includes the attachment of a third party in the space reserved for Verizon's exclusive use. These photographs are a representative sample of the many instances in which FPL has allowed this to occur.



Matthew G. Dowell

Sworn to before me on
this 30th day of July, 2014



Notary Public

My commission expires: *May 22, 2018*

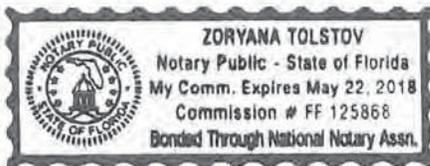
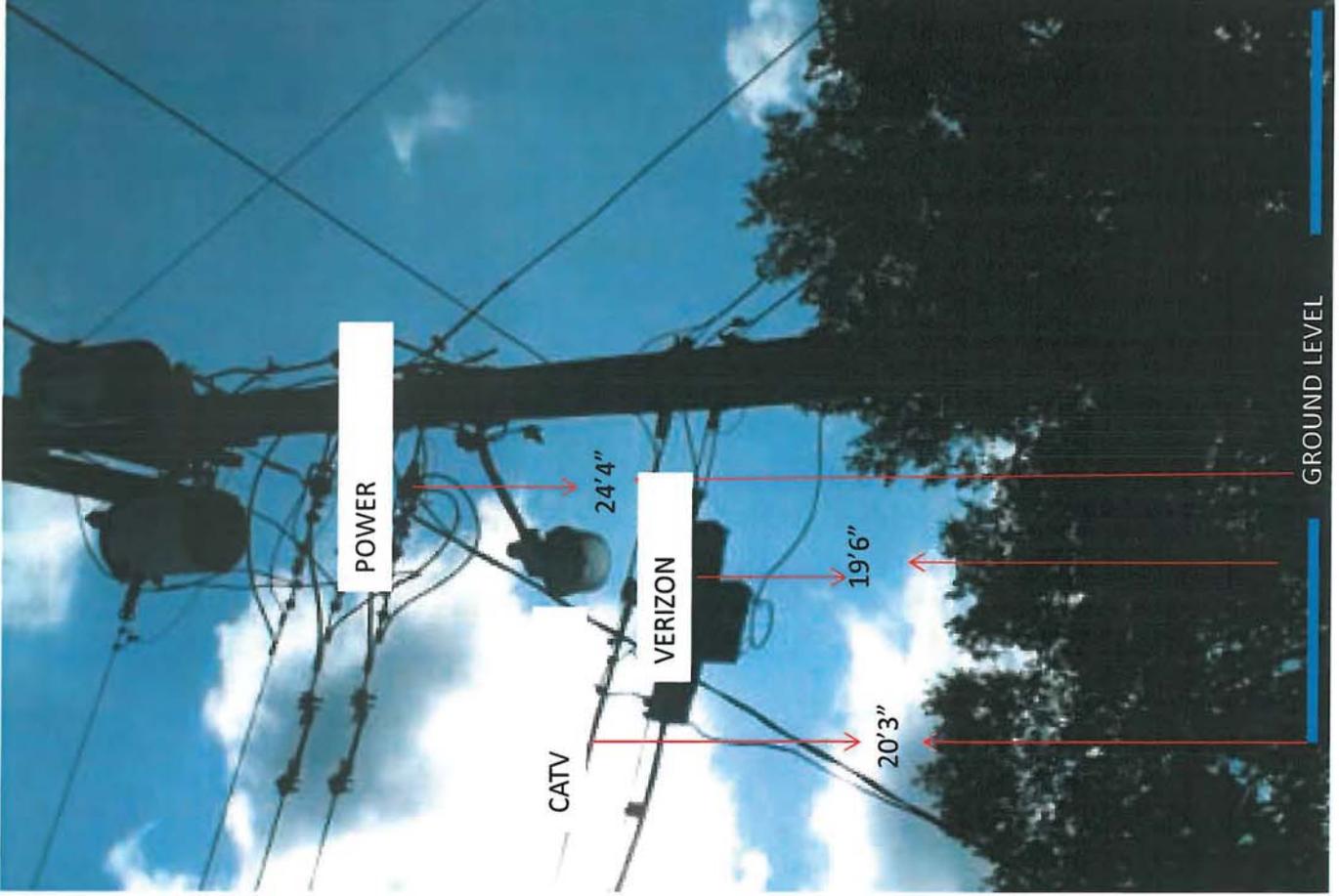


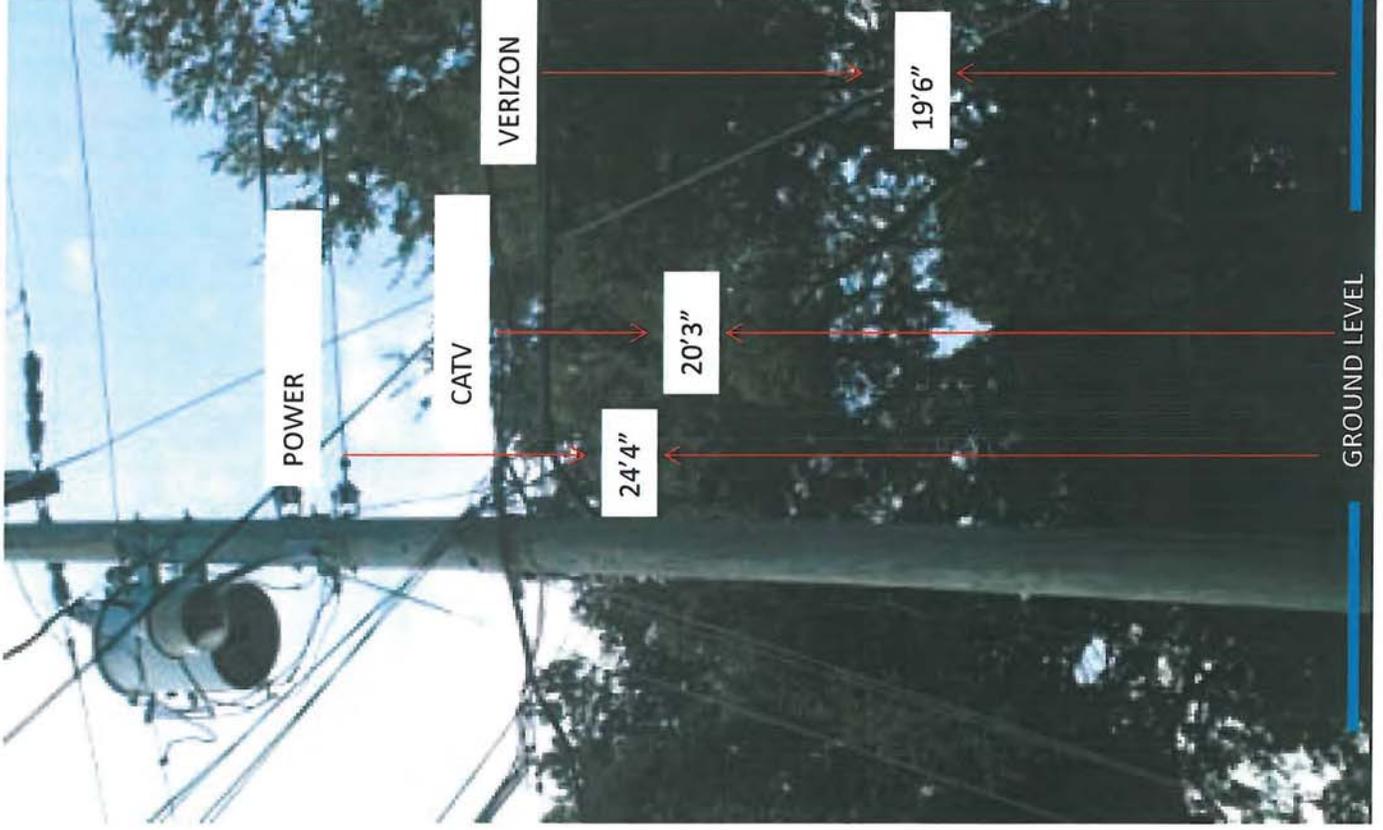
Exhibit A

P7470 Cass Cir. No FPL#
27.24933, -82.50842
Sarasota FL



PUBLIC VERSION

P3588 Austin St, No FPL# 27.28105,
-82.49802
Sarasota, FL



P1717 Puritan Ter, NO FPL#
27.31066, -82.53574
Sarasota, FL

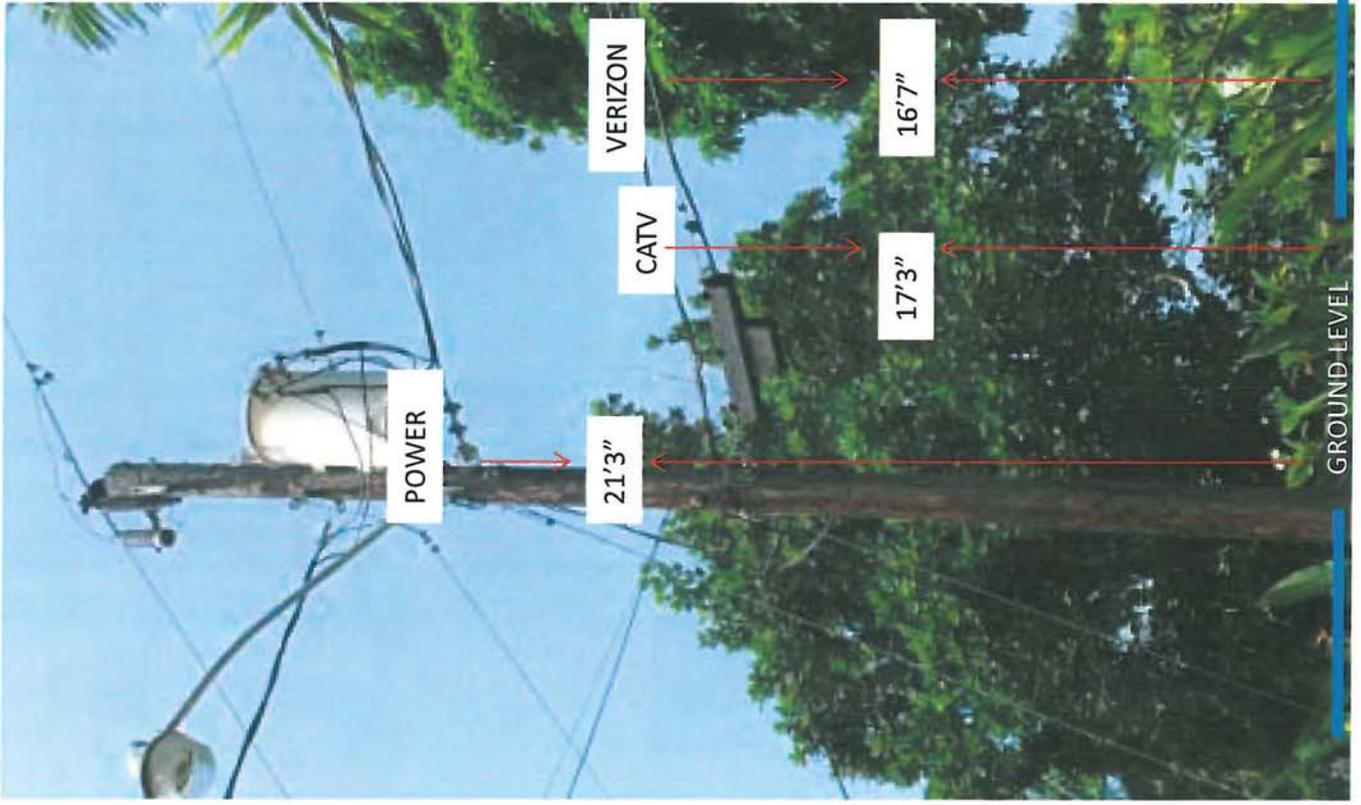


Exhibit G

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON FLORIDA LLC,)	
)	
Complainant,	)	File No.
)	
v.)	
	)	Related to:
FLORIDA POWER AND LIGHT COMPANY,	)	Docket No. 14-216
	)	File No. EB-14-MD-003
Respondent.)	
)	
)	

AFFIDAVIT OF TIMOTHY J. TARDIFF, PH.D.

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF SUFFOLK)

I, TIMOTHY J. TARDIFF, being sworn, depose and say:

I. Introduction

1. My name is Timothy J. Tardiff. My business address is 211 Congress Street, Boston, MA 02110. I am a Principal at Advanced Analytical Consulting Group. I have specialized in telecommunications policy issues for over 30 years. I received a B.S. degree from the California Institute of Technology in mathematics (with honors) in 1971 and a Ph.D. in Social Science from the University of California, Irvine in 1974. My research has included the theoretical and applied aspects of methodologies used to establish regulated rates for, among other things, pole attachments and services identified in the Telecommunications Act of 1996; studies of the demand for telephone services, such as local measured service and toll; analysis of the market potential for new telecommunications products and services; assessment of the growing competition for telecommunications services; and evaluation of regulatory frameworks consistent with the growing competitive trends. I have published articles in the regulatory economics literature, which in recent years have focused on policies for the increasingly competitive telecommunications industry.

2. I have participated in numerous legal and regulatory proceedings on issues of telecommunications economics and regulation. Since the passage of the Telecommunications Act of 1996, I have performed analyses, filed declarations and testimony, and/or appeared as a witness in pole attachment disputes, interconnection arbitrations, unbundled network element proceedings, universal service investigations, applications by incumbent local exchange carriers for authorization to provide interLATA long-distance, and implementation of the Triennial Review Order rules for unbundling network elements in over 25 states and before the Federal Communications Commission (“FCC”). Most recently, I have participated in regulatory and legal proceedings related to the FCC’s National Broadband Plan. In particular, I have advised telecommunications clients, filed economic analyses, and written articles on topics such as (1) rates for the use of network infrastructure such as utility poles to facilitate the efficient provision of broadband services, (2) rates for the exchange of traffic between landline carriers that avoid uneconomic arbitrage opportunities and encourage efficient investment in telecommunications networks, and (3) development of an analytical framework for determining whether incumbents’ high capacity (special access) services face enough competition to justify relaxed regulation or effective deregulation. My international research and consulting experience includes studies and expert reports on telecommunication competition and interconnection issues in Canada, Japan, New Zealand, Peru, Thailand, Australia, the Commonwealth of the Northern Mariana Islands, and Trinidad and Tobago. I attach a copy of my full resume as Exhibit T-1.
3. The purpose of this affidavit is to discuss from an economic perspective the Enforcement Bureau’s request in its recent order that the monetary value of possible advantages to Verizon, relative to third party attachers, arising from certain terms and conditions in the parties’ joint use agreement be quantified in order to determine whether the rates that Florida Power and Light (“FPL”) calculates under the parties’ joint use agreement are just and reasonable.¹ I first present the appropriate economic framework for calculating the monetary value of any such alleged advantages and the principles and issues relevant to that analysis. I then evaluate FPL’s previous claims that specific items—(1) its installation of taller poles,

¹ *Verizon Florida LLC, Complainant v. Florida Power and Light Company, Respondent*, Docket No. 14-216, File No. EB-14-MD-003, Memorandum Opinion and Order, February 11, 2015, ¶ 23 (“Memorandum Opinion and Order”).

(2) unauthorized attachment provisions, and (3) the timing of annual rental payments—purportedly confer unique advantages on Verizon, with particular emphasis on FPL’s claim that the existing agreement has caused a substantial increase in the costs of its poles. In the final section, I compare rates Verizon has paid under the existing agreement to the upper bound reference point the FCC has previously established for evaluating the reasonableness of rates under new agreements.

4. Applying the economic framework, which focuses on possible specific differences between the existing joint use agreement at issue and license agreements under which third parties operate,² leads to several conclusions. First, many of the purported advantages listed in the Memorandum Opinion and Order are one-time charges akin to non-recurring charges that occur infrequently, provide little or no relative advantage to Verizon, and/or have already been paid for by Verizon up front under the terms of the existing agreement. Second, with one exception, FPL has provided no data or quantification of the monetary value of the advantages it claims Verizon enjoys. Third, with regard to the one exception—FPL’s claim that joint use has caused FPL to install poles that are a certain percentage more expensive than if joint use agreements had never existed—FPL’s comparison is meaningless, because it (1) says nothing about the cost of Verizon’s attachments relative to third party attachments, (2) ignores the fact that third parties impose similar costs as Verizon, (3) includes costs that Verizon pays for up-front, (4) ignores offsetting revenues FPL realizes from the attachments of Verizon and third parties. Fourth, the rental rates under the existing agreement have been well in excess of what would be necessary to offset possible monetary advantages.

II. Economic Framework

5. The Enforcement Bureau’s Memorandum Opinion and Order distinguishes between (1) a new agreement that may or may not advantage incumbent local exchange carriers (“ILECs”) relative to third party attachers and (2) a situation in which a power company has insisted on charging rates under an existing agreement that presumably has terms and conditions that

² The terms and conditions in a license agreement to which the power company and a third party have agreed—not the terms and conditions in a “boilerplate” draft agreement under consideration at the beginning or intermediate stages of a negotiation—provide the relevant differences.

relatively favor the ILEC.³ In the former case, benchmarks (or reference points) for just and reasonable rates would range between (1) the rate charged to third party attachers in the event that the terms and conditions in the agreement at issue do not materially advantage the ILEC relative to third parties⁴ and (2) the pre-existing telecom rate in the event that the ILEC and third parties are not similarly situated.⁵ In contrast, when a dispute is over the applicability of a rate from an existing agreement, the Memorandum Opinion and Order imposes the requirement—not discussed in the 2011 Report and Order⁶—that the ILEC quantify the monetary value of the terms or conditions that provide it a material advantage.⁷

6. The Memorandum Opinion and Order cites specific purported advantages that FPL claims Verizon enjoys.⁸ Determining whether any item, in fact, confers a material advantage depends on a number of economic considerations that I will next discuss.

³ From an economic perspective, there is little if any distinction between a disputed new agreement and the insistence by the power company that the ILEC pay rates under an existing agreement that had been in effect for a number of years. For example, suppose negotiations between the parties had broken down at a point where the power company had offered to reduce rental rates from \$35 to \$30, but no further and the parties had agreed to some changes in the other terms and conditions in the existing agreement. Such a situation would appear to constitute a new agreement, in which case the rate would be evaluated with reference to the pre-existing telecom rate. Further, such a distinction between new and existing agreements seems inconsistent with the rationale for using the pre-existing telecom rate as a reference point.

We find it prudent to identify a specific rate to be used as a reference point in these circumstances because it will enable better informed pole attachment negotiations between incumbent LECs and electric utilities. We also believe it will reduce the number of disputes for which Commission resolution is required by providing parties clearer expectations regarding the potential outcomes of formal complaints, thus narrowing the scope of the conflict... Further, we find it more administrable to look to this rate, which historically has been used in the marketplace, than to attempt to develop in this Order an entirely new rate for this context.

Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245; GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 218 (“2011 Report and Order”).

Further, different treatments for new and existing agreements may inhibit, complicate, and/or lengthen the duration of the negotiating process. Since the upside for a power company with superior bargaining power would typically be higher (approval of the existing rate versus the pre-existing telecom rate), the power company may well be reluctant to offer and/or consider a new agreement.

⁴ *Ibid.*, ¶ 217.

⁵ *Ibid.*, ¶ 218.

⁶ “The *Order* [2011 Report and Order] did not adopt a rate formula for existing joint use agreements, nor did it specify the types of evidence required to establish that the Agreement Rates are unjust and unreasonable.” Memorandum Opinion and Order, ¶ 26.

⁷ *Ibid.*, ¶ 24.

⁸ See, for example, *Ibid.*, ¶ 21.

A. Ensuring Competitive Parity

7. Proper comparison focuses on the terms of the parties' existing agreement relative to the terms of the agreements entered by third parties to make attachments on the same power company's poles. As the 2011 Report and Order explains, competitive parity dictates such a comparison.⁹ If an agreement were to provide an ILEC no material advantages in its terms and conditions relative to third party attachments, parity in pole rental rates is essential for competition for broadband services among ILECs and their competitors to proceed undistorted by artificial advantages.
8. Quantifications based on other comparisons, e.g., the power company's actual cost per pole in accommodating its own attachments and those of other parties relative to what that cost might be in a hypothetical world with no ILEC and/or third party attachers, are meaningless. As described in greater detail below, FPL has been accommodating both ILEC and third party attachers for more than forty years, suggesting that (1) accommodating third party attachers entails similar extra cost and (2) in the case of third parties attaching to joint use poles, any extra costs (relative to there being attachments other than FPL) have already been incurred.
9. Competitive parity would also recognize that certain differences in terms and conditions are warranted because they reflect the different costs that the power company experiences in accommodating different attachers.¹⁰ For example, that FPL has elected not to carry out routine inspections as often for Verizon as for third party attachers benefits FPL, but not Verizon or its competitors.¹¹

⁹ “Where incumbent LECs are attaching to other utilities’ poles on terms and conditions that are comparable to those that apply to a telecommunications carrier or a cable operator—which generally will be paying a rate equal or similar to the cable rate under our rules—competitive neutrality counsels in favor of affording incumbent LECs the same rate as the comparable provider (whether the telecommunications carrier or the cable operator).” 2011 Report and Order, ¶ 217.

¹⁰ The total cost of providing the service, e.g., broadband, is the cost of the input (in this case the pole attachment) plus the additional costs of the input purchaser (in this case an ILEC or third party). Competitive parity requires that the input price offered to different purchasers be the cost each input purchaser imposes plus an equal absolute mark-up (if any). Timothy J. Tardiff, “The Protected Profits Benchmark: Input Price, Retail Price, or Both?” *Antitrust Law Journal*, Vol. 78, Issue 3, 2013, pp. 719-727.

¹¹ See Declaration of Thomas J. Kennedy ¶ 24 in File No. EB-14-MD-003, Exhibit A to FPL’s Response, April 4, 2014, (Kennedy April 2014 declaration) (stating that FPL does not “routinely” inspect Verizon’s attachments after their installation).

10. Similarly, competitive parity must account for the fact that, to the extent particular provisions of the existing agreement impose costs on FPL, those costs would be reciprocally imposed on Verizon. Therefore, a proper quantification of the monetary value of provisions that favor Verizon would include only the *net* amount (burden imposed on FPL less the reciprocal burden placed on Verizon).

B. Measuring Possible Advantages and Disadvantages

1. One-Time Differences

11. Many of the possible differences between an existing joint use agreement and a licensing agreement would occur when an attachment was first established. Accordingly, it is appropriate to consider how much the ILEC would pay in one-time charges and annual rental payments if it were subject to a third party agreement compared to the annual rental and other payments the power company is demanding under the existing agreement.¹² In traditional ratemaking terms, the payments made under typical license agreements are analogous to non-recurring charges incurred when a service is first established and the annual rental payments are analogous to recurring charges. The advantage of one arrangement (e.g., license agreement) relative to an alternative arrangement (e.g., an existing joint use agreement) would involve a comparison of the value of the respective payments over a suitably defined duration. For example, if the frequency of one-time charges as a percentage of joint use poles is expected to be reasonably constant, a suitable duration would be one year.¹³

12. It is important to remember that, in any particular period, e.g., billing year, the frequency of one-time charges would be no greater than the number of new attachments for which one-time charges and/or costs would apply under a license agreement (but not under the existing joint use agreement) and many times considerably less. For example, if make-ready charges

¹² The maximum rate FPL may charge Verizon's CLEC competitors, e.g., the new telecom rate, is a per-pole rate. 47 C.F.R. §§ 1.1409 (e)(1) and 1.1409(e)(2) allocate the annual cost of a pole based on space occupied and *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-98; CS Docket No. 97-151, Consolidated Order on Reconsideration, 16 FCC Rcd 12103 (2001), ¶ 31, describes the maximum rate per pole. Therefore, the comparison described here is equivalent to calculating the one-time third party charges per pole, adding this result to the monthly rental rate that may be charged to third-parties, and then comparing this sum to the existing rate rental being demanded by the power company of the ILEC.

¹³ Similarly, if an agreement has a particular duration, e.g., five years, the average annual frequencies of one-time charges as a percentage of joint use poles could be used in the comparison.

applied under a license agreement, they would only be incurred for those poles requiring make ready work. This means that if there were 1,000 attachments and new attachments were 1.5 percent of the total attachments (new plus existing), one-time charges would apply to at most 15 attachments. Similarly, if charges for make ready work were incurred for 10 percent of new attachments, or in this example, 0.15 percent of total attachments, there would be one or two poles needing make ready work.

2. Avoid Double-Counting

13. A close review of the Joint Use Agreement and executed license agreements is required to avoid including as possible advantages items for which Verizon has already paid.¹⁴ In particular, for some of the items identified in the Memorandum Opinion and Order and/or by FPL's declarants, the existing agreement requires that Verizon pay some or all of the associated costs up-front. For example, as discussed in greater detail below, [REDACTED]

[REDACTED]

[REDACTED] Accordingly, these items should not be included in any estimate of the monetary value of possible advantages of the existing agreement.

14. Similarly, the Memorandum Opinion and Order lists as a possible benefit the replacement of poles to accommodate Verizon.¹⁵ Quantification of any associated benefits would start with how often such situations occur. The frequency of occurrence would then be multiplied by the value of the replacement to Verizon. [REDACTED]

[REDACTED]

¹⁴ Again, in this regard, comparison to a hypothetical or proposed license agreement is of no value.

¹⁵ Memorandum Opinion and Order, ¶ 21, fifth item.

¹⁶ Neither the Memorandum Opinion and Order nor Mr. Kennedy's declaration, which seems to be the source for the possible benefits, provides details on the particular situations when Verizon can obtain replacement poles, but FPL's Pole Attachment Complaint Response appears to link such replacements to the need for additional capacity. Kennedy April 2014 declaration ¶ 21; Response at 28. [REDACTED]

[REDACTED]

██ there would be little associated benefit.

3. The Value of Certain Agreement Provisions Can Change

15. In the case of agreements that have been in existence for decades, the value of certain terms and conditions established decades ago might be very different now than in the past. For example, even if documents established that the ILEC requested and needed four feet for its attachments more than four decades ago, Verizon has explained that its attachments require only 1.25 feet on average today.¹⁷ Insisting on terms that perpetuate this space allocation (and a cost-allocation formula that assumes occupancy of the unneeded space) is equivalent to a household wanting to downsize in response to changing conditions being forced to stay in its housing unit and pay the same rent.¹⁸

C. FPL Possesses the Data Necessary to Quantify Certain Alleged Benefits

16. Because FPL performs and receives payment for certain activities, it has superior access to detailed data required to quantify the benefits it alleges Verizon enjoys. For example, the Memorandum Opinion and Order lists inspection fees as a possible item that advantages ILECs. Since these fees are avoidable by the third party attacher, and therefore not routinely paid to FPL, FPL would seem to be well-positioned to provide the data that indicate how much revenue such fees would add to the rental rates proscribed by the FCC’s rate formulae.

17. However, FPL has not provided data to corroborate its claims concerning the relative advantages of the existing joint use agreement. Instead, FPL for the most part has merely listed alleged advantages. The one exception was the assertion by FPL’s declarants that joint use has caused the deployment of taller, more expensive poles, but even here, as described in detail below, the amount of the putative cost increase is either unsupported, inconsistent between FPL’s declarants, and/or inconsistent with the terms of the Joint Use Agreement and data on the actual sizes of FPL’s distribution poles. For another alleged advantage (unauthorized attachment fees), FPL has reported that there were *no* unauthorized

¹⁷ Affidavit of Steven R. Lindsay in File No. EB-14-MD-003, January 31, 2014 (Exhibit A to Verizon’s January 31, 2014 Complaint).

¹⁸ Since FPL also collects revenue from third party attachers in the space reserved for Verizon (Memorandum Report and Order, note 59), the analogy can be extended to include the landlord subletting some of the space rented to and paid for by the household and then pocketing those additional rents.

attachments by third parties in its three most recent reports to the Florida Public Services Commission.¹⁹

III. Taller Poles

18. Among the items purportedly conferring on ILECs an advantage *relative to third party attachers*—and the only item for which FPL has offered a quantitative estimate—is the proposition that electric utilities installed taller, more costly poles to accommodate joint use.²⁰ In order for such differences to advantage Verizon “vis-à-vis other attachers,”²¹ it is not sufficient to demonstrate that poles cost more in the real world than they would if the only attachments on FPL poles were FPL’s facilities. Rather, to the extent that these putative extra installation costs are at all relevant, the proper comparison would be between the extra costs—*net of revenues from pole attachment fees*—needed to accommodate ILEC attachments vis-à-vis the extra net costs needed to accommodate third party attachers. FPL’s calculations do not do this. Instead, they claim that poles are on the order of eight feet taller in order to provide attachment space and the safety space.²² But similar space requirements (relative to there being only FPL facilities on poles) apply in the case of third party attachers. In particular, the following subsections establish (1) that to the extent that the presence of attachers other than FPL has resulted in taller poles, there are even more FPL-owned poles with third party attachments than there are FPL-owned poles with Verizon attachments, (2) the most recent joint field survey provides no support for FPL’s claim that FPL’s joint use poles are taller than its poles with only its own facilities, and (3) even if FPL claim of eight-

¹⁹ Florida Power and Light, Annual Filing to the FPSC, March 1, 2013, p. 46 (available at <http://www.psc.state.fl.us/utilities/electricgas/distributionreports/2012/IOU/FPL.pdf>); Florida Power and Light, Annual Filing to the FPSC, March 3, 2014, p. 46 (available at <http://www.psc.state.fl.us/utilities/electricgas/distributionreports/2013/IOU/FPL.pdf>); Florida Power and Light, Annual Filing to the FPSC, March 2, 2015, p. 44 (available at <http://www.psc.state.fl.us/utilities/electricgas/distributionreports/2014/IOU/FPL.pdf>).

²⁰ Memorandum Opinion and Order, ¶ 21. The Memorandum Opinion and Order (¶ 18) cites FPL’s response for the assertion that accommodating Verizon’s attachments adds 50 percent to the installation cost of poles. FPL’s declarant offered no support for this assertion, which is contradicted by a calculation of another declarant purportedly establishing that accommodating Verizon adds 32 percent to pole cost. Declaration of Roger A. Spain in File No. EB-14-MD-003, Exhibit B to FPL’s Response, April 4, 2014, ¶ 28.

²¹ *Ibid.*, ¶ 7.

²² Spain declaration, ¶ 28 and Kennedy April 2014 declaration, ¶ 17.

foot taller poles to accommodate joint use were valid, the extra revenue from Verizon and third party attachers more than offsets the putative additional cost.

A. FPL's Poles Accommodate Third Party Attachments

19. FPL's (in conjunction with other Florida investor-owned utilities) 2008 filing in the FCC's pole attachment proceeding clearly established that FPL designs its network to accommodate third party attachments: "Third party attachment standards...do not exist in a vacuum. They are part in parcel of an electric utility's overhead distribution construction standards."²³ In other words, electric utilities design their networks to accommodate other parties'—both ILECs and third parties—attachments; therefore, costs that would prevail in a hypothetical world where no other parties used FPL's poles are of no economic relevance.²⁴

20. The presence and volume of third party attachments indicates that FPL *has* been accommodating the attachments of third parties for a substantial duration and in substantial volumes. In several declarations filed in support of FPL's Response to Verizon's 2014 complaint and in the FCC's pole attachment proceeding, Mr. Kennedy has reported that throughout FPL's territory:

- Third parties, such as cable companies, have been placing attachments on FPL's poles since 1970.²⁵
- There are over one-third more third party attachments than ILEC attachments. In particular, in 2008 Mr. Kennedy reported that there were more than 665,000 third party

²³ Initial Comments of Florida Power and Light, Tampa Electric and Progress Energy Florida Regarding Safety and Reliability in WC Docket No. 07-245, March 7, 2008, p. 6.

²⁴ Although neither the Memorandum Opinion and Order nor FPL is clear on exactly how a comparison between FPL's existing pole facilities and those that might exist in a hypothetical system without the existing agreement should be reflected in rates, economists long ago explained that basing rates on such hypothetical systems would be result in uneconomic outcomes. Alfred E. Kahn and William B. Shew, "Current Issues in Telecommunications Regulation: Pricing," *Yale Journal on Regulation*, Vol. 4, No. 2, 1987, pp. 191-256. Among other things, including differences between real and hypothetical cost in the pole attachment rates charged to ILECs would undermine competitive parity among ILECs and their broadband competitors. Further, even if a comparison to an imaginary world with no third party attachments were relevant, rather than being a cost to FPL, joint use can be beneficial. If joint use requires 50 percent higher installation cost (as Mr. Kennedy asserted without providing support), with 50 percent cost sharing, FPL incurs 25 percent *lower* costs for joint use poles than it would if there no other parties with attachments on its poles. For example, if the cost of a stand-alone pole were 100, FPL would bear the full cost. Alternatively, a pole accommodating two attachers would cost 150 (under Mr. Kennedy's claim) and with 50 percent cost sharing, FPL's amount would be 75.

²⁵ Kennedy April 2014 declaration, ¶ 10.

attachments²⁶ out of a total of 1.16 million attachments of ILECs and third parties on FPL's poles.²⁷ Therefore, there were fewer than 495,000 ILEC attachments.²⁸

- In 2008, FPL reported 760,000 poles that had ILEC and/or third party attachments.²⁹ Therefore, at least 265,000 of these poles (or 35 percent) had no ILEC attachments.³⁰ Accordingly, to the extent that the presence of other attachers requires taller poles, ILECs attachments are clearly not the sole or even the primary reason.³¹

21. The results from the most recent joint field survey of the common service territories of Verizon and FPL confirm the prevalence of third party attachments on FPL's poles. The following discussion compares the distribution of poles for FPL as a whole (described in the previous paragraph) with the corresponding distribution in the common territory at issue in this matter.³²

- There are 43 percent more FPL poles with third party attachments (96,426) than poles with Verizon attachments (67,159).
- Of the 105,958 poles with attachments other than FPL's, 38,799 (or 37 percent) had no ILEC attachments. This amount is about four times the number of FPL's poles with only Verizon attachments (9,532). 57,627 of FPL's poles have both Verizon and third party attachments.³³

²⁶ Declaration of Thomas J. Kennedy, Attachment 1 to Initial Comments of Florida Power and Light, Tampa Electric and Progress Energy Florida Regarding Safety and Reliability in WC Docket No. 07-245, March 7, 2008, ¶ 18 ("Kennedy March 2008 declaration").

²⁷ Kennedy March 2008 declaration, ¶ 2.

²⁸ $495,000 = 1,160,000 - 665,000$; $665,000/495,000 = 1.34$.

²⁹ Kennedy March 2008 declaration, ¶ 2.

³⁰ $265,000 = 760,000 - 495,000$. $0.35 = 265,000/760,000$.

³¹ Indeed, the number of FPL poles with only third party attachments appears to be on the order of three times the number of poles with only ILEC attachments. For example, assuming (1) a single attachment per attaching entity and (2) at most three attaching entities (including FPL) per pole results in 265,000 poles with only third party attachments, 95,000 with only ILEC attachments, and 400,000 poles with both an ILEC and a third party attachment.

³² The results for the common territory are calculated from data provided to Verizon by FPL following the 2011 survey of FPL's service area..

³³ Therefore, 86 percent ($57,627/67,159$) of FPL's joint use poles have at least one third party attacher. The corresponding percentage for Verizon's joint use poles is almost identical.

In summary, to the extent that the presence of other attachers requires taller poles, Verizon’s attachments are clearly not the sole (or even the primary) reason for the height of FPL’s poles in the common service territory.

B. Joint Field Survey Results and Provisions in the Existing Agreement Undermine FPL’s Claim That Joint Use Poles Are Necessarily Taller

22. In essence, FPL’s declarants have asserted that joint use poles have cost FPL more than it otherwise would have spent because each and every joint use pole is taller than a pole that accommodates only FPL’s attachments.³⁴ The results of FPL’s most recent joint field survey undermine this assertion. In particular, of the approximately 7,000 Verizon-owned poles that have FPL and third party attachments, more than 80 percent are 30-foot or 35-foot poles, indicating that there are reasons other than joint use for the taller poles FPL asserts are necessary. In addition, the distributions of FPL’s poles across available size categories (e.g., 35-foot, 40-foot, etc.) differ very little among poles that have only FPL’s attachments and FPL’s joint use poles. The following table summarizes the results described in this paragraph.

Table 1: Heights of Different Types of Poles³⁵

Height (feet)	FPL Pole/Only FPL Attachments	FPL Joint-Use Pole	FPL Pole/Third party but no Verizon Attachments	Verizon Joint-Use Pole
30 and shorter	19.6%	13.4%	10.1%	45.1%
35	11.5%	18.2%	14.1%	35.7%
40	51.3%	58.4%	49.1%	18.2%
45	13.1%	8.2%	20.3%	0.9%
50 and higher	4.6%	1.9%	6.5%	0.1%
Number of poles	100,765	67,159	38,799	7,018

³⁴ See, for example, Kennedy April 2014 declaration, ¶ 17: “To accommodate Verizon’s four feet of space, FPL must install a pole 94-100 inches taller than it needs to serve its electric customers...”

³⁵ The pole counts in Table 1 differ slightly from the counts listed on FPL’s April 15, 2013 invoice. In particular, FPL charged Verizon based on a total of 67,149 wood, concrete, special, and transmission poles (compared to 67,159 in Table 1), offset by negative charges for FPL’s attachments on 7,010 Verizon poles (compared to 7,018 poles in Table 1). FPL Complaint, April 24, 2013, Exhibit A.

For example, 68.4 percent of FPL’s joint use poles and 69.0 percent of FPL poles with only FPL attachments are 40 feet or higher (compared to the even higher 75.8 percent of FPL’s poles with third party, but no Verizon attachments). Consistent with language of the existing agreement not precluding smaller poles from joint use (discussed in greater detail below), almost one-third of FPL-owned joint use poles are 35 feet or shorter.³⁶

23. Further, there are several provisions in the existing agreement that undermine the validity of the proposition that each and every pole is on the order of eight-feet higher to accommodate joint use.

- The agreement provides for the possibility of future joint use of existing poles: “This agreement...shall cover all poles of each of the parties now existing in such service areas...”³⁷
- While the agreement defines a normal joint use pole as either 35-foot or 40-foot for billing purposes, it indicates that shorter poles can be used for joint use: “It is not intended to preclude the use of joint use poles shorter or of less strength in locations where such structures will meet the requirement of both parties and the specification in Article VI.”³⁸

- 

In summary, both the results of the most recent joint field survey and the terms of the existing agreement provide no support for FPL’s claim that joint use has caused it to install taller poles.

³⁶ FPL’s claim that joint use has caused it to install taller poles may also be inconsistent with the rate at which it is installing larger poles. In particular, during the most recent ten year period, data presented in Mr. Spain’s Attachment F showed that 34 percent of 35-foot, 40-foot, and 45-foot poles were 45-foot poles. The corresponding percentage derivable from the data in Table 1 is 16 percent. That is, during a period in which there is very little growth in ILEC attachments, FPL has been installing proportionately more 45-foot poles than represented in its stock of poles.

³⁷ Agreement, Article II, Section 2.1.

³⁸ Agreement, Article I, Section 1.1.5. As shown in Table 1 above, the results of the most recent joint field survey suggest that shorter poles can accommodate joint use: about 81 percent of Verizon’s poles in the common service territory are shorter than 40 feet.

³⁹ 

C. Joint Use Has Reduced FPL's Net Costs

24. Even if every one of FPL's poles is on the order of eight feet taller because of the existing agreement, there would not be an overall cost increase for FPL. Consider the extreme scenario in which, because of a joint use agreement, every pole in the common serving territory was taller and stronger (relative to there being no attachments other than the power company's). The power company has 1,000 poles, with 487 of these with only its attachments, 325 joint use poles, and the remaining 188 having third party, but no ILEC, attachments.⁴⁰ If there were no other attachers, poles would cost \$50, resulting in a total cost of \$50,000.
25. The extra size would increase the cost per pole by a certain percentage in this hypothetical example. However, the cost increase is offset by (1) cost sharing between the power company and ILEC in the case of joint use poles and (2) third party attachers on poles other than those with only electric company attachers. For the purpose of this example only, my calculation of such a percentage accepts Mr. Spain's assumption of eight-foot higher poles,⁴¹ but corrects his calculation to account for the fact that the ILEC pays the extra cost for a 45-foot pole (relative to a 40-foot pole) when it is responsible for the extra height. This correction reduces the calculated pole cost increase from 31.8 percent to 10.6 percent.⁴² Finally, in this example, there is one third party attacher that is charged 7.4 percent of the pole cost on every joint use pole and every pole with third party, but no Verizon attachments.⁴³
26. The hypothetical example shows that even if a power company employed taller poles everywhere to anticipate the possibility of joint use, its costs would increase by 10.6 percent from \$50,000 ($\$50 \times 1,000$) to \$55,300 ($\$50,000 \times 1.106$). However, its decision allowed the power company to increase its net revenues with (1) revenue of \$8,986 from 50 percent sharing of the \$55.30 per pole cost ($\$55,300 / 1,000 = \55.30 ; $(\$55.30 \times 325) / 2 = \$8,986$)

⁴⁰ This distribution is based on the results of the most recent joint field survey.

⁴¹ In particular, Mr. Spain assumes that 40 percent of poles are 5 feet higher than would be required without the existing agreement and 60 percent of poles are 10 feet higher. Spain declaration, ¶ 28. Thus, the average increase is $0.4 \times 5 \text{ feet} + 0.6 \times 10 \text{ feet} = 8 \text{ feet}$.

⁴² I changed the costs per pole for a 45-foot pole in the bottom half of Mr. Spain's Attachment F to be the same as the corresponding costs for forty-foot poles.

⁴³ This percentage is from the FCC's cable rate with default inputs.

on the 325 joint use poles and (2) revenues of \$2,099 from the \$4.09 rental rate ($\$55.30 \times 0.074 = \4.09 ; $\$4.09 \times 513 = \$2,099$) from the third party on 513 poles⁴⁴ with attachments other than the power company's. Therefore, in this example, the power company is better off by \$5,785 ($\$8,986 + \$2,099 - \$5,300 = \$5,785$) because it installed poles that cost \$55,300 than it would have been had it installed the poles that cost \$50,000.

27. This subsection, in conjunction with the preceding two subsections, again provides no support for the claim that the existing joint use agreement has burdened FPL with higher costs relative to what is required to accommodate third party attachers. In particular, (1) to the extent FPL's poles are taller to accommodate Verizon, accommodating third parties would impose similar (if not greater) burdens, 2) the results of the most recent joint field survey indicate that FPL's joint use poles are *not* taller, and 3) even if taller poles were required, the revenues from Verizon and third party attachers have more than offset any additional cost.

IV. Unauthorized Attachments

28. Mr. Kennedy has also alleged that the treatment of unauthorized attachments confers an advantage on Verizon.⁴⁵ FPL's filings to the FCC and the Florida Commission indicate that this item is of little or no practical consequence. In particular, in its FPL's 2008 filing in the FCC pole attachment proceeding included a declaration by Mr. Kennedy that reported a volume of unauthorized attachments on the order of only one percent of third party attachments.⁴⁶ Further, in its most recent reports for 2012, 2013, and 2014, FPL reported no unauthorized attachments.⁴⁷

29. These observations have a number of implications.

- The apparent decrease from a small incidence of unauthorized attachments *in* FPL's 2008 FCC filing to no reported unauthorized attachments to the Florida Commission

⁴⁴ 1,000 – 487.

⁴⁵ Kennedy April 2014 declaration, ¶ 25.

⁴⁶ Kennedy March 2008 declaration (¶ 10) reported 1,798 unauthorized attachments found in an audit of 20 percent of FPL's system. Since there were 665,000 third party attachments at the time (Kennedy March 2008 declaration, ¶ 18), the ratio of unauthorized attachments to third party attachments is $1,798 / (0.2 \times 665,000) = 1.4$ percent.

⁴⁷ Note 19 *supra*.

in recent years demonstrates that an attacher has control over whether or not it is subject to unauthorized attachment fees. Ensuring competitive parity would be frustrated if the putative monetary advantages associated with joint use terms and conditions automatically included such avoidable speculative charges.

- The small (or non-existent) incidence of such charges indicates that even if they were relevant, their monetary value would be negligible. For example, the number of FPL poles to which Verizon is attached increased by about 1,600 between the latest joint field survey and the previous survey.⁴⁸ If (unrealistically) every one of these poles were subject to a fee of 5 years' rent, the fee would be \$42.60 (5 x \$8.52)⁴⁹ in unauthorized attachment fees. The resulting charges would have a monetary value of about only \$0.20.⁵⁰
- Because FPL is demanding the existing rental rate at a time when Verizon is not placing attachments on new joint use poles (because the existing agreement has terminated), Verizon has not avoided any such fees relative to a third party attacher (or for that matter, any one-time charge associated with new attachments) since the agreement was terminated.

In summary, any difference in unauthorized attachment provisions between the existing agreement and an executed license agreement are of little or no monetary value because unauthorized attachments (1) occur rarely, if at all, (2) are avoidable, (3) are irrelevant when new attachments are not being installed, and (4) even if relevant, would have a very small monetary value.

V. Timing of Annual Rental Payments

30. FPL lists as an advantage the provision that under the existing agreement Verizon is billed in arrears, while under a licensing agreement, third parties are billed in advance.⁵¹ In particular,

⁴⁸ FPL Complaint, April 24, 2013, Exhibits A and B.

⁴⁹ Affidavit of Mark S. Calnon, in File No. EB-14-MD-003, January 31, 2014, ¶ 9, (Exhibit B to Verizon's Complaint).

⁵⁰ There are approximately 67,000 FPL poles to which Verizon is attached. Therefore, the annual additional charge per pole for five years of payments would be $\$42.60 \times 1,600/67,000/5 = \0.20 .

⁵¹ Kennedy April 2014 declaration, ¶ 30.

Verizon has informed me that under a license agreement, half the payments for a given year are due at the beginning of the year and half the payments are due at mid-year. In contrast, under a joint use agreement, the full amount of the payment would be due at the end of the year. For example, if rental charges for 2014 were \$100, the license agreement would call for a \$50 payment on or about January 1, 2014 and another \$50 on or about July 1, 2014, while a joint use agreement would call for a \$100 payment on or about December 31, 2014. Adjusting for this difference would simply require that the time value of money be recognized, i.e., the equivalent rate under a license agreement would include an adjustment for about three-quarters of a year of interest payments.⁵² For example, if the rate charged to third parties were \$10 and the relevant annual interest rate were 4.75 percent, an adjustment of \$0.36 per pole ($\$10 \times 0.0475 \times 0.75$) would provide for competitive parity.

VI. Payments Under the Existing Agreement Have More Than Recovered the Minimal Value of Alleged Advantages

31. The age of the Joint Use Agreement is relevant because, as the Memorandum Opinion and Order explains,⁵³ Verizon has been paying FPL under the existing agreement for four decades. In light of the fact that the existing rates FPL has demanded are several times the pre-existing telecom rate, the difference between payments under the agreement and what Verizon would have paid under a license agreement at the old telecom rate demonstrates that Verizon has already paid much more than the monetary value of any advantages.
32. The following example—which approximates the present situation—illustrates that Verizon has paid substantially more than any one-time costs that its competitors incur under license agreements. Over the period of 2002 (the first full year in which the pre-existing telecom rate was in effect) to the middle of 2011 (when the 2011 Report and Order took effect), suppose the average number of poles to which Verizon was attached was 65,000. In 2011, the difference between the rate FPL calculated under the existing agreement (\$35.47) and the

⁵² For example, if the relevant interest rate were 4.75 percent, relative to a party under a joint use agreement, a licensee paying \$50 at the beginning of the year and \$50 at mid-year would lose \$3.56 ($\$50 \times 0.0475 + 50 \times 0.0475/2$) in interest payments before the payment from the joint user was due at the end of the year.

⁵³ Memorandum Opinion and Order, ¶ 19.

pre-existing telecom rate (\$12.91)⁵⁴—the upper reference point for just and reasonable rates in the 2011 Report and Order—was \$22.56. If that difference were increasing at about two percent per year between 2002 and 2011, the average over the period would be about \$20.75.⁵⁵ Therefore, over 9.5 years, Verizon has paid about \$12.8 million in payments in excess of the upper reference point ($65,000 \times \$20.75 \times 9.5$) in this example.

33. Consistent with the FCC’s rationale for the upper reference point, the difference between the pre-existing and new telecom rate, which would be approximately one-third of the former,⁵⁶ represents recovery of the putative monetary advantages of a joint use agreement. At a rate of increase in cost of 2 percent per year, that difference would average about \$4 per year over 10 years. Suppose the \$4 per year was designed to recover one-time fixed costs over a 25 year period, resulting in an average of \$100 of one-time costs.⁵⁷ Therefore, the initial magnitude of the one-time charges would be \$6.5 million ($65,000 \times \100). Further, for the poles that were already in place in 2002, assumed to be 63,000 in this example,⁵⁸ the one-time charges may well have been incurred years ago and already fully paid by the difference between the rates charged to Verizon and telecommunications carriers in earlier years.
34. In summary, the example suggests that the excess payments of \$12.8 million during the time the pre-existing telecom rate was fully in effect were well in excess of any conceivable unrecovered one-time charges.

⁵⁴ Affidavit of Mark S. Calnon, in File No. EB-14-MD-003, January 31, 2014, ¶ 9, (Exhibit B to Verizon’s Complaint).

⁵⁵ If the cost increase was uniform, the average difference (\$20.75) would be midway between the 2011 difference (\$22.56) and the 2002 difference, which would be \$18.94 ($\$20.75 - (\$22.56 - \$20.75)$). A cost difference increase from \$18.94 to \$22.56 over the nine years from 2002 to 2011 implies an average annual rate of about two percent.

⁵⁶ The new telecom rate for 2011 is \$8.52, which is 66 percent of the pre-existing telecom rate (\$12.91). Affidavit of Mark S. Calnon, in File No. EB-14-MD-003, January 31, 2014, ¶ 9, (Exhibit B to Verizon’s Complaint).

⁵⁷ To simplify the discussion, I ignore the effect of an interest, or discount rate, which makes the calculation conservatively high. The 25 year period is consistent with recovery of the one-time costs over the average life of a pole. FPL’s depreciation rate of 4.1 percent (2010 FPL FERC Form 1, p. 337.1, Line 54(e)) is consistent with a life of about 25 years.

⁵⁸ FPL had about 67,000 joint use poles in 2011. With uniform growth, an average of 65,000 implies an initial count of 63,000.

By: Timothy J. Tardiff

Timothy J. Tardiff
Dated: March 13, 2015

Sworn to before me this 13th day of March, 2015.

Ann Marie Power
Notary Public



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Professional Summary

Dr. Timothy J. Tardiff has more than 30 years of academic and consulting experience. He has participated in numerous legal and regulatory proceedings regarding telecommunications, economics, intellectual property antitrust, and regulation issues. His research consulting, and expert witness experience in telecommunications has addressed pricing and costing issues involving increasingly competitive services, such as wireless and traditional wireline services. This experience has also included extensive examination and economic evaluation of all facets of the costing methodologies used to establish prices in rate-regulated industries—including expert reports and testimonies in a U.S. Department of Transportation proceeding on the reasonableness from an economic perspective of the rates international carriers at Los Angeles International Airport pay for use of terminal space. His work has included the telecommunications, software, transportation, energy, and public utility industries, and he has published extensively in economics, telecommunications, and transportation journals.

Dr. Tardiff is an economic consultant with clients in the telecommunications and regulated utilities industries. From 2006 to 2009, he was a Managing Director at Huron Consulting Group. Prior to joining Huron, Dr. Tardiff served as a vice president in the telecommunication practice at NERA Economic Consulting. During his career, he has served as the director of Marketing Research and senior member of the transportation practice at Charles River Associates, Inc. and assistant professor in the Department of Civil Engineering and Division of Environmental Studies at the University of California, Davis.

Dr. Tardiff's research has addressed the demand, cost, and competitive aspects of converging technologies, including wireless and broadband. He has evaluated pricing policies for increasingly competitive telecommunications markets, including appropriate mechanisms for pricing access services to competitors and studied actual and potential competition for services provided by incumbent telephone operating companies. Most recently, he has analyzed the effects of convergence and growing intermodal competition on whether incumbent firms should be considered dominant in the provision of certain services and the regulatory and antitrust implication of such determinations.

Since the passage of the United States Telecommunications Act, Dr. Tardiff has participated in interconnection arbitrations, unbundled element proceedings, universal service investigation, applications by incumbent local exchange carriers for authorization to provide interLATA long-distance, and implementation of the Triennial Review Order rules for unbundling network elements in over 25 states and before the United States Federal Communications Commission. His international research and consulting experience includes studies and expert reports on telecommunication competition issues in Canada, Japan, New Zealand, Peru, Australia, and Trinidad and Tobago, where he was an economic expert in an interconnection arbitration between two wireless carriers.

Education

- Ph.D., Social Sciences, University of California, Irvine, CA
- B.S., Mathematics, California Institute of Technology, Pasadena, CA

Testimony experience

- Reply Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications, Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and CTSI, LLC d/b/a Frontier Communications CTSI Company, LLC, Complainants v. UGI Utilities – Electric Division, Respondent, File No. EB-14-MD-007, September 15, 2014.
- Reply Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications, Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company, Frontier Communications of Breezewood, LLC, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications Company of West Virginia, and Frontier West Virginia Inc., Complainants, v. Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company d/b/a Allegheny Power , Monongahela Power Company, and the Potomac Edison Company, Respondents, File No. EB-14-MD-008, July 31, 2014.
- Supplemental Expert Report, Duke Energy Carolinas, LLC, Plaintiff v. Frontier Communications of the Carolinas LLC, Defendant, 2:13-cv-00040-MR-DLH, U.S. District Court for the Western District of North Carolina, June 27, 2014.
- Deposition Testimony, Florida Power & Light Company, Plaintiff v. Verizon Florida LLC, Defendant, Case No. 13-014808-CA-01, Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida, June 24, 2014.
- Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications, Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company, Frontier Communications of

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Breezewood, LLC, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications Company of West Virginia, and Frontier West Virginia Inc., Complainants, v. Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company d/b/a Allegheny Power , Monongahela Power Company, and the Potomac Edison Company, Respondents, File No. EB-14-MD-008, June 11, 2014.

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- Expert Report, Tampa Electric Company, Plaintiff v. Verizon Florida LLC, Defendant, Civil Action No. 12-016349, Circuit Court, Hillsborough County, Florida, Civil Division, February 24, 2014.
- Reply Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications of the Carolinas, Frontier Communications of the Carolinas, LLC, Complainant v. Duke Energy Progress, Inc., Defendant, File No. EB-13-MD-007, February 11, 2014.
- Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications of the Carolinas, Frontier Communications of the Carolinas, LLC, Complainant v. Duke Energy Carolinas, LLC, Defendant, File No. No. EB-14-MD-002, January 29, 2014.

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- Deposition Testimony, Texas Public Utility Commission Docket No. 38389, July 16, 2012.
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- Reply Declaration of Timothy J. Tardiff and Dennis L. Weisman on an analytical framework for evaluating the competitiveness of special access services, prepared for filing with the Federal Communications Commission on behalf of Qwest Communications International, WC Docket No. 05-25, RM-10593, February 24, 2010.
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- Reply Declaration of Timothy J. Tardiff and Dennis L. Weisman on the economics of forbearance from regulating certain wholesale services, prepared for filing with the Federal Communications Commission on behalf of Qwest Communications International, WC Docket No. 09-135, October 21, 2009. (Includes Dennis L. Weisman and Timothy J. Tardiff, “Principles of Competition and Regulation for the Design of Telecommunications Policy”).
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- Reply Declaration of Timothy J. Tardiff on the use of the HAI, Release 5.3 Model for unbundled network elements costs, prepared for filing with the Washington Utilities and Transportation Commission on behalf of Verizon Northwest, Docket No. UT-023003, April 26, 2004.
- Reply Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the Indiana Utility Regulatory Commission on behalf of SBC Indiana, Cause No. 42500, February 13, 2004.
- Direct Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the Oklahoma State Corporation Commission on behalf of SBC Oklahoma, Cause No. 200300646, February 11, 2004.
- Rebuttal Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the Indiana Utility Regulatory Commission on behalf of SBC Indiana, Cause No. 42500, January 30, 2004.

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- Reply Declaration of Howard Shelanski and Timothy Tardiff on the review of rules for pricing unbundled network elements, prepared for filing with the Federal Communications Commission on behalf of Verizon, WC Docket No. 03-173, January 30, 2004.
- Direct Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the Indiana Utility Regulatory Commission on behalf of SBC Indiana, Cause No. 42500, January 16, 2004.
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- Reply Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the California Public Utilities Commission on behalf of SBC California, Rulemaking 95-04-043, Investigation 95-04-044, January 16, 2004.
- Direct Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the Missouri Public Service Commission on behalf of SBC Missouri, Case No. TO-2004-0207 Phase I, December 18, 2003.
- Declaration of Alfred E. Kahn and Timothy Tardiff on the review of rules for pricing unbundled network elements, prepared for filing with the Federal Communications Commission on behalf of Verizon, WC Docket No. 03-173, December 16, 2003.
- Direct Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the California Public Utilities Commission on behalf of SBC California, Rulemaking 95-04-043, Investigation 95-04-044, December 12, 2003.
- Direct Testimony of Timothy J. Tardiff concerning geographic market definition, prepared for filing with the Public Utilities Commission of Ohio on behalf of SBC Ohio, Case No. 03-2040-TP-COI, November 12, 2003.
- Statement of Timothy J. Tardiff on the Commission's Telecommunications Service Obligation (TSO) Model, prepared for filing with the New Zealand Commerce Commission on behalf of Telecom Corporation of New Zealand, May 20, 2003.
- Rebuttal Declaration of Timothy J. Tardiff on the use of the HAI, Release 5.3 Model for unbundled network elements costs, prepared for filing with the California Public Utilities Commission on behalf of SBC California, Application Nos. 01-02-024, 01-02-035, 02-02-031, 02-02-032, and 02-03-002, March 12, 2003.
- Reply Declaration of Timothy J. Tardiff on the use of the HAI, Release 5.3 Model for unbundled network elements costs, prepared for filing with the California Public Utilities Commission on behalf of SBC California, Application Nos. 01-02-024, 01-02-035, 02-02-031, 02-02-032, and 02-03-002, February 7, 2003.
- Affidavit of Timothy J. Tardiff on the use of the FCC's Synthesis Model to calculate unbundled network switching and transport prices, prepared for filing with the Regulatory Commission of Alaska, on behalf of Alaska Communications Systems, Docket No. U-96-89, December 20, 2002.

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- Declaration of Timothy J. Tardiff in support of the Petition of Verizon for Forbearance From The Prohibition Of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) Of The Commission's Rules, CC Docket No. 96-149, September 24, 2002.
- Affidavit of Timothy J. Tardiff on unbundled network element pricing, prepared for filing with the Federal Communications Commission on behalf of ACS, WC Docket No. 02-201, July 24, 2002.
- Reply Declaration of Alfred E. Kahn and Timothy J. Tardiff in the triennial review of unbundled network elements, prepared for filing with the Federal Communications Commission on behalf of Verizon, CC Docket Nos. 01-338, 96-98, and 98-147, July 17, 2002.
- Statement of Alfred E. Kahn and Timothy J. Tardiff on funding the telecommunications service (universal service) obligation, prepared for filing with the New Zealand Commerce Commission on behalf of Telecom Corporation of New Zealand, June 10, 2002.
- Supplemental Surrebuttal Testimony of Timothy Tardiff and Francis Murphy on the use of the FCC's Synthesis Model for evaluating the costs of unbundled network elements, prepared for filing with the Florida Public Service Commission on behalf of Verizon-Florida, Docket No. 990649B-TP, April 22, 2002.
- Surrebuttal Testimony of Timothy Tardiff and Francis Murphy on the use of the FCC's Synthesis Model for evaluating the costs of unbundled network elements, prepared for filing with the Florida Public Service Commission on behalf of Verizon-Florida, Docket No. 990649B-TP, March 18, 2002.
- Surrebuttal Testimony of Howard Shelanski and Timothy Tardiff on economic principles for determining the costs of unbundled network elements, prepared for filing with the Pennsylvania Public Utility Commission on behalf of Verizon-Pennsylvania, Docket No. R-00016683, February 8, 2002.
- Surrebuttal Testimony of Timothy J. Tardiff and Joseph A. Gansert on the application of the Modified Synthesis Model for the costs of unbundled network elements, prepared for filing with the Pennsylvania Public Utility Commission on behalf of Verizon-Pennsylvania, Docket No. R-00016683, February 8, 2002.
- Rebuttal Testimony of Howard Shelanski and Timothy Tardiff on economic principles for determining the costs of unbundled network elements, prepared for filing with the Pennsylvania Public Utility Commission on behalf of Verizon-Pennsylvania, Docket No. R-00016683, January 11, 2002.
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- Declaration of Alfred E. Kahn and Timothy J. Tardiff submitted to the U.S. Federal Communications Commission on behalf of Verizon regarding broadband regulation, December 18, 2001.
- Supplemental Rebuttal Testimony of Timothy J. Tardiff on the application of the Modified Synthesis Model for the costs of unbundled network elements, prepared for filing with the Federal Communications Commission on behalf of Verizon-Virginia, CC Docket Nos. 00-218, 00-249, and 00-251, November 16, 2001.
- Declaration of Timothy J. Tardiff on the use of the HAI, Release 5.2a for deriving an unbundled switch cost reduction, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, October 30, 2001.
- Declaration of Timothy J. Tardiff on the use of the HAI, Release 5.2a for deriving an unbundled loop cost reduction, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, October 19, 2001.
- Surrebuttal Testimony of Howard Shelanski and Timothy J. Tardiff on economic principles for determining the costs of unbundled network elements, prepared for filing with the Federal Communications Commission on behalf of Verizon-Virginia, CC Docket Nos. 00-218, 00-249, and 00-251, September 21, 2001.
- Rebuttal Testimony of Timothy J. Tardiff on the application of the Modified Synthesis Model for the costs of unbundled network elements, prepared for filing with the Maryland Public Service Commission on behalf of Verizon-Maryland, Case No. 8879, September 5, 2001.
- Declaration of Timothy J. Tardiff on the use of the HAI, Release 5.2a and Modified Synthesis Models for unbundled loop and switch costs, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 4, 2001.
- Rebuttal Testimony of Timothy J. Tardiff on the application of the Modified Synthesis Model for the costs of unbundled network elements, prepared for filing with the Federal Communications Commission on behalf of Verizon-Virginia, CC Docket Nos. 00-218, 00-249, and 00-251, August 27, 2001.
- Affidavit of Timothy J. Tardiff on the use of proxy costs models for unbundled network elements, prepared for filing with the Regulatory Commission of Alaska, on behalf of Alaska Communications Systems, Docket No. U-96-89, July 27, 2001.
- Rebuttal Testimony of Timothy J. Tardiff on the application of the Hatfield Model for the costs of unbundled network elements, prepared for filing with the Massachusetts Department of Telecommunications and Energy on behalf of Verizon-Massachusetts, Docket No. D.T.E. 01-20, July 18, 2001.
- Rebuttal Testimony of Timothy J. Tardiff on the application of the Hatfield Model for the costs of unbundled network elements, prepared for filing with the New Jersey Board of Public Utilities on behalf of Verizon-New Jersey, Docket No. TO00060356, October 12, 2000.

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- Supplemental Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the State of Maine Public Utilities Commission on behalf of Bell Atlantic-Maine, Case No. 97-505, October 10, 2000.
- Public Interest Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Nevada Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Nevada Bell Long Distance for Provision of In-Region InterLATA Services in Nevada (with Alfred E. Kahn), July 24, 2000.
- Responsive Testimony on the HAI Model of unbundled network elements, prepared for filing with the New York Public Service Commission on behalf of Bell Atlantic-New York, Case 98-C-1357 (filed as part of panel testimony), June 26, 2000.
- Affidavit of Timothy J. Tardiff on avoided cost discounts for wholesale services, prepared for filing with the Regulatory Commission of Alaska, on behalf of Alaska Communications Systems, Docket Nos. U-99-141, U-99-142 and U-99-143, April 17, 2000.
- Third Affidavit of Timothy J. Tardiff on costs models for unbundled network elements, prepared for filing with the Regulatory Commission of Alaska, on behalf of Alaska Communications Systems, Docket Nos. U-99-141, U-99-142 and U-99-143, March 24, 2000.
- Second Affidavit of Timothy J. Tardiff on costs models for unbundled network elements, prepared for filing with the Regulatory Commission of Alaska, on behalf of Alaska Communications Systems, Docket Nos. U-99-141, U-99-142 and U-99-143, February 25, 2000.
- Rebuttal Testimony of Timothy J. Tardiff on collocation costs models, prepared for filing with the Delaware Public Service Commission on behalf of Bell Atlantic-Delaware, Docket No. 99-251, February 24, 2000.
- Affidavit of Timothy J. Tardiff on costs models for unbundled network elements, prepared for filing with the Regulatory Commission of Alaska, on behalf of Alaska Communications Systems, Docket Nos. U-99-141, U-99-142 and U-99-143, February 11, 2000.
- Public Interest Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas (with Alfred E. Kahn), January 10, 2000.
- Rebuttal Testimony of Timothy J. Tardiff on collocation costs models, prepared for filing with the Pennsylvania Public Utility Commission on behalf of Bell Atlantic-Pennsylvania, Docket Nos. R-00994697 and R-00994697C0001, December 21, 1999.
- “Relaxed Regulation of High Capacity Services in Phoenix and Seattle: The Time is Now,” prepared for filing with the Federal Communications Commission on behalf of US WEST Communications, Petitions of US WEST Communications for Forbearance from Regulation as a Dominant Carrier in the Phoenix and Seattle MSAs (with Alfred E. Kahn), July 21, 1999.

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- “High Capacity Competition in Seattle: Reply to Comments of Intervening Parties,” prepared for filing with the Federal Communications Commission on behalf of US WEST Communications, Petition of US WEST Communications for Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington MSA (with Alfred E. Kahn), March 10, 1999.
- Rebuttal Testimony of Timothy J. Tardiff on collocation costs models, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, February 8, 1999.
- Surrebuttal Testimony of Alfred E. Kahn and Timothy J. Tardiff filed with the Missouri Public Service Commission, in support of the Applications of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Provision of In-Region InterLATA Services in Missouri, Docket No. TO 99-227, February 4, 1999.
- Rebuttal Testimony of Timothy J. Tardiff on the HAI Model of unbundled network elements, prepared for filing with the Rhode Island Public Utilities Commission on behalf of Bell Atlantic-Rhode Island, Docket No. 2681, January 15, 1999.
- Reply Testimony of Timothy J. Tardiff on collocation costs models, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, January 11, 1999.
- “Economic Evaluation of High Capacity Competition in Seattle,” prepared for filing with the Federal Communications Commission on behalf of US WEST Communications, Petition of US WEST Communications for Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington MSA (with Alfred E. Kahn), December 22, 1998.
- Testimony of Timothy J. Tardiff on collocation costs models, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, December 18, 1998.
- “Measuring and Recovering the Costs of Long-Term Number Portability: Implications of Price Cap Regulation,” Prepared for Southwestern Bell for presentation to the Federal Communications Commission, December 10, 1998.
- Direct Testimony of Alfred E. Kahn and Timothy J. Tardiff, filed with the Missouri Public Service Commission, in support of the Applications of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Provision of In-Region InterLATA Services in Missouri, Docket No. TO 99-227, November 20, 1998.
- “High Capacity Competition in Phoenix: Reply to Comments of Intervening Parties,” prepared for filing with the Federal Communications Commission on behalf of US WEST Communications, Petition of US WEST Communications for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA (with Alfred E. Kahn), October 28, 1998.

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- “Measuring and Recovering the Costs of Long-Term Number Portability,” Prepared for Southwestern Bell for presentation to the Federal Communications Commission, October 28, 1998 (with Alfred E. Kahn).
- Declaration of Timothy J. Tardiff on the economic impacts of separate subsidiary requirements for the offer of advanced services by incumbent local exchange carriers, prepared for filing with the Federal Communications Commission on behalf of Bell Atlantic, in the matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, October 15, 1998.
- “An Analysis of the HAI Model Release 5.0a,” Rebuttal Testimony filed with the Florida Public Service Commission, Docket No. 980696-TP, on behalf of GTE Florida, September 2, 1998 (with Gregory M. Duncan, Karyn E. Model, Christian M. Dippon, Jino W. Kim, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- “Economic Evaluation of High Capacity Competition in Phoenix,” prepared for filing with the Federal Communications Commission on behalf of US WEST Communications, Petition of US WEST Communications for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA (with Alfred E. Kahn), August 14, 1998.
- Rebuttal Testimony of Timothy J. Tardiff on the HAI Model of unbundled network elements, prepared for filing with the New Hampshire Public Utilities Commission on behalf of Bell Atlantic-New Hampshire, Docket No. DE-97-1171, June 22, 1998.
- Rebuttal Affidavit before the Arkansas Public Service Commission in the matter of the Application of Southwestern Bell Telephone Company Seeking Verification that It Has Fully Complied with and Satisfied the Requirements of Section 271 (c) of the Telecommunications Act of 1996 (with Alfred E. Kahn), June 11, 1998.
- Rebuttal Testimony before the State Corporation Commission of the State of Kansas in the matter of Southwestern Bell Telephone Company – Kansas’ Compliance With Section 271 of the Federal Telecommunications Act of 1996, Docket No. 97-SWBT- 411-GIT (with Alfred E. Kahn), May 27, 1998.
- Rebuttal Affidavit Before the Public Utilities Commission of the State of California in support of Pacific Bell’s Draft Application for Authority to Provide InterLATA Services in California (with Alfred E. Kahn), May 20, 1998.
- “An Analysis of the Hatfield Model Release 4.0,” prepared for filing with the California Public Utilities Commission on behalf of GTE California, May 1, 1998 (with Gregory M. Duncan, Karyn E. Model, Christian M. Dippon, Jino W. Kim, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- Reply Testimony of Timothy J. Tardiff on unbundled network element prices and retail service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 27, 1998.
- Rebuttal Testimony of Alfred E. Kahn and Timothy J. Tardiff filed with the Oklahoma Public Service Commission, in support of the Applications of SBC Communications, Inc.,

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- Reply Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas (with Alfred E. Kahn), April 17, 1998.
- Testimony of Timothy J. Tardiff on unbundled network element prices and retail service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 8, 1998.
- Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc., Pacific Bell, and Pacific Bell Communications for Provision of In-Region InterLATA Services in California (with Alfred E. Kahn), March 31, 1998.
- “Economic Principles Governing Measurement of Nonrecurring/OSS Costs: An Analysis of the AT&T/MCI Recommendations,” prepared for filing with the California Public Utilities Commission on behalf of GTE California and Pacific Bell, March 4, 1998 (with Gregory M. Duncan).
- “Analysis of the Hatfield Model Release 5.0a,” Rebuttal Testimony filed with the North Carolina Utilities Commission, Docket No. P-100, Sub 133d, on behalf of GTE South, March 2, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- “Analysis of the Hatfield Model Release 5.0a,” Rebuttal Testimony filed with the South Carolina Public Service Commission, on behalf of GTE South, March 2, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas (with Alfred E. Kahn), March 2, 1998.
- “Analysis of the Hatfield Model Release 5.0a,” Rebuttal Testimony filed with the Kentucky Public Service Commission, on behalf of GTE South, February 26, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Arkansas (with Alfred E. Kahn), February 24, 1998.
- Testimony before the State Corporation Commission of the State of Kansas in the matter of Southwestern Bell Telephone Company – Kansas’ Compliance With Section 271 of the

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Federal Telecommunications Act of 1996, Docket No. 97-SWBT- 411-GIT (with Alfred E. Kahn), February 17, 1998.

- “Analysis of the Hatfield Model Release 5.0,” Rebuttal Testimony filed with the Alabama Public Utilities Commission, on behalf of GTE South, February 13, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- Affidavit before the Federal Communications Commission in the matter of Application of SBC Communications. Inc. Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma (with Alfred E. Kahn), February 13, 1998.
- “Analysis of the Hatfield Model Release 5.0,” Rebuttal Testimony filed with the North Carolina Utilities Commission, Docket No. P-100, Sub 133b, on behalf of GTE South, January 30, 1998 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Aniruddha Banerjee, Karyn E. Model, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).
- Supplemental Rebuttal Testimony of Timothy J. Tardiff on switching costs, prepared for filing with the State of Maine Public Utilities Commission on behalf of Bell Atlantic-Maine, Case No. 97-505, December 22, 1997.
- “Reply to AT&T Recommendations for Regulatory Treatment of OSS Costs,” prepared for filing with the California Public Utilities Commission on behalf of GTE California and Pacific Bell, December 15, 1997 (with Gregory M. Duncan).
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Vermont Public Service Board on behalf of Bell Atlantic-Vermont, Case No. 57-13, November 21, 1997.
- Reply Affidavit of Timothy J. Tardiff on the Hatfield Model, filed with the New York Public Service Commission on behalf of Bell Atlantic-New York, Case 94-C-0095 and Case 28425, November 17, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the State of Maine Public Utilities Commission on behalf of Bell Atlantic-Maine, Case No. 97-505, October 21, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the application of the Hatfield Model to universal service funding requirements, prepared for filing with the New Jersey Board of Public Utilities on behalf of Bell Atlantic-New Jersey, Docket No. TX95120631, October 20, 1997.
- “Analysis of the Hatfield Model Release 4.0,” filed with the Pennsylvania Public Utility Commission on behalf of GTE North, October 20, 1997 (with Gregory M. Duncan, Rafi A. Mohammed, Christian M. Dippon, Francis J. Murphy, Robert P. Cellupica, and Thomas F. Guarino).

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- Supplemental Rebuttal Testimony of Timothy J. Tardiff on toll and carrier access demand elasticities and universal service rate rebalancing prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, October 10, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on toll and carrier access demand elasticities and universal service rate rebalancing, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 30, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the State Corporation Commission of Virginia on behalf of Bell Atlantic-Virginia, Case No. PUC970005, June 10, 1997.
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- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the District of Columbia Public Service Commission on behalf of Bell Atlantic-DC, Formal Case No. 962, May 2, 1997.
- Declaration of Timothy J. Tardiff on OANAD Cost Studies, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 16, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Maryland Public Service Commission on behalf of Bell Atlantic-Maryland, Case No. 8731-II, April 4, 1997.
- “Economic Evaluation of the Hatfield Model, Release 3.1,” filed with the Washington Utilities and Transportation Commission on behalf of GTE, March 28, 1997 (with Gregory M. Duncan and Rafi Mohammed).
- “Economic Evaluation of the Hatfield Model, Version 2.2, Release 2,” prepared for filing with the California Public Utilities Commission on behalf of GTE California and Pacific Bell, March 18, 1997 (with Gregory M. Duncan).
- Statement of Alfred E. Kahn and Timothy J. Tardiff, “Funding and Distributing the Universal Service Subsidy,” Prepared for US West for presentation to the Federal Communications Commission, March 13, 1997.
- Testimony of Timothy J. Tardiff on toll and carrier access demand elasticities, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, March 6, 1997.
- Surrebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Pennsylvania Public Utility Commission on behalf of Bell Atlantic-Pennsylvania, Dockets A-310203F0002, A-310213F0002, A-310236F0002, A-310258F0002, February 21, 1997.
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- “Reply to Kravtin/Selwyn Analysis of the Gap Between Embedded and Forward-Looking Costs,” affidavit filed with the Federal Communications Commission, In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, on behalf of GTE, February 14, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Arkansas Public Service Commission on behalf of Southwestern Bell Telephone Company, Docket 96-395-U, January 9, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Kansas Corporation Commission on behalf of Southwestern Bell Telephone Company, Docket 97-AT&T-290-Arb, January 6, 1997.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Massachusetts Department of Public Utilities on behalf of New England Telephone and Telegraph Company, Docket 96-80/81, October 30, 1996.
- Statement of Alfred E. Kahn and Timothy J. Tardiff, “Joint Marketing, Personnel Separation and Efficient Competition Under the Telecommunications Act of 1996,” Prepared for US West for presentation to the Federal Communications Commission, October 11, 1996.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Oklahoma Public Service Commission on behalf of Southwestern Bell Telephone Company, September 30, 1996.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Missouri Public Service Commission on behalf of Southwestern Bell Telephone Company, Case No. TO-97-040 & TO 97-40-67, September 30, 1996.
- “Economic Evaluation of Version 2.2 of the Hatfield Model,” prepared for filing in interconnection arbitrations in Pennsylvania, California, Florida, Indiana, North Carolina, Oklahoma, Iowa, Texas, Virginia, Minnesota, Hawaii, Nebraska, Kentucky, Washington, and Missouri on behalf of GTE, September 1996 (with Gregory M. Duncan).
- Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the Texas Public Utility Commission on behalf of Southwestern Bell Telephone Company, Docket Nos. 16189, 16196, 16226, 16285, 16290, September 6, 1996.
- “Economic Analysis of MFS’s Numerical Illustration,” prepared for filing with the Federal Communications Commission, In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area, on behalf of US West, August 30, 1996.

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- Affidavit of Timothy J. Tardiff on proxy rates for unbundled local switching, prepared for filing with the Federal Communications Commission on behalf of GTE Corporation, petition for a stay of the First Report and Order in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, August 28, 1996.
- Rebuttal Testimony of Timothy J. Tardiff on the Hatfield Model of unbundled network elements, prepared for filing with the New York Public Service Commission on behalf of New York Telephone, July 15, 1996.
- Reply Testimony of Timothy J. Tardiff on local exchange service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, July 10, 1996.
- “Economic Evaluation of Version 2.2 of the Hatfield Model,” attached to Reply Testimony of Timothy J. Tardiff, prepared for filing with the California Public Utilities Commission on behalf of GTE California, July 10, 1996. Also presented to the Federal Communications Commission as attachment to letter from Whitney Hatch of GTE to William F. Caton, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, July 11, 1996.
- Testimony of Timothy J. Tardiff on local exchange service price floors, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, June 14, 1996.
- Declaration of Alfred E. Kahn and Timothy J. Tardiff, prepared for filing with the Federal Communications Commission, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, on behalf of Bell Atlantic, May 30, 1996.
- Declaration of Timothy J. Tardiff on Round I and Round II OANAD Cost Studies, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, May 24, 1996.
- “Economic Evaluation of Pacific Bell’s Round I and Round II Cost Studies: Reply Comments,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, April 17, 1996.
- “Incremental Cost Principles for Local and Wireless Network Interconnection,” prepared for filing with the Federal Communications Commission on behalf of Pacific Telesis, March 4, 1996 (with Richard D. Emmerson).
- “Economic Evaluation of Selected Issues from the Fourth Further Notice of Proposed Rulemaking in the LEC Price Cap Performance Review: Reply Comments,” Prepared for filing with the Federal Communications Commission on behalf of the United States Telephone Association, March 1, 1996 (with William E. Taylor and Charles J. Zarkadas).
- Declaration of Timothy J. Tardiff on the toll and carrier access demand stimulation caused by the January 1, 1995 price reductions (update), prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, January 19, 1996.
- “Universal Service Funding and Cost Modeling,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, January 19, 1996.

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- “Economic Evaluation of Selected Issues from the Fourth Further Notice of Proposed Rulemaking in the LEC Price Cap Performance Review,” Prepared for filing with the Federal Communications Commission on behalf of the United States Telephone Association, December 18, 1995 (with William E. Taylor and Charles J. Zarkadas).
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- “Evaluation of the Benchmark Cost Model,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, December 1, 1995.
- Affidavit of William E. Taylor and Timothy J. Tardiff on interconnection regulation, prepared for filing with the Mexican Secretariat of Communications and Transport on behalf of Southwestern Bell International Holdings Corporation, October 18, 1995.
- Participant, California Public Utilities Commission, Full Panel Hearing on Universal Telephone Service, September 29, 1995.
- “Incentive Regulation and Competition: Reply Comments,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 18, 1995 (with Richard L. Schmalensee and William E. Taylor).
- “Incentive Regulation and Competition: Issues for the 1995 Incentive Regulation Review,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 8, 1995 (with Richard L. Schmalensee and William E. Taylor).
- “Preserving Universality of Subscription to Telephone Service in an Increasingly Competitive Industry,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 1, 1995 (with Alfred E. Kahn).
- Declaration of Timothy J. Tardiff and Lester D. Taylor on the toll and carrier access demand stimulation caused by the January 1, 1995 price reductions, prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, September 1, 1995.
- “Economic Evaluation of Proposed Long-Run Incremental Cost (LRIC) Methodology,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, July 13, 1995 (with Richard D. Emmerson).
- “California Public Utilities Commission Proposed Rules for Local Competition: An Economic Evaluation,” prepared for filing with the California Public Utilities Commission on behalf of Pacific Bell, May 24, 1995.
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Professional associations

- Member, American Economic Association
- Associate Member, American Bar Association
- Member, Federal Communications Bar Association

Fellowships, grants and awards

- First Place, Dissertation Contest of the Transportation Science Section of the Operations Research Society of America.
- National Science Foundation (NSF) Research Initiation Grant (Engineering Division), 1976-1978.
- NSF Grant for Improving Doctoral Dissertation Research in the Social Sciences, 1973-1974.
- NSF Predoctoral Fellowship, 1972-1974.
- Public Health Service Traineeship, 1971-1972.

Exhibit 1

JOINT USE AGREEMENT
 BETWEEN
 FLORIDA POWER & LIGHT COMPANY
 AND
 GENERAL TELEPHONE COMPANY OF FLORIDA

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Section 0.1 THIS AGREEMENT, made and entered into this 1 day of January, 1975, by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "Electric Company," and General Telephone Company of Florida, a corporation organized and existing under the laws of the State of Florida herein referred to as the "Telephone Company."

WITNESSETH

Section 0.2 WHEREAS, the parties hereto desire to cooperate in accordance with terms and provisions set forth in the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded; and

Section 0.3 WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including consideration of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles;

Section 0.4 NOW, THEREFORE, in consideration of the foregoing premises and of mutual benefits to be obtained from the covenants herein set forth, the parties hereto, for themselves and for their successors and assigns, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 For the purpose of this Agreement the following terms, when used herein, shall have the following meanings:

1.1.1. CODE means the "National Electrical Safety Code" in its present form or as subsequently revised, amended or superseded.

1.1.2. ATTACHMENTS mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.

1.1.3. JOINT USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

1.1.4. JOINT USE POLE is a pole upon which space is provided under this Agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefor upon specific request.

1.1.5. NORMAL JOINT USE POLE under this Agreement shall be a pole which meets the requirements set forth in the Code for support and clearance of supply and communication conductors under conditions existing at the time joint use is established or is to be created under known plans of either party. It is not intended to preclude the use of joint poles shorter or of less strength in locations where such structures will meet the requirements of both parties and the specifications in Article VI. A normal joint pole for billing purposes shall be:

- (A) In and along public streets, alleys, or roads, a 40 foot class 5 wood pole, complete with pole ground of #6 copper or equivalent copperweld conductor.
- (B) In all other areas, a 35 foot class 5 wood pole, complete with pole ground of #6 copper or equivalent copperweld conductor.
- (C) Strength requirements of Code Grade B construction will be used as minimum design criteria for overhead lines. As a consequence, a minimum pole strength shall be calculated using a 9 pound per square foot wind load on the projected area of cylindrical surfaces, with a 1.6 multiplier used for the wind load on the area of flat surfaces. For new construction, pole strength shall have a safety factor of four based on their ultimate strength.

1.1.6. SPECIAL POLES are poles of special materials, such as steel, laminated wood or prestressed concrete. At locations where Electric Company, at its option, sets special poles, Telephone Company may attach its facilities after having obtained specific written permission. This will be in the form of a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS," (Exhibit "A" attached hereto and made a part hereof).

For the purposes of this Agreement, Telephone Company will not be required to, but may at its option, set special poles.

A "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS" will be required for Telephone Company attachments to special poles installed subsequent to the date of this Agreement.

1.1.7. STANDARD SPACE on a joint use pole for the use of each party shall be not less than that required by the Code and shall be for the exclusive use of the parties except as set forth in the Code whereby certain attachments of one party may be made in the space reserved for the other party. This standard space is specifically described as follows:

- (A) For Electric Company, the uppermost 6 feet.
- (B) For Telephone Company a space of 4 feet at sufficient distance below the space of Electric Company to provide at all times the minimum clearance required by the specifications referred to in Article VI and at sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run wires or cables attached in such space.
- (C) It is the intention of the parties that any pole space in excess of the aforementioned reservations and clearance requirements shall be between the standard space allocations of the parties. This excess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachments of the other party.

1.1.8. OWNER means the party hereto owning the pole to which attachments are made.

1.1.9. LICENSEE means the party hereto, other than the Owner, who is making joint use of a pole hereunder.

1.1.10. INSTALLED COST is the cost incurred in setting a new pole (either as a new installation or replacement) and includes the cost of material, direct labor, construction and equipment charges, engineering and supervision, and standard overhead charges of the Owner as commonly and reasonably incurred in the joint usage of poles. The installed cost does not include the cost of attaching or transfer costs but does include the cost of ground wires.

1.1.11. THEN VALUE IN PLACE is the current in-plant pole cost less observed depreciation.

1.1.12. COST OF ATTACHING is the cost of making attachments to a new pole and includes the charges listed in Paragraph 1.1.10.

1.1.13. TRANSFER COST is the cost of transferring attachments from the replaced pole to the replacement pole. It does not include the material cost of replacing hardware but otherwise includes the charges listed in Paragraph 1.1.10.

1.1.14. VERTICAL GROUND WIRE means a #6 copper or equivalent copperweld conductor, conforming to the requirements of the Code, attached vertically to the pole and extending through Telephone Company space to the base of the pole where at least 7 feet will be spirally wound and stapled to the flat butt face.

1.1.15. MULTI-GROUNDED NEUTRAL means an Electric Company conductor, located in Electric Company space, which is bonded to all Electric Company vertical ground wires.

1.1.16. BONDING WIRE shall mean a suitable conductor, conforming to the requirements of the Code, connecting equipment of Telephone Company and Electric Company to the vertical ground wire or to the multi-grounded neutral.

1.1.17. SALVAGE VALUE is the Owner's price on used equipment. Under this Agreement, a wood pole that has been set will have no salvage value

1.1.18. PERMIT shall mean a "REPORT OF FP&L CO. ATTACHMENTS TO TELEPHONE CO. POLES" (Exhibit "B" attached hereto and made a part hereof), or similar report of Telephone Company attachments to Electric Company poles, or a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS." All attachments to, or removal of attachments from, joint use poles by a Licensee shall be recorded by use of an appropriate permit.

ARTICLE II

SCOPE OF AGREEMENT

Section 2.1 This Agreement shall be in effect in those parts of the State of Florida now or hereafter served by both Telephone Company and Electric Company, and shall cover all poles of each of the parties now existing in such service areas, or hereafter erected or acquired therein, when said poles are brought hereunder as joint use poles in accordance with the procedure hereinafter provided.

Section 2.2 Each party reserves the right to exclude from joint use those poles which have been installed for purposes other than, or in addition to, normal distribution of electric or telephone service. Among those included in this category are poles which, in the judgement of Owner, (a) are required for the sole use of the Owner, (b) would not readily lend themselves to joint use because of interference, hazards or similar impediments, present or future, or (c) have been installed primarily for the use of a third party. In the event one of the parties deems it desirable to attach to any such excluded poles, the party wishing to attach will proceed in the manner provided in Article III. Where a third party use is involved, approval must be obtained from such third party as a prerequisite to processing under Article III.

Section 2.3 With the exception of Telephone Company service drops, Telephone Company may not make initial or additional attachments to Electric Company transmission line poles (above 35,000 volts phase to phase nominal rating) without the written approval of Electric Company as provided in Article III of this Agreement.

ARTICLE III

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS AND BONDING ATTACHMENTS

Section 3.1 Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon not then specifically reserved by application hereunder for its use, it shall make written application to the other party specifying in such application the location of the pole in question. Within ten (10) days after the receipt of such application, the Owner shall notify the applicant in writing, advising whether or not said pole is one of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not one of those excluded, and after the Owner completes any transferring or rearranging which may be required in respect to attachments on said poles, including any necessary pole replacements as provided in Article IV Section 4.4, the applicant shall have the right as Licensee hereunder to use said space in accordance with the terms of this Agreement.

Section 3.2 The provisions of Section 3.1 do not apply to the poles of either party being used jointly by the other party as of the effective date of this Agreement; therefore, the Licensee shall have the right to use space on these poles for attachments in accordance with the terms of this Agreement.

Section 3.3 Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense, and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

Section 3.4 Each party, regardless of pole ownership, shall be responsible for determining the proper pole strength and arranging for any necessary guying of a joint pole where a requirement therefore is created by the addition or alteration of attachments thereon by such party. See Section 1.1.5 (C) for design criteria.

Strength of special poles will be determined considering wind loading to be 50 pound per square foot on projected areas of Telephone and Electric Company facilities. A safety factor of 1.0 will be used in this determination.

Section 3.5 Electric Company shall give sixty (60) days written notice to Telephone Company, advising Telephone Company of any initial attachments or conversion of any existing attachments that will result in joint use with any of the following conditions:

- (A) The absence of a multiple grounded Electric Company neutral line conductor.
- (B) Voltage in excess of 15,000 volts phase to ground.

If Telephone Company agrees to joint use with any such change then the joint use of such poles shall be continued with such changes in construction as may be required to meet the requirements of the Code. If, however, Telephone Company fails within thirty (30) days from receipt of such written notice to agree in writing to such change then both parties shall cooperate and determine the most practical and economical method of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

Section 3.6 The Ownership of any new line constructed in a new location under the foregoing provision shall be vested in the party for whose use it is constructed, unless otherwise agreed by the parties.

Section 3.7 On joint use poles Telephone Company may, at its own expense, bond its attachments in Telephone Company space together and to the vertical ground wire where the same exists.

Section 3.8 Under no condition will Electric Company's vertical ground wire be broken, cut, severed or otherwise damaged by Telephone Company.

Section 3.9 On joint use poles Electric Company shall, at its own expense, bond its street light brackets, conduit and other attachments in Telephone Company space together and to the vertical ground wire where the same exists.

Section 3.10 Telephone Company shall not install steps of any type on new joint use poles with the exception of poles with high activity terminals attached. Telephone Company will endeavor to remove pole steps that are not necessary when doing other work on existing joint use poles.

ARTICLE IV

ERECTING, REPLACING OR RELOCATING POLES

Section 4.1 Whenever, for whatever reason, the Owner shall deem it necessary to change the location of a jointly used pole, the Owner shall, before making such change in location, give timely notice thereof to the Licensee in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing), specifying in such notice the time of such proposed relocation, and the Licensee shall, at a time mutually agreed upon, transfer its attachments to the pole at the new location.

Section 4.2 Whenever either party hereto is about to erect new poles within the territory covered by this Agreement, either as a new pole line, an extension of an existing pole line, or as the reconstruction of an existing pole line being jointly used hereunder, such party shall immediately notify the other party hereto prior to completion of engineering plans for such erection in order that any necessary joint planning may be coordinated and so that compliance may be had with the provisions of Sections 4.3 and 4.4 of this Article IV.



Section 4.4 Whenever any jointly used pole, or any pole about to be so used under the terms and provisions of this Agreement, is insufficient in height and/or strength for proposed immediate additional attachments thereon or does not meet the requirements of public authority or property owners, the Owner shall promptly add or replace said pole with a new pole of such height and/or strength and make such other changes in the existing pole line as the new conditions may require. The costs associated with such new poles and changes are to be as outlined in Section 4.5.





Section 4.7 When replacing a joint use pole carrying terminals of aerial cable, underground connections or transformer equipment, the replacement pole shall be set in such a location that existing facilities may be transferred at a minimum of cost and inconvenience.

Section 4.8 Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all reasonable costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

Section 4.9 Telephone Company will be permitted to drill its own holes in special poles if this is done in a manner acceptable to Electric Company's local Division Transmission & Distribution Manager. Holes for Telephone Company's attachments on special poles will be provided by Electric Company for the following costs:

1. \$.50 when the location is specified to Electric Company before Electric Company orders the pole.
2. Electric Company's cost for drilling when the pole is drilled after delivery.

ARTICLE V

PERMISSION OF JOINT USE

Each party hereto hereby permits joint use by the other party of any of its poles when brought under this Agreement, as herein provided, subject to the terms and conditions herein set forth.

ARTICLE VI

SPECIFICATIONS

Joint use of poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law and the terms and provisions of the Code in its present form or as subsequently revised, amended or superseded. Said Code, by this reference, is hereby incorporated herein and made a part of this Agreement.

ARTICLE VII

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

Section 7.1 From and after the date of this Agreement, the Owner will, insofar as practicable, obtain suitable right of way easements or permits for both parties on joint use poles brought hereunder.

Section 7.2 While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties of joint use poles, no guarantee is given by the Owner of permission from property owners, municipalities or others for use of poles and right of way easement by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may, at any time upon thirty (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved and its appurtenances from the right of way easement involved and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from said poles and its appurtenances from said right of way easement at its sole expense. Should the Licensee fail to remove its attachments and appurtenances, as herein provided, the Owner may remove them and the Licensee shall reimburse the Owner for the expense incurred.

Section 7.3 Each party shall be responsible for its own circuits where tree trimming or cutting (e.g., shade trees, side clearances, etc.) is required. Where benefits are mutual and the need for the work is agreed upon beforehand, costs shall be apportioned on an equitable basis.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

Section 8.1 The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with Article VI of this Agreement, and shall replace, subject to the provisions of Article IV, such of said poles as become defective. Each party shall, at its own expense and at all times, maintain all of its attachments in accordance with the specifications contained in the Code and keep said attachments in safe condition and in thorough repair.

Section 8.2 Both parties shall, in writing, report to each other all hazardous conditions found to exist in any joint use construction hereunder, immediately upon discovery, and the responsible party shall proceed forthwith to alter such construction so as to remove the hazard. Any existing joint use construction hereunder which does not conform to the specifications set forth in Article VI shall be brought into conformity with said specifications at the earliest possible date.

Section 8.3 The cost of removing hazards and of bringing existing joint use construction into conformity with said specifications, as provided in Section 8.2, shall be borne by the parties hereto in the manner provided in Section 3.3 and Article IV.

ARTICLE IX

ABANDONMENT OF JOINTLY USED POLES

Section 9.1 If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to that date on which it intends to abandon such pole. This notice of abandonment will be in the form of a "NOTICE OF ABANDONMENT," (Exhibit "C" attached hereto and made a part hereof). If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole thereupon becomes the property of the Licensee, and the Licensee (a) shall indemnify and save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter and arising out of the presence or condition of such pole or any attachments thereon, whether or not such liability is due to or caused by, in whole or in part, the negligence of the former Owner; and (b) shall pay said former Owner a sum equal to the then value in place of such abandoned pole, less credit on a depreciated basis for any payments which the Licensee furnishes proof he

has made under the provisions of Article IV when the pole was originally set, or shall pay such other equitable sum as may be agreed upon between the parties.

Section 9.2 The Licensee may at any time abandon the joint use of a pole by giving due notice thereof in writing to the Owner and by removing from said pole any and all attachments the Licensee may have thereon.

ARTICLE X

RENTAL AND PROCEDURE FOR PAYMENTS

Section 10.1 The parties contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this Agreement, shall be based on the equitable sharing and the costs and economics of joint use.

Section 10.2 On or about January 1 of each year, each party, acting in cooperation with the other and subject to the provisions of Section 10.3 of this Article, shall ascertain and tabulate the total number of poles in use by each party as Licensee, which tabulation shall indicate the number of poles in use by each party as Licensee for which an adjustment payment by one of the parties to the other is to be determined as hereinafter provided.

Section 10.3 Special poles will be inventoried and listed separately from normal joint use poles. The list of special poles will be separated into those poles with the adjustment rate specified in Section 10.4 and those with the rates specified in Section 10.5.

Section 10.4 Special poles to be billed at the adjustment rate specified in Section 10.6 are in the categories listed below:

1. Intermediate poles set in an existing joint use wood pole line.
2. Junction poles where Telephone Company aerial facilities cross an Electric Company line of special poles.
3. Poles supporting any of the following:
 - a. Telephone Company terminal with riser cable of 100 pairs or less in size.
 - b. Telephone Company aerial drops only on field side.
 - c. Only one Telephone Company cable of 100 pairs or less from pole to pole. A 2-wire service drop between two poles will be considered a cable.
 - d. An emergency telephone.
4. Poles set to replace Telephone Company poles in a Telephone Company route.

5. Poles set before the date of this Agreement. A special pole with a manufacturer's brand date of 1974 or earlier will be considered set before the date of this Agreement unless a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS" has been made for this pole subsequent to the date of this Agreement.

Section 10.5 Special poles to be billed at 1.5 times the adjustment rate specified in Section 10.6 are all those not conforming to Section 10.4.

Section 10.6 Adjustment rate to be utilized for normal joint use poles [REDACTED]

Section 10.7 The parties hereto agree that an attachment count also includes any pole on which it is mutually agreed that space was reserved for the Licensee at the Licensee's request and on which the Licensee has not attached. The Licensee is only liable for billing under this Section until the Licensee makes an initial attachment or an interval of five (5) unattached years elapses from the date of the space reservation, whichever condition occurs first.

Section 10.8 At the end of each calendar year each party, acting in cooperation with the other, shall have ascertained and tabulated the total number of poles in use, or specifically reserved for use, by each party as Licensee. The equity settlement for that calendar year will be made as follows:

The jointly used poles owned by each party shall be multiplied by the appropriate adjustment rate. [REDACTED]

Section 10.9 Upon the execution of this Agreement and every five (5) years thereafter, or as may be mutually agreed upon, the parties hereto shall make a joint field check to verify the accuracy of the joint use records hereunder. If the parties mutually agree to postpone the first joint field check hereunder, the parties shall use their existing records as changed from time-to-time to determine the number of jointly used poles owned by each party until the first joint field check is made hereunder. The said joint inventory shall be a one hundred (100) percent field inventory unless the parties voluntarily and mutually agree to some other method. Upon completion of such inventories the office records will be adjusted accordingly and subsequent billing will be based on the

adjusted number of attachments. The adjustment and the number of attachments shall be deemed to have been made equally over the years elapsed since the preceding inventory. Unless otherwise agreed upon, retroactive billing for the pro-rated adjustment will be added to the normal billing for the year following completion of the field inventory.

Section 10.10 Rental or other charges paid to the Owner by a third party will in no way affect the rental or charges paid between the parties of this Agreement.

Section 10.11 Payment of all other amounts, provision for which is made in this Agreement, shall be made currently or as mutually agreed thereto.

ARTICLE XI

PERIODIC REVISION OF ADJUSTMENT PAYMENT RATE

Section 11.1 Article X of this Agreement covering Rental and Procedures for Payment shall remain in effect for a minimum term on one (1) year. At any time thereafter, the adjustment rate shall be subject to renegotiation at the request of either party.

Section 11.2 In the event the parties cannot, within six (6) months after a request under Section 11.1 is made, agree upon rental payments, this Agreement shall terminate and be of no further force and effect insofar as the making of attachments to additional poles. All other terms and provisions of this Agreement shall remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties herein with respect to existing joint use poles.

ARTICLE XII

Section 12.1 If either party shall default in any of its obligations (other than to meet money payment obligations) under this Agreement, and such default shall continue for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default hereunder, insofar as such rights may relate to the further granting of joint use of poles hereunder shall be suspended; and such suspension shall continue until the cause of such default is rectified by the party in default or until the other party shall waive such default in writing.

Section 12.2 If either party shall default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the total cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days after presentation of bills therefore shall constitute a default under Section 12.3.

Section 12.3 If the default giving rise to a suspension of rights involves the failure to meet a money payment obligation hereunder, and such suspension shall continue for a period of sixty (60) days, then the party not in default may forthwith terminate the rights of the other party to attach to the poles involved in the default.

ARTICLE XIII

LIABILITY AND DAMAGES

Section 13.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this Agreement, including the erection, maintenance, presence, use or removal of attachments, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this Agreement, the liability for such damages, as between the parties hereto, shall be as follows:

13.1.1 Each party shall be liable for all damages for such injuries, to all persons (including employees of either party) or property, caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided for in Article VIII hereof.

13.1.2 Each party shall be liable for all damages for such injuries, to its own employees or its own property, that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.3 Each party shall be liable for one half (1/2) of all damages for such injuries to persons other than employees of either party, and for one half (1/2) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.4 Where, on account of injuries of the character heretofore described in this Article, either party hereto shall make payments to injured employees or to their relatives or representatives in conformity with (a) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding Subsections 13.1.1 and 13.1.2 and shall be paid by the parties hereto accordingly.

13.1.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim, whether or not such liability and expense is due to or caused by, in whole or in part, the negligence of the party to be protected.

13.1.6 In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses, including court costs, attorneys' fees, valid disbursements and other proper charges and expenditures, incurred by the parties in connection therewith.

ARTICLE XIV

ASSIGNMENT OF RIGHTS

AND

EXISTING RIGHTS OF OTHER PARTIES

Section 14.1 Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights of way covered by this Agreement, to any firm, corporation, or individual, without written notification to the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in the case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the leasee, transferee, merging or consolidating company, as the case may be.

Section 14.2 If either of the parties hereto has, as Owner, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be constructed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that for the purposes of this Agreement all attachments of any such third party shall be treated as attachments belonging to the Owner, and except as

modified by Section 14.3, the rights, obligations and liabilities hereunder of said Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

Section 14.3 In the event that attachments to be made by a third party require rearrangements or transfer of the Licensee's attachments to maintain standard space (as defined in Section 1.1.7), and standard clearance (as outlined by the Code), the Licensee shall have the right to collect from said third party all costs to be incurred by the Licensee to make such required rearrangements or transfers prior to doing the work.

Section 14.4 Each Owner reserves the right to use, or permit to be used by other third parties, such attachments on poles owned by it which would not interfere with the rights of the Licensee with respect to use of such poles.

Section 14.5 Third party space requirements must be accommodated without permanent encroachment into the standard space allocation of the Licensee; therefore, neither party hereto shall, as Owner, lease to any third party, space on a joint use pole within the allotted standard space of the Licensee without adequate provision for subsequent use of such standard space by Licensee without cost to the Licensee.

Section 14.6 Where either party allows the use of its poles for fire alarm, police or other like signal system, or where such systems are presently or hereafter permitted by the Owner to occupy its poles, such use shall be permitted under and in accordance with the terms of this Article.

ARTICLE XV

SERVICE OF NOTICES

Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its principal office in Miami, Florida, or to the Telephone Company at its principal office in Tampa, Florida, as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE XVI

TERM OF AGREEMENT

Subject to the provisions of Articles XI and XII herein, the provisions of this Agreement, insofar as the same may relate to the further granting of joint use of poles hereunder, may be terminated by either party, after the first day of January, 1976, upon six (6) months notice in writing to the other party; provided, however, that, if such provisions shall not be so terminated, said Agreement in its entirety shall continue in force thereafter until partially terminated as above provided in this Article by either

party at any time upon six (6) months notice in writing to the other party as aforesaid; and provided, further, that notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce, or insist upon compliance with, any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

EXISTING CONTRACTS

All existing Agreements between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement are, by mutual consent, hereby abrogated and annulled.

ARTICLE XIX

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties of this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed by their respective officers thereunto duly authorized, on the day and year first above written.

WITNESSES:

FLORIDA POWER & LIGHT COMPANY

D. K. Eymann

By Logan Johnson
Senior Vice President

Gene Gause

Attest: Ashted O'Leary
Secretary Seal

WITNESSES:

GENERAL TELEPHONE COMPANY OF FLORIDA

Allen Summons

By J. E. Khan
Vice President

Doris Bazel

Attest: Victor Leavengood
Secretary Seal

"EXHIBIT "A"

PERMIT FOR ATTACHMENT TO
F.P. & L. CO. POLES OF SPECIAL MATERIALS
(INSTALLED AFTER JANUARY 1, 1975)
DATE _____

GENERAL TELEPHONE COMPANY OF FLORIDA desires to attach its facilities to certain Florida Power & Light Company special poles in accordance with the terms of their current Joint Use Agreement. Location of the poles, description of the General Telephone facilities to be attached; and the applicable rental rate (see Exhibit "A", Sheet 2) is given below.

Location

GT Facilities

Rental Rate*

F.P. & L. Co. agrees to the proposed attachments and rates, or has indicated the items it questions.

GENERAL TELEPHONE COMPANY

FLORIDA POWER & LIGHT COMPANY

BY _____

BY _____

TITLE _____

TITLE _____

*Indicate 1 for concrete poles to be billed at current wood pole rate and/or 1/2 for concrete poles to be billed at 1/2 current wood pole rate.

1. Special Poles Billed at Current Wood Pole Rental Cost

- a. Intermediate poles set in an existing joint use wood pole line.
- b. Junction poles where aerial facilities cross an F.P.&L. Co. pole line of special materials.
- c. Poles supporting any or all of the following: Licensee's terminal with riser cable 100 pairs or less in size; aerial drops only to buildings on field side of pole; only one cable of 100 pairs or less from pole to pole. (Between poles a service drop will be considered one cable), an emergency telephone.
- d. Special poles set to replace Licensee's poles in Licensee's pole route.
- e. Poles set before 1975, and specifically excluded by Agreement Section 10.4

2. Special Poles Billed at 1.5 Times Current Wood Pole Rental Cost

All those not conforming to 1. above.

3. Costs for Extra Height and Strength

- a. Strength of poles will be determined considering wind loading to be 50 pounds per square foot on projected areas of all facilities. A safety factor of 1.0 will be used in this determination.
- b. The Licensee will pay F.P.&L. Co. the difference between the installed costs of the taller or stronger poles and the poles originally proposed by F.P.&L. Co.
- c. Should Licensee wish an existing special pole to be replaced, whether or not Licensee's attachments exist on the pole, or the setting of a special pole not required by F.P.&L. Co., Licensee will pay the entire cost required including attachments and transfer costs for F.P.&L. Co. facilities.

4. Costs for Holes in Concrete Poles

Holes for Licensee's attachments may be provided by F.P.&L. Co. at the height specified by Licensee for the following compensation:

- a. Where the Location is specified to F.P.&L. Co. before F.P.&L. Co. orders the poles - - - \$.50 per hole.
- b. Where the hole must be drilled after delivery of the pole - - - F.P.&L. Co. current cost per hole.

Licensee will be permitted to drill its own holes if this is done in a manner acceptable to the F.P.&L. Co. local Division Transmission & Distribution Manager.

EXHIBIT "C"

NOTICE OF ABANDONMENT

, 19__

TO:

Attention:

Title _____

The poles listed below are being abandoned by us but they are still used to support your attachments. Please examine the poles involved and advise if you wish to remove, transfer or inherit under terms of Article IX of the Agreement.

TELEPHONE COMPANY SERVICE AREA _____

POWER COMPANY DISTRICT _____

<u>MAP REF.</u>	<u>POLE NO.</u>	<u>LOCATION</u>	<u>TYPE ATTACH.</u>
-----------------	-----------------	-----------------	---------------------

INVOLVES DEPRECIATED VALUE

Yes _____ No _____

SIGNED _____

TITLE _____

Exhibit 2

PUBLIC VERSION

This SUPPLEMENTAL AGREEMENT, made this 29th day of March, 1978, by and between Florida Power & Light Company, a corporation of the State of Florida, hereinafter called the "Electric Company", and the General Telephone Company of Florida, a corporation of the State of Florida, hereinafter called the "Telephone Company";

WITNESSETH, that,

WHEREAS, the parties hereto made a Joint Use Agreement, dated the 1st day of January, 1975, covering the joint use of certain of their poles located in the State of Florida; and

WHEREAS, the parties hereto now desire to amend said Agreement above referred to, and in the particulars hereinafter set forth:

NOW, THEREFORE, the parties hereto, for and in consideration of the premises and mutual covenants herein contained, do hereby, for themselves, their successors and assigns, covenant and agree as follows:

1. That Section 10.6 which reads as follows: "Adjustment rate to be utilized for normal joint use poles 

is hereby changed to read:


For subsequent calendar years, the adjustment rate for normal joint use poles will be one half of the average annual cost of joint use poles for the next preceding year as determined by the party owning the majority of the jointly used poles.

2. 

3. That, except as herein amended by this Supplemental Agreement, said Agreement dated the 1st day of January, 1975, shall remain in full force according to its terms, and this Supplemental Agreement shall not be deemed to make any change in said Agreement except such changes as are specifically set forth herein.

FLORIDA POWER & LIGHT COMPANY

Witnesses:

D.K. Eymann
Debra J. Demby

By: R.E. [Signature]
~~Group~~ Vice President

Attest: [Signature]
Secretary

seal

GENERAL TELEPHONE COMPANY OF FLORIDA

Witnesses:

By: [Signature]
Vice President Network E&C

Attest: Victor Lavengood
Secretary

seal



Exhibit 3

PUBLIC VERSION

Confidential Exhibit

Exhibit 4

PUBLIC VERSION

Confidential Exhibit

Exhibit 5

PUBLIC VERSION

Confidential Exhibit

Exhibit 6

PUBLIC VERSION

Confidential Exhibit

Exhibit 7

PUBLIC VERSION

Payment Coupon

General Mail Facility
Miami, FL 33188-0001

7610101600000232300000799119683196802087010101

B 01016 0000799119 8 7 01 01 01
Please mail this portion with your check

Cust. No.: 23230	Inv. No.: 799119
This Month's Charges Past Due After 04/02/2009	Amount Due This Invoice 2,086,913.86

Make check payable to FPL in US funds and mail payment to address below.

VERIZON COMMUNICATIONS
RAUL G. RIVERA
1909 US HWY 301N
MC: FLG2-0937
TAMPA FL 33619

FPL
GENERAL MAIL FACILITY
MIAMI FL 33188-0001

Florida Power & Light Company

Federal Tax ID#: 59-0247775

INVOICE

Customer Name and Address

VERIZON COMMUNICATIONS
RAUL G. RIVERA
1909 US HWY 301N
MC: FLG2-0937
TAMPA FL 33619

Customer Number: 23230
Invoice Number: 799119
Invoice Date: 02/26/2009

B 01016 0000799119 8 7 01 01 01
Please Retain This Portion for your Records

CURRENT CHARGES AND CREDITS

Customer No: 23230 Invoice No: 799119

DESCRIPTION	QUANTITY	PRICE	AMOUNT
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO FPL WOOD POLES 2008 POLE ATTACHMENT FEE	64,159	33.81	2,169,215.79
JU-VERIZON ATTACH TO FPL POLES CONC POLES @ WOOD PRICE 2008 POLE ATTACHMENT FEE	1,476	33.81	49,903.56
JU-VERIZON ATTCH FPL SPEC POLE ATTACHED TO SPECIAL POLES 2008 POLE ATTACHMENT FEE	4	50.72	202.88
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO FPL TRANSMISSION POLES 2008 POLE ATTACHMENT FEE	193	135.24	26,101.32
JU-CRE FPL ATTACH TO TEL POLE FPL ATTACHED TO VERIZON POLES 2008 POLE ATTACHMENT FEE	6,857	-33.81	-231,835.17
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO FPL WOOD POLES 2007 POLE ATTACHMENT FEE	475	33.14	15,741.50
JU-CRE FPL ATTACH TO TEL POLE FPL ATTACHED TO VERIZON POLES 2007 POLE ATTACHMENT FEE	37	-33.14	-1,226.18

Florida Power & Light Company
General Mail Facility
Miami, FL 33188-0001

PUBLIC VERSION

Customer No: 23230 Invoice No: 799119

DESCRIPTION	QUANTITY	PRICE	AMOUNT
JU-VERIZON ATTACH TO FPL POLES VERIZON OWES FPL FOR UNPAID POLE 2007 SURVEY TRUE-UP	1	30,167.25	30,167.25
JU-CRE FPL ATTACH TO TEL POLE VERIZON OWES FPL FOR OVERPAYMENT OF POLE ATTACHMENT FEE 2007 SURVEY TRUE-UP	1	28,642.91	28,642.91
<p>INVOICE LINES 1 THROUGH 5 REFLECT THE 2008 ANNUAL JOINT USE BILLING. INVOICE LINES 6 THROUGH 9 REFLECT TRUE-UP ATTACHMENT BILLING ASSOCIATED WITH STORM RESTORATION OF 2004 AND 2005 AND IDENTIFIED BY JOINT VERIZON-FPL TEAM. BILLING FOR POLES IN ACCORDANCE WITH SECTION 4.8 OF OUR JOINT USE AGREEMENT WILL FOLLOW.</p> <p>PAYMENT IS DUE 35 DAYS FROM THE DATE OF THIS INVOICE. LATE PAYMENT IS SUBJECT TO INTEREST OF 8% PER ANNUM.</p>			
<p>For Inquiries Contact: THOMAS J KENNEDY Phone: (954) 321-2241</p>		<p>Total Amount Due \$2,086,913.86</p> <p>This Month's Charges Past Due After 04/02/2009</p>	

Messages

Payment Coupon

PUBLIC VERSION

/610101600000232300000823009929779102036010101

General Mail Facility
Miami, FL. 33188-0001

B 01016 0000823009 3 6 01 01 01
Please mail this portion with your check

Cust. No.: 23230	Inv. No.: 823009
This Month's Charges Past Due After 03/08/2010	Amount Due This Invoice 2,019,779.29

Make check payable to FPL in US funds and mail payment to address below

**VERIZON COMMUNICATIONS
SAM WASMUNDT
1909 US HWY 301 N
MC: FLG2-750
TAMPA FL 33619**

**FPL
GENERAL MAIL FACILITY
MIAMI FL 33188-0001**

**Florida Power & Light Company
INVOICE**

Federal Tax ID#: 59-0247775

Customer Name and Address

**VERIZON COMMUNICATIONS
SAM WASMUNDT
1909 US HWY 301 N
MC: FLG2-750
TAMPA FL 33619**

**Customer Number: 23230
Invoice Number: 823009
Invoice Date: 02/01/2010**

B 01016 0000823009 3 6 01 01 01
Please Retain This Portion for your Records

CURRENT CHARGES AND CREDITS

Customer No: **23230** Invoice No: **823009**

DESCRIPTION	QUANTITY	PRICE	AMOUNT
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO FPL WOOD POLES 2009 POLE ATTACHMENT FEE	63,960	34.13	2,182,954.80
JU-VERIZON ATTACH TO FPL POLES CONCRETE POLES @ WOOD PRICE 2009 POLE ATTACHMENT FEE	1,474	34.13	50,307.62
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO SPECIAL POLES 2009 POLE ATTACHMENT FEE	4	51.20	204.80
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO FPL TRANSMISSION POLES 2009 POLE ATTACHMENT FEE	149	136.52	20,341.48
JU-VERIZON ATTACH TO FPL POLES FPL ATTACHED TO VERIZON POLES 2009 POLE ATTACHMENT FEE	6,857	-34.13	-234,029.41
PAYMENT IS DUE 35 DAYS FROM THE DATE OF THIS INVOICE. LATE PAYMENT IS SUBJECT TO INTEREST OF 6% PER ANNUM.			

Florida Power & Light Company
General Mail Facility
Miami, FL. 33188-0001

Customer No: 23230 Invoice No: 823009

DESCRIPTION	QUANTITY	PRICE	AMOUNT
For Inquiries Contact: THOMAS J KENNEDY Phone: (954) 321-2241	Total Amount Due \$2,019,779.29 This Month's Charges Past Due After 03/08/2010		

Messages

/610101600000232300000846108753399502078010101

General Mail Facility
Miami, FL 33188-0001

B 01016 0000846108 7 8 01 01 01
Please mail this portion with your check

Cust. No.: 23230	Inv. No.: 846108
This Month's Charges Past Due After 03/07/2011	Amount Due This Invoice 2,059,933.57

Make check payable to FPL in US funds and mail payment to address below

VERIZON COMMUNICATIONS
SAM WASMUNDT
1909 US HWY 301 N
MC: FLG2-750
TAMPA FL 33619

FPL
GENERAL MAIL FACILITY
MIAMI FL 33188-0001

Florida Power & Light Company
INVOICE

Federal Tax ID#: 59-0247775

Customer Name and Address

VERIZON COMMUNICATIONS
SAM WASMUNDT
1909 US HWY 301 N
MC: FLG2-750
TAMPA FL 33619

Customer Number: 23230
Invoice Number: 846108
Invoice Date: 01/31/2011

B 01016 0000846108 7 8 01 01 01
Please Retain This Portion for your Records

CURRENT CHARGES AND CREDITS

Customer No: 23230 Invoice No: 846108

DESCRIPTION	QUANTITY	PRICE	AMOUNT
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO FPL WOOD POLES 2010 POLE ATTACHMENT FEE	63,940	34.83	2,226,710.50
JU-VERIZON ATTACH TO FPL POLES CONCRETE POLES @ WOOD PRICE 2010 POLE ATTACHMENT FEE	1,466	34.83	51,053.45
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO SPECIAL POLES 2010 POLE ATTACHMENT FEE	4	52.24	208.95
JU-VERIZON ATTACH TO FPL POLES ATTACHED TO TRANSMISSION POLES 2010 POLE ATTACHMENT FEE	149	139.30	20,755.70
JU-CRE FPL ATTACH TO TEL POLE FPL ON VERIZON POLES 2010 POLE ATTACHMENT FEE	6,857	-34.83	-238,795.03
PAYMENT IS DUE 35 DAYS FROM THE DATE OF THIS INVOICE. LATE PAYMENT IS SUBJECT TO INTEREST OF 6% PER ANNUM.			

Florida Power & Light Company
General Mail Facility
Miami, FL 33188-0001

PUBLIC VERSION

Customer No: 23230 Invoice No: 846108

DESCRIPTION	QUANTITY	PRICE	AMOUNT
For Inquiries Contact: THOMAS J KENNEDY Phone: (954) 321-2241	Total Amount Due \$2,059,933.57 This Month's Charges Past Due After 03/07/2011		

Messages

PAYMENT COUPON
PUBLIC VERSION

/4115006401147100000044180001413400209729370

4,1,1500,640114,7100000044,1800014134,0,0209729370

Please mail this portion with your check

1800014134 1 of 1

Cust. No.:7100000044	Inv. No.:1800014134
This Month's Charges Past Due After	Amount Due This Invoice \$ 2,097,293.70

VERIZON FLORIDA LLC
SAM WASMUNDT
1909 US HWY. 301 N.MC FLG2-750
TAMPA FL 33619

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company

Invoice

Customer Name and Address

VERIZON FLORIDA LLC
SAM WASMUNDT
1909 US HWY. 301 N.MC FLG2-750
TAMPA FL 33619

Federal Tax Id.#: 59-0247775

Customer Number: 7100000044
Invoice Number: 1800014134
Invoice Date: 02/28/2012

4,1,1500,640114,7100000044,1800014134,0,0209729370
Please retain this portion for your records

CURRENT CHARGES AND CREDITS

Customer No: 7100000044 Invoice No: 1800014134

Description	Amount
5. FPL on VZ poles 6,857 @ \$35.465	243,183.51-
1. VZ on FPL Wood pls 63,918 @ \$35.465	2,266,851.87
2. VZ on FPL Conc pls wood price 1,474 @ \$35.465	52,275.41
3. VZ on FPL SPC poles 4 @ \$53.198	212.79
4. VZ on FPL Trans pls 149 @ \$141.86	21,137.14
For Inquiries Contact: Tom Kennedy 954-321-2241	Total Amount Due \$2,097,293.70 This Month's Charges Past Due After



PAYMENT COUPON
PUBLIC VERSION

/4115006401147100000044180003755290238338840

4,1,1500,640114,7100000044,1800037552,9,0238338840

Please mail this portion with your check

1800037552 1 of 2

Cust. No.: 7100000044 Inv. No.: 1800037552	
This Month's Charges	Amount Due
Past Due After	This Invoice
05/15/2013	\$ 2,383,388.40

VERIZON FLORIDA LLC
LARRY R. JOHNSON
1909 US HWY 301 N MC FLG2-0937
TAMPA FL 33619

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company

Invoice

Customer Name and Address

VERIZON FLORIDA LLC
LARRY R. JOHNSON
1909 US HWY 301 N MC FLG2-0937
TAMPA FL 33619

Federal Tax Id.#: 59-0247775

Customer Number: 7100000044

Invoice Number: 1800037552

Invoice Date: 04/15/2013

4,1,1500,640114,7100000044,1800037552,9,0238338840

Please retain this portion for your records

CURRENT CHARGES AND CREDITS

Customer No: 7100000044 Invoice No: 1800037552

Description	Amount
7,010 FPL atts on VZ Wd Poles @ \$36.225 (2012)	253,937.25-
Adjust 2008 FPL atts on VZ Poles per Jt Fld Check*	1,284.78-
Adjust 2009 FPL atts on VZ Poles per Jt Fld Check*	2,628.01-
Adjust 2010 FPL atts on VZ Poles per Jt Fld Check*	4,005.45-
Adjust 2011 FPL atts on VZ Poles per Jt Fld Check*	5,426.91-
65,526 VZ atts on FPL Wd Poles @ \$36.225 (2012)	2,373,679.35
1,473 VZ atts on FPL Con Poles @ \$36.225 (2012)	53,359.43
4 VZ atts on FPL Spc Poles @ \$54,338 (2012)	217.35



PUBLIC VERSION

CURRENT CHARGES AND CREDITS

Customer No: 7100000044 Invoice No: 1800037552

Description	Amount
146 VZ atts on FPL Trans Poles @ \$144.90 (2012)	21,155.40
Adjust 2008 VZ atts on FPL Poles per Jt Fld Check*	13,456.38
Adjust 2009 VZ atts on FPL Poles per Jt Fld Check*	27,133.35
Adjust 2010 VZ atts on FPL Poles per Jt Fld Check*	41,691.51
Adjust 2011 VZ atts on FPL Poles per Jt Fld Check*	56,574.65
Int. charges on Inv # 18000014134 thru 4/16/13**	63,403.38
For Inquiries Contact: Tom Kennedy 954-321-2241	Total Amount Due \$2,383,388.40 This Month's Charges Past Due After 05/15/2013

Message

*Adjustments made pursuant to the Joint Field Check and Section 10.9 of the JUA. **Interest charges on unpaid balance of \$917,986.43. Payment is due within 30 days from the date of this invoice.

PUBLIC VERSION



PAYMENT COUPON

74115006401147100000044180006075190224906647

4,1,1500,640114,7100000044,1800060751,0 0224906647
Please mail this portion with your check

1800060751 1 of 1

Cust. No.:7100000044	Inv. No.:1800060751
This Month's Charges	Amount Due
Past Due After	This Invoice
05/31/2014	\$ 2,249,066.47

VERIZON FLORIDA LLC
RANDY JOHNSON
7701 E. TELECOM PARKWAY
TEMPLE TERRACE FL 33637

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33186-0001

Florida Power & Light Company
Invoice
Customer Name and Address

VERIZON FLORIDA LLC
RANDY JOHNSON
7701 E. TELECOM PARKWAY
TEMPLE TERRACE FL 33637

Federal Tax Id. #: 59-0247775

Customer Number: 7100000044
Invoice Number: 1800060751
Invoice Date: 06/01/2014

4,1,1500,640114,7100000044,1800060751,0,0224906647
Please retain this portion for your records

CURRENT CHARGES AND CREDITS

Customer No: 7100000044 Invoice No: 1800060751

Description	Amount
7,010 FPL atts on VZ Wd Poles @ \$37.155 (2013)	260,456.55-
65,479 VZ atts on FPL Wd Poles @ \$37.155 (2013)	2,432,872.25
1,473 VZ atts on FPL Con Poles @ \$37.155 (2013)	54,729.32
4 VZ atts on FPL Spc Poles @ \$55.733 (2013)	222.93
146 VZ atts on FPL Trans Poles @ \$148.62 (2013)	21,698.62
For Inquiries Contact: Tom Kennedy 954-321-2241	Total Amount Due \$2,249,066.47 This Month's Charges Past Due After 05/31/2014

Exhibit 8

PUBLIC VERSION

T_J_Kennedy@fpl.com

02/08/2008 11:26 AM

Steve R. Lindsay/EMPL/FL/Verizon@VZNotes
To

Wayne E. Sumner/EMPL/FL/Verizon@VZNotes,
Cheryl_S_Burson@fpl.com,
cc Stephen_Norton@fpl.com

Re: Question About Permitting to Attach FPL Poles
Subject

Steve,

I don't think it is necessary for Verizon to go through a permitting process to attach to FPL poles. I think we should continue with our current relationship with some extra caution. That is,

...for new pole construction both companies should speak ahead of time to determine if the other company wants the pole owner to design for joint use. A new joint use pole line will be built to Extreme Wind Loading (EWL) standards using FPL's Design Guidelines as filed with the Florida Public Service Commission.

...for existing FPL poles that Verizon wishes to attach a new attachment to, it is important to first determine if that pole line has been hardened either incrementally or to EWL or if there are plans to do either in the near future. Again it will be necessary for the Verizon Engineer to speak with the FPL engineer to make that determination. The Verizon engineer is then responsible to assure the new attachments meet the minimum design requirements for that pole line, which could be EWL, Incrementally Hardened, or Grade B construction. FPL does not require that Verizon provide us with that information, however FPL reserves the right to review that analysis if an issue arises. Because of our joint use relationship, in most cases FPL would provide make-ready, for a fee, to accommodate the Verizon attachment.

PUBLIC VERSION

...for overlashing Verizon cable to an existing attachment or adding an additional cable to the pole, Verizon should again follow the process directly above to be sure your engineering analysis uses the correct standard for that pole line.

FPL's Design Guidelines provides standards for construction that meet the EWL and Incrementally hardened requirements. Verizon Engineers will have to use the NESC to guide their analysis of Grade B construction as they had "pre-storm-hardening".

<http://www.psc.state.fl.us/library/filings/07/03831-07/03831-07.pdf>

- You will find the new construction pole class guidelines on page 13 (pdf pg 23) Paragraph 5.3
- The design guidelines begin on pdf pg 41.
- The pole sizing guidelines are on pg 5&6 (pdf pg 45) of the design guidelines. Note at the bottom of the page it establishes that anytime there are three primary cables, you should use a class two pole, therefore there is no question as to whether it is a lateral or feeder. The minimum span lengths should be used when installing a new pole line or installing new facilities (increasing the load) on an extreme wind loaded (EWL) line (you'll have to ask FPL if an existing line is EWL).
- There are numerous pictures in this document of feeders and feeder equipment, but a good quick reference to distinguish the differences between a feeder, lateral and service pole can be found on pdf pg 149. Beginning from the left in this picture, the first four poles are feeder poles and have three primary conductors on the pole. (Feeder or Lateral,) These poles would need to be class 2 poles. The fifth through eighth poles are lateral poles with one primary conductor. Whether one or two primary conductors, these poles can be class 3 poles. The last pole is a service (drop) pole. If there were more poles in between (without primary), we would call them secondary poles because there is no primary on the pole. If these poles are serving critical customers they should be Class 4 poles

I think I covered it all, but if you have additional questions, let me know.

Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
ENV/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

Exhibit 9



Mail Code: FLG2 937
1909 US Hwy 301 N
Building D
Tampa, FL 33619
Phone: 813-664-6047
Facsimile: 813-664-6054
steve.lindsay@verizon.com

June 27, 2011

Thomas Kennedy
Principal Regulatory Affairs Analyst
7200 NW 4th ST
Plantation, FL 33317-2211

RE: Renegotiation of the Joint Use Agreement

Dear Mr. Kennedy:

Verizon would like to meet to begin the process of negotiating a new joint use agreement or, in the alternative; a new amendment which would replace the March 29, 1978 amendment to the contract that sets forth the method for computing pole attachment rates.

The amendment was put into place during a time when the only two attachers on a pole were GTE and FP&L. As you know, the joint use of poles has changed dramatically in the last 33 years and we are no longer the only two companies occupying our poles. The 1978 amendment allows FP&L to collect 50% of its annual pole costs from Verizon in addition to 3rd party pole rent from those making attachments in the space paid for by Verizon. This is grossly unfair and unreasonable.

As you know, Verizon does not occupy 50% of the usable space on a typical FP&L pole but closer to 10% on average. Conversely, FP&L occupies 60% to 80% of the usable space on an average FP&L joint use pole. The division of pole costs needs to be adjusted to reflect the current allocation of space.

Verizon currently pays FP&L \$34.13 per pole whereas our competitors such as Comcast pay less than \$10 per pole. Verizon is seeking a rate comparable to that paid by Comcast. Verizon is also willing to lower the pole rates charged to FP&L.

In its recent Pole Attachment Order, the FCC prescribed certain parameters for rates paid by an incumbent LEC attacher such as Verizon. In particular, FCC explained that where incumbent LECs are attaching to other utilities' poles on

PUBLIC VERSION

terms and conditions *comparable* to those that apply to other telecommunications carriers or cable operators, the incumbent LEC should be afforded the same rate as the comparable providers.

In order to evaluate the reasonableness of the rate paid by an incumbent LEC, the FCC noted that incumbent LECs should be provided with copies of the agreements between the electric utility (with appropriate confidentiality and/or redaction) and comparable cable and telecommunications providers. This letter constitutes Verizon's formal request that FP&L provide us with a copy of FP&L's standard license agreement containing information on FP&L's standard rates, terms and conditions for telecommunications providers and cable companies, along with additional information reflective of the extent to which FP&L's standard terms and conditions may vary between FP&L and individual licensees.

Verizon has developed a standard joint use contract that I am willing to send you to start the process of renegotiation if you don't have one available. In the alternative, I can also provide you with a new amendment to the contract that reflects an appropriate sharing of pole cost.

Verizon will also entertain the option of a reciprocal license agreement if FP&L is willing to grant Verizon the same rates afforded to our competitors. We are also willing to negotiate a rate that is somewhere between the lower bound CATV rate and the existing CLEC rate if you would like to maintain the same joint use relationship we've worked under for the last 30+ years.

Verizon looks forward to meeting with you to reach an agreement on a new joint use agreement that is fair and reasonable; please let me know when you are available to discuss our proposal.

Should you have any questions or concerns, please contact me at 813-664-6047.

Sincerely,

Steve Lindsay
Verizon Network Engineering

cc:

W. Balcerski – VZ
J. Slavin – VZ
J. Bachmore – VZ
A. Reilly - VZ

Exhibit 10



Mail Code: FLG2 937
1909 US Hwy 301 N
Building D
Tampa, FL 33619
Phone: 352-503-5017
Facsimile: 813-664-6054
steve.lindsay@verizon.com

December 09, 2011

Mr. Thomas Kennedy
Principal Regulatory Affairs Analyst
Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211

RE: Request for executive meeting and termination notification

Dear Mr. Kennedy:

Since July of this year, Verizon and Florida Power and Light (FP&L) have been meeting in an attempt to reach an agreement on new pole attachment rates. We believe those discussions have reached a point of impasse. Without attempting to summarize all of the communications exchanged between our companies over the past six months, I believe the salient points are as follows:

1. Verizon has supplied you with a proposal for a new joint use agreement for your review which would both modernize our agreement and enable Verizon to pay pole attachment rates that are equivalent to those paid by our competitors. Verizon believes that this rate, which we have calculated in accordance with the revised FCC formula, is \$11.68 per pole. In contrast, FP&L continues to insist that we pay \$34.13 per pole.

2. Verizon has proposed transforming the current joint-use relationship into more of a CLEC-style license arrangement, which would result in Verizon bearing certain additional costs and reduced rights in exchange for the desired rate reductions. Although FP&L provided Verizon with a copy of FP&L's standard pole attachment license agreement, FP&L stated that Verizon is not eligible for that agreement and that FP&L would refuse to offer Verizon an agreement on such terms. Specifically, in sending the agreement to Verizon, FP&L stated "It is important to note that FPL is not offering this agreement to Verizon and would not normally allow a non-applicable agreement to be used in this manner. FPL is providing this agreement to Verizon at their request, such that it is not necessary for Verizon to obtain the agreement through discovery in a complaint proceeding as noted in the FCC 11-50 Order." We see no basis for FP&L rejecting out-of-hand Verizon's request to negotiate changes to our current joint-use license agreement to bring it more in line with existing CLEC-style license agreements that FP&L maintains

PUBLIC VERSION

with Verizon's competitors.

3. Finally, my November 17th letter suggested three different solutions to resolving the impasse on the pole rate issue, including offering to sell all existing Verizon owned jointly used poles to FP&L. The proposal would have enabled FP&L to continue to enjoy joint-use style rights on all poles on which it is attached by virtue of its acquisition of such poles, and would have enabled Verizon to transition to the type of CLEC-style license agreement, and rates, that our competitors currently enjoy. All of these proposals were rejected by FP&L during our December 7th conference call.

In light of this impasse between our respective negotiating teams, Verizon requests that executives from each company meet as soon as possible in person to attempt in good faith to resolve these issues, including reaching agreement on a just and reasonable pole attachment rate for both companies. We therefore invite Florida Power and Light's executive team to attend a meeting on January 16, 2012 from 1 PM to 3 PM in Verizon's Engineering Office – 1909 US HWY 301 N, Building "D". Please let me know if this date works for Florida Power and Light and please provide the name and title of the Florida Power and Light executives and others who will attend this meeting. If you plan on attending with attorneys, please indicate that in your response. The Verizon executives participating in this meeting will have sufficient authority to make binding decisions on behalf of Verizon regarding the subject matter of the discussions, i.e., the rates for pole attachments under either a new joint-use agreement or a new CLEC-style license agreement. We request that Florida Power and Light send executives with equivalent authority to participate in this meeting. If this date does not work for you, please provide alternative dates. We are anxious to resolve this issue as soon as possible and are hopeful that we can meet soon in order to avoid the need to seek FCC intervention.

This letter also serves as formal notice under Article 11 paragraph 11.2 that Verizon hereby terminates the existing joint use agreement. Should FP&L dispute Verizon's right to so terminate the existing joint use agreement, this letter shall also serve as formal notice of termination of the agreement under Article 16. However, we remain willing to enter into a new agreement if the rate issue is resolved.

Should you have any questions or concerns, please contact me at 352-503-5017.

Sincerely,

Steve Lindsay
Staff Consultant
Verizon Network Engineering.

cc: Alan Reilly, Tim Vogel, Jim Slavin, Bill Balcerski, Kati Saunders, Cissy George, Sanford Walker.

Exhibit 11

PUBLIC VERSION



Alpine Communication Corp.

595 N. Nova Rd Ste 208, Ormond Beach, FL 32174 – Ph 386-615-3316 Fax 386-615-3317

FPL
DIRECTORY
And
PERMIT APPLICATION PROCESS MANUAL
For use by
CATV COMPANIES
And NON-LEC TELECOM COMPANIES

MAY 2005

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SECTION I.
FPL DIRECTORY for use by
CATV COMPANIES
And NON-LEC TELECOM COMPANIES

PUBLIC VERSION

FPL DIRECTORY
For use by
CATV COMPANIES
And NON-LEC TELECOM COMPANIES

ACTIVITY/REQUEST

FPL CONTACT/PHONE NUMBER

AGREEMENTS (LEGAL CONTRACTS
BETWEEN YOUR COMPANY AND FPL)

KEN GILBERT
(305) 485-6172, MIAMI
(DSBN REGULATORY STRATEGY)

CABLE LOCATIONS

SUNSHINE STATE ONE CALL
1-800-432-4770

ENGINEERING/CONSTRUCTION
INQUIRIES NOT RELATED TO POLE
ATTACHMENT PERMITS

REGIONAL PHONE CENTERS
(SEE BELOW) WILL REFER YOU
TO APPROPRIATE SERVICE CENTER

METERED ELECTRIC ACCOUNTS
(BILLING INQUIRIES)

REGIONAL PHONE CENTERS
(SEE BELOW)

PERMITS FOR ATTACHMENTS TO
FPL POLES, SYSTEM RE-BUILDS (REFER
TO PERMIT #, IF KNOWN)

ALPINE COMMUNICATION CORP.
(386) 615-3316, FAX: (386) 615-3317,
595 N. NOVA ROAD SUITE 208
ORMOND BEACH, FL 32174
WWW.ALPINECOMCORP.COM

POLE ATTACHMENT SURVEYS
(INCLUDING BACK-BILLING)

KEN GILBERT
(305) 485-6172, MIAMI
(DSBN REGULATORY STRATEGY)

POWER SUPPLY (CALL APPROPRIATE
SERVICE CENTER IF KNOWN, IF NOT,
CALL REGIONAL PHONE CENTER)

REGIONAL PHONE CENTERS
BROWARD COUNTY (954) 797-5000
MIAMI-DADE COUNTY (305) 442-8770
PALM BEACH COUNTY (561) 697-8000
OTHER AREAS IN FLORIDA (800) 226-3545

RATES (ANNUAL UPDATE TO
CATV ATTACHMENT RATE)

JOE ENDER
(305) 552-4071, MIAMI
(RATES)

SEMI-ANNUAL BILLINGS
- INQUIRIES

FRANK VELARDE
(305) 552-4934, MIAMI
(CUSTOMER BILLING & ACCOUNTING)

SEMI-ANNUAL BILLINGS
- COLLECTIONS

PAT JANZEN
(305) 552-2932, MIAMI
(DSBN REGULATORY STRATEGY)

SECTION II.
AGREEMENTS, SAFETY, PLANNING AND
BUDGETING

AGREEMENTS, SAFETY, PLANNING AND BUDGETING

AGREEMENTS

The use of this manual is restricted to CATV companies and (non-LEC) Telecom companies possessing a current signed attachment agreement with FPL.

SAFETY

It is the responsibility of the licensee (CATV or Telecom Company) to ensure that all persons involved with the application for attachment to FPL poles, and all persons involved with the field engineering, design, installation, construction and ongoing maintenance of these attachments, comply with all applicable federal, state and local safety laws and regulations including the Occupational Safety and Health Act, the National Electric Safety Code, any requirements of FPL and any additional safety requirements requested by FPL.

It is also the responsibility of the licensee to warn its employees and contractors of the fact that electrical facilities are of high voltage and to inform these persons as to safety and precautionary measures which he or she must use when working on or near FPL poles and other facilities.

Proper guying of cables, including guy guards must be accomplished by the licensee. No attachment resulting in an unguyed tension of more than 200 lbs. will be permitted.

Cable risers installed on FPL poles must not interfere with climbing space on the pole. This is particularly important on poles in locations inaccessible to bucket trucks.

PLANNING AND BUDGETING

Accuracy is very important in the first step in the process, the preparation of the permit application package, since incomplete or inaccurate applications **WILL BE REJECTED**.

Ample time must be allotted by your company to safely, accurately, and efficiently perform the field engineering necessary to properly prepare your permit application package and to complete the remaining steps in the permit process.

PUBLIC VERSION

To estimate the time required to complete the permit application process, you will need to sum your estimates of the time required to:

- Review the permit manual
- Obtain 11” x 17” FPL primary maps
- Prepare no larger than 11” x 17” CATV company maps
- Gather field notes including existing and proposed clearances both at the pole and at mid-spans between the poles
- Perform wind loading calculations
- Make “Non-Make Ready”/”Make Ready” decisions
- Assemble permit package(s)
- Submit permit package(s)
- Allow time for Alpine Make Ready work order design and FPL construction
- Receive approval; signed Exhibit “A”(s)
- Construct attachments
- Review field attachments for compliance to standards
- Submit Exhibit “B” – Notification of Attachment/Removal

For budget purposes it is important to forecast the number of non-make ready and make ready pole attachments that will be anticipated in the coming year. Costs for permit applications are found in Section III. B. Some representative costs for make ready construction will be furnished by Alpine Communication Corp. at your request.

SECTION III.
PERMIT APPLICATION PROCESS
FOR
FPL DISTRIBUTION POLES

**SECTION III. A.
OVERVIEW OF PROCESS**

**FPL'S CATV / TELECOM POLE ATTACHMENT
PERMIT PROCESS:**

IT'S AS SIMPLE AS 1-2-3-4 !

- 1) APPLY** for permit.
- 2) RECEIVE** approved permit.
- 3) CONSTRUCT/QC** attachments.
- 4) NOTIFY** of construction completion.

PUBLIC VERSION

1) **APPLY** for permit.

- When making new attachments, over lashing to existing attachments or increasing wire diameter, apply for permit for attachments to FPL poles. Apply for a permit for Non-FPL poles that require FPL make-ready.
- Remember that permits are not granted for attachments to poles that are exclusively part of an FPL street lighting system.
- The attachment permit is for CATV cables, wires and supporting hardware only, not for power supplies, amplifiers or similar equipment.
- Create appropriate permit application package(s) and retain appropriate copies for your company:
 - Non-make ready
 - Make ready (requires design, cost approval, invoice, payment, and construction of FPL work order prior to FPL permit approval)
 - Major rebuild or upgrade
- Review permit application package for accuracy and completeness to avoid rejection.
- Submit complete permit package (Permit number must include submittal year).

2) **RECEIVE** approved permit. (Exhibit “A”)

3) **CONSTRUCT/QC** attachments.

- You must have an approved permit. (Exhibit “A”)
- A copy of the approved permit (Exhibit “A” and highlighted CATV and FPL Primary maps) must be available for inspection on the job site during construction of the attachments.
- You must complete construction within 60 days of permit approval (180 days if Major rebuild permit), or permit will automatically expire, and you will need to re-apply.
- Build facilities as designed in approved permit package.
- Conform to FPL requirements (clearances, tagging, bonding, down guys, anchors, guy guards, proper brackets for attachments per reverse side of the Exhibit “A”, no stand off or extension arms, etc.) and NESC standards.
- Upon completion of construction, perform quality control review of facilities for compliance and make adjustments if necessary,

4) NOTIFY of construction completion. (Exhibit “B”)

- Send notice monthly (provided there have been attachments/removals during that month). Remember to include all routine attachments to drop or lift poles.
- Notice (Exhibit “B”) must be sent to permit process contractor (Alpine).
- Notice (Exhibit “B”) must be sent within 30 days after construction of the attachments is complete.

FAILURE TO FILE AN EXHIBIT “B” WILL DELAY THE POST INSPECTION AND RECORDING OF YOUR ATTACHMENTS AND WILL PREJUDICE OTHER ENTITIES DESIRING TO ATTACH TO FPL POLES. FAILURE TO TIMELY FILE AN EXHIBIT “B”, THEREFORE, WILL RESULT IN A REQUIREMENT FOR YOUR PAYMENT FOR A FIELD INSPECTION OF ALL POLES ON THE EXPIRED EXHIBIT “A”, AND MAY RESULT IN TERMINATION OF THE POLE ATTACHMENT AGREEMENT IN WHOLE OR PART. IT MAY ALSO LEAD TO POST AUDIT BACKBILLINGS AND ADMINISTRATIVE FEES. THE LICENSEE APPLICANT AND COMPANY MANAGEMENT WILL BE NOTIFIED IN WRITING OF ANY FAILURE TO COMPLY.

**SECTION III. B.
PERMIT PROCESSING FEES**



Alpine Communication Corp.

595 N. Nova Rd Ste 208, Ormond Beach, FL 32174 - Ph 386-615-3316 Fax 386-615-3317

PERMIT PROCESSING FEES

(60 day permit life applies to all unless otherwise noted)

Non-Make Ready Application (New and Existing Attachments)

\$7.95 per pole – administrative fee

Make Ready Application (New and Existing Attachments) (For those poles requiring FPL Make Ready)

\$7.95 per pole – administrative fee

\$108.00 per pole – engineering fee

Major Rebuild Application - Existing Non-Make Ready Attachments Only

\$7.95 per pole – applications with 300 or more poles (180 day permit life)

Expired Exhibit “A” Inspection Fee (For failure to timely file Exhibit “B” only)

\$9.95 per pole

Non-Standard Attachment (Billed following Post-Inspection of Exhibit “B”)

\$24.95 per pole – For poles not in compliance with NESC/FPL standards

Re-Inspection of Non-Standard Attachments (Upon notification of correction)

\$9.95 per pole

Returned Application (\$10.00 min) (Application does not meet minimum standards for processing)

\$3.95 per pole

Permit Duplication Fees

For Hardcopies

\$30.00 per hour - \$20.00 min

\$.15 per copy up to 11” x 17”

plus shipping

For Electronic Copies (E-mail .pdf)

\$9.95 up to 50 pages

\$5.00 for each additional 50 page increment

SECTION III. C. APPLY FOR PERMIT

- When making new attachments, over lashing to existing attachments or increasing wire diameter, apply for permit for attachments to FPL poles. Apply for a permit for Non-FPL poles that require FPL make-ready.
- Remember that permits are not granted for attachments to poles that are exclusively part of an FPL street lighting system.
- Remember that in order to construct your attachments, you must also secure any necessary permit, consent, or certification from state, county or municipal authorities or from owners of property.
- The attachment permit is for CATV cables, wires and supporting hardware only, not for power supplies, amplifiers or similar equipment.
- Create appropriate permit application package(s) and retain appropriate copies for your company.
 - Non-make ready
 - Make ready (requires design, cost approval, invoice, payment, and construction of FPL work order prior to FPL approval)
 - Major rebuild or upgrade
- Review permit application package for accuracy and completeness to avoid rejection.
- Check list of common reasons for permit application package rejection:
 1. Omission of check payable to Alpine Communication Corp. for the processing fee, with transmittal identifying permit number.
 2. Packages not submitted in duplicate.
 3. Exhibit "A" incomplete or missing.
 4. Pole & Midspan Measurement Worksheet incomplete or missing.
 5. Make Ready photos per page 51 not included.
 6. Wind load documentation incomplete or missing.
 7. No larger than 11" x 17" Licensee maps with route highlighted, affected pole(s) numbered in sequence, and with span footages shown, incomplete or missing.
 8. Marked (highlighted route) 11" x 17" FPL primary maps incomplete or missing.
 9. Permit number not included on all documents.
 10. Submittal year not included in permit number.
- Submit complete package to permit process contractor (Alpine). (Permit number must include submittal year).

SECTION III. C. 1. POLE IDENTIFICATION

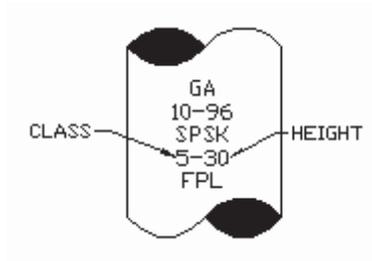
How do you identify an FPL owned distribution pole?

A pole having a FPL TLN tag does not indicate FPL ownership. This tag may be on any pole to which FPL is attached (i.e. Bellsouth, DOT, and Verizon poles)

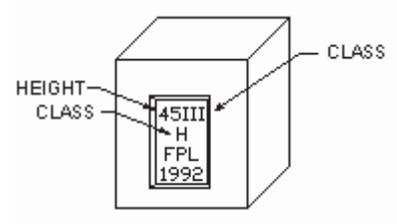
Most FPL wood poles have a pitched rooftop (double slant).



FPL owned poles have brands placed approximately eight feet above grade on wood poles. Included in the pole brand will be the letters “FPL”. Other pole owner’s brands on wood poles can be found three to four feet above grade.



FPL owned concrete poles have a brand that includes the letters “FPL”. Other concrete poles could be municipal or Department of Transportation-owned.



Other wood pole owners have a flat or slant cut top.



Various other pole owners have their own method to indicate pole ownership. The licensee should familiarize themselves with these identification methods in their areas.

Wood Pole Setting Depth and Size

Normal Setting Depth	Size	Approx. Circumference (inches) of FPL wood poles at 5 Ft. above grade					
		Class					
		1	2	3	4	5	6
5'-6"	30	34.5	32.1	30.1	27.7	25.7	23.3
6'	35	36.9	34.5	32.1	29.7	27.3	25.3
6'-6"	40	38.9	36.5	34.1	31.7	29.2	26.8
7'	45	40.9	38.5	35.6	33.2	30.8	28.3
7'	50	42.5	39.7				
7'-6"	55	43.7	40.9				
8'	60	45.3	42.4				
8'-6"	65	46.4	43.6				
9'	70	48.0	45.1				
9'-6"	75	49.2	45.9				
10'	80	50.4	47.5				
10'-6"	85	51.5	48.1				

**SECTION III. C. 2.
REQUIRED FIELD FORMS
AND ABBREVIATIONS**

In order to determine if there is space on the pole for the licensee attachment, and to have the information needed to perform wind load calculations, **a complete “Pole and Mid-Span Measurement” form is required for each pole listed in the licensee permit application.** The form and instructions follow.

In order to report installations of new attachments to drop poles, a form “Drop Pole Worksheet” and instructions are also included.

POLE & MIDSPAN MEASUREMENT WORKSHEET

PUBLIC VERSION

1 MAKE READY REQ'D? <input type="checkbox"/>	4 GUYING REQUIRED? <input type="checkbox"/>	5 FPL SIDE GUY? <input type="checkbox"/>	RWA DW RD RW 6 CN RR			
2 2 LANE <input type="checkbox"/> 4 LANE <input type="checkbox"/> ROAD	MS DIR 9	QTY	SIZE	NPS	ATT HEIGHT	MS HEIGHT
3 NOT ACCESSIBLE TO FPL VEHICLES <input type="checkbox"/>		10	11	12	13	14
POLE SPAN LENGTH						
PREVIOUS 7	NEXT 8					
PRI 15						
VERTICAL	MODIFIED VERTICAL	TRIANGULAR	MODIFIED TRIANGULAR	CROSSARM		
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG | 17					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | 16 SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
NEU | SEC | SCBL | QPX | TPX | DPX | SA | SDL | CAP | TX | REC | SG	PR | CSR | SR | SL | SLDL | TS | CATV | TELC | TEL | DP | REG					
OWNER 18	TYPE 19	HT-CL 20	TLN 21			
POLE# 22	CATV MAP# 23	FPL MAP# 24				
ADDRESS 25	PERMIT# 26	29				
INSPECTED BY 27	DATE 28	JUNCTION POLE SEE ADD'L SHEET <input type="checkbox"/>				

COMMENTS / MAKE READY REQUESTED **30**

Instructions for Pole & Midspan Measurement Worksheet

- 1) Check this box if Make ready is required
- 2) If pole requires make ready, check this box to indicate whether the road is 2 or 4 lanes
- 3) If pole requires make ready, check this box when FPL's trucks don't have proper room to perform the make ready without blocking traffic lanes
- 4) Check this box if guying is required
- 5) Check this box if the pole has an FPL side guy perpendicular to the proposed cable route
- 6) Please circle the proper location of mid-span (i.e. Road, Driveway...)
- 7) Fill in the span length to the previous pole
- 8) Fill in the span length to the next pole
- 9) Circle direction from the pole that the mid-span will be measured
- 10) Number of primary wires attached at the same height
- 11) Size of the attached cable (i.e. 1/0, .625 or 1/2") or transformer/capacitor/FPL riser.
- 12) Check this column if attachment doesn't span back to the previous pole
- 13) Height of the attachments on the pole (i.e. 25'6")
- 14) Mid-span height of the attachments (i.e. 22'9"), and height of the top TX bolt and the bottom arrester L bracket bolt
- 15) Mark how the primary is framed on the pole
- 16) Mark proper description of attachment being measured, and measure all attachments from top to bottom in descending order of height
- 17) Use this spot to record a "P" if this is a proposed attachment
- 18) Use to classify ownership of the pole (i.e. FPL, BST, VER, etc.)
- 19) Type of pole; wood or concrete
- 20) Indicate height and class of pole (i.e. 45-3, 45IIH etc.)
- 21) The number that FPL has assigned to that pole location (i.e. 5-4475-6756-0-2)
- 22) The licensee must assign a consecutive number to each pole affected by the proposed construction
- 23) The licensee map number for this pole location
- 24) Please enter FPL primary map number for this pole location
- 25) Street address of pole location if available
- 26) Permit number assigned for this pole application (i.e. 72-05-001)
- 27) Fill in name of field representative making notes
- 28) Date pole is surveyed
- 29) Check this box if FPL's distribution lines run perpendicular to proposed cable route, also mark in the comments that this is page 1 of 2
- 30) Please make comments or make ready requests that apply to this pole

PUBLIC VERSION
ABBREVIATIONS FOR USE WITH FPL PERMIT PACKAGES

ABR..	ATTACHMENT	COMMENTS / DESCRIPTION				MINIMUM	
						CLR	MS
PRI	PRIMARY	HIGH VOLTAGE CONDUCTORS NEAR THE TOP OF THE POLE				**	**
PRG	PRIMARY RISER	MEASURE TO WHERE THE GROUND SPLITS FROM THE CABLE				40"	N/A
PR	PRIMARY RISER	TO THE TOP OF THE CONDUIT				3"	N/A
NEU	NEUTRAL	BARE CONDUCTOR BONDED TO THE VERTICAL GROUND				40" *	30"
SEC	SECONDARY	OPEN WIRE CONDUCTORS				40"	30"
SCBL	CABLED SECONDARY	LASHED, 2 COATED, 1 BARE MESSENGER				40"	30"
QPX	QUADRAPLEX	TWISTED CONDUCTOR, 1 BARE, 3 COATED, FOR COMMERCIAL				40"	30"
TPX	TRIPLEX	TWISTED CONDUCTOR, 1 BARE, 2 COATED, FOR HOMES				40"	30"
DPX	DUPLEX	TWISTED CONDUCTOR, 1 BARE, 1 COATED, FOR STREET LIGHTS				40"	30"
SA	SERVICE ATTACHMENT	ATTACHMENT POINT FOR QPX, TPX, OR DPX				40"	N/A
SDL	SVC DRIP LOOP	MEASURE TO THE LOWEST POINT OF THE CABLE				40"	N/A
SR	SERVICE RISER	MEASURE TO THE TOP OF THE SVC RISER, U-GUARD, OR PIPE				40"	N/A
CSR	CUST. OWNED SVC RISER	ANY SERVICE RISER THAT HAS A WEATHER HEAD				40"	N/A
REG	REGULATOR	MEASURE TO THE BOTTOM OF THE REGULATOR				30"	N/A
REC	RECLOSER	MEASURE TO THE BOTTOM OF THE RECLOSER				30"	N/A
CAP	CAPACITOR	MEASURE TO THE BOTTOM OF THE CAPACITOR				30"	N/A
TX	TRANSFORMER	MEASURE TO THE BOTTOM OF THE TRANSFORMER				30"	N/A
SLDL	STREET LIGHT DRIP LOOP	MEASURE TO THE LOWEST POINT OF THE CABLE				12"	N/A
SL	STREET LIGHT	MEASURE TO THE LOWEST PART OF THE BRACKET				4"	N/A
TS	TRAFFIC SIGNAL	CABLE OFTEN ATTACHED WITH A SINGLE BOLT & "J" BRACKET				12"	12"
TELC	TELECOMMUNICATIONS	KMC, MFS, ETC...				12"	12"
CATV	CABLE TV CABLE	TIME WARNER CABLE, COMCAST, ETC...				12"	12"
TEL	TELEPHONE	BELL SOUTH, VERIZON, ETC...				12"	12"
OHGW	OVERHEAD GROUND WIRE	JOINT USE IS AVOIDED				**	**
DP	DROP	TELEPHONE OR CATV SERVICE DROP					
RWA	RIGHT OF WAY ACCESSIBLE	RIGHT OF WAY MAY BE ACCESSIBLE TO VEHICLES					
RWI	RIGHT OF WAY INACCESSIBLE	RIGHT OF WAY IS NOT ACCESSIBLE TO VEHICLES					
DW	DRIVEWAY	RD	ROAD	CN	CANAL		
RR	RAILROAD	MS	MIDSPAN	ANC	ANCHOR		
SG	SPAN GUY	DG	DOWN GUY	GG	GUY GUARD		
CLR	CLEARANCE	P	PROPOSED	MR	MAKE READY		
TXB	TRANSFORMER TOP BOLT	REGB	REGULATOR TOP BOLT	RECB	RECLOSER TOP BOLT		
CAPB	CAPACITOR TOP BOLT	LB	L BRACKET BOTTOM BOLT	PHB	POT HEAD BRACKET BOLT		

* WHERE NO SECONDARY IS PLANNED BY FPL, 30" MINIMUM CLEARANCE IS PERMISSIBLE IF COMMUNICATION IS BONDED TO FPL'S GROUNDING SYSTEM

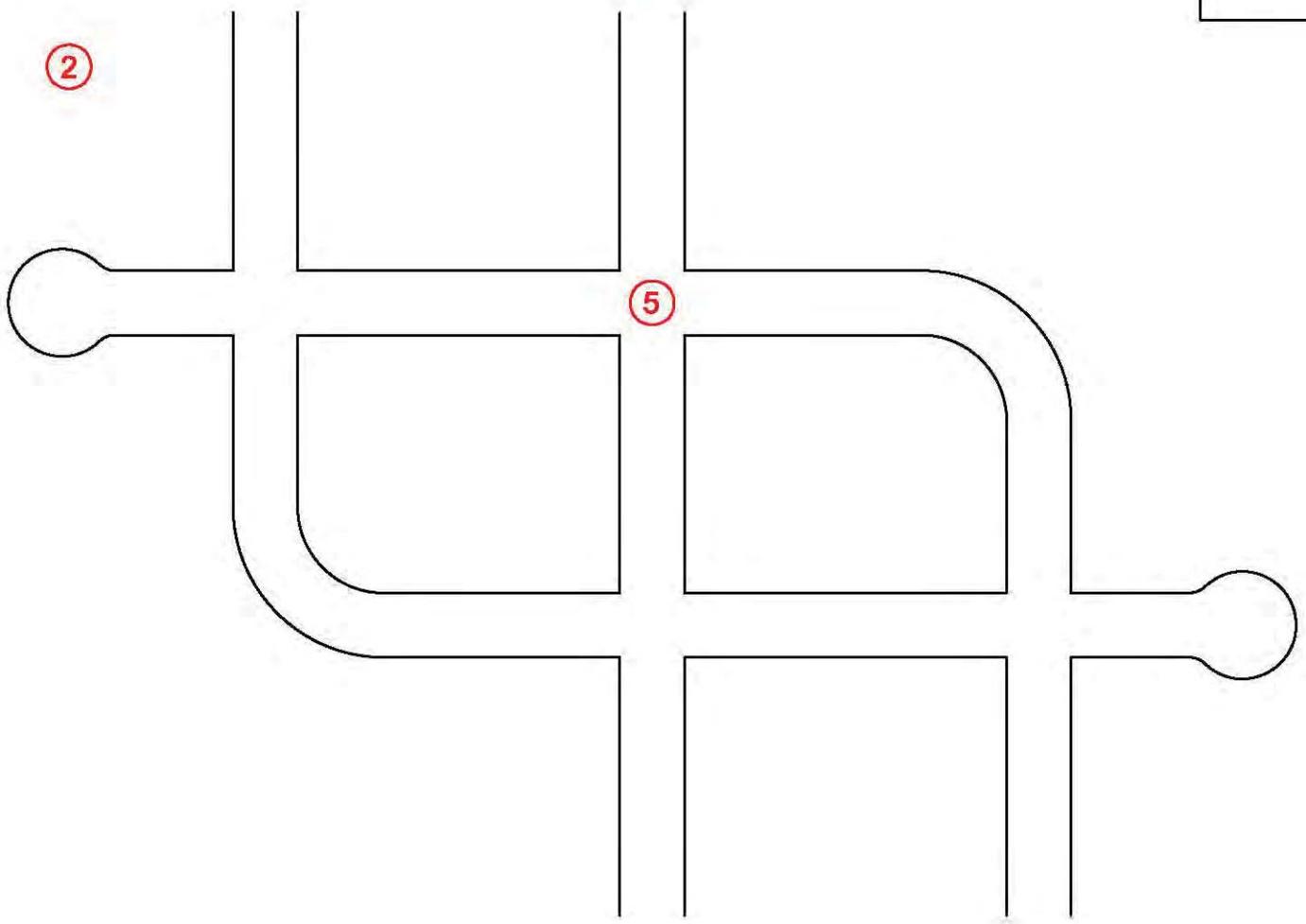
** SEE MANUAL

FPL DROP POLE WORKSHEET

PUBLIC VERSION

PLEASE SHOW DROP POLE(S) AND ASSOCIATED LINE POLE(S) **FPL POLES ONLY**
 PLEASE LABEL ALL INTERSECTING STREETS

INDICATE NORTH



CLEARANCE CHECKLIST (CHECK IF OK OR REFER TO SUPERVISOR)	DROP POLE #				
	1	2	3	4	
40" BELOW FPL SERVICE DROP?					(6)
AND/OR FPL SERVICE RISER?		(7)			STREET ADDRESS
12" BELOW ST. LT. DRIP LOOP?					CITY, STATE, ZIP
4" BELOW ST. LT. BRACKET?					
OWNER (8)	TYPE (9)	HT-CL (10)	POLE#(S) (12)	CATV MAP# (13)	
NEAREST TLN TO DROP POLE (11)			FPL MAP# (14)		
PREPARED BY (15)		DATE (16)	PERMIT# (17)		

COMMENTS _____ (18)

Instructions for Drop Pole Worksheet

(All Drop Pole Worksheets Must Accompany A Pole & Midspan Measurement Worksheet)

- 1) Show which direct north is by putting an N in the correct location
- 2) Show location of the house on example streets
- 3) Show location of FPL distribution poles using an X
- 4) Show location of the drop pole with an X. Draw a line to show drop from origin pole to drop pole.
- 5) Write in the name of all surrounding streets
- 6) Write in the complete street address
- 7) Check the appropriate box for each pole to verify that proper clearances exist. Place dashes in unused columns
- 8) Use to classify ownership of the pole (i.e. FPL, BST, VER, etc.)
- 9) Type of pole; wood or concrete
- 10) Indicate height and class of pole (i.e. 45-3, 45IIIIH etc.)
- 11) The number that FPL has assigned to that pole location (i.e. 5-4475-6756-0-2)
- 12) The licensee must assign a consecutive number to each pole affected by the proposed construction
- 13) The licensee map number for this pole location
- 14) Please enter FPL primary map number for this pole location
- 15) Fill in name of field representative making notes
- 16) Date pole is surveyed
- 17) Permit number assigned for this pole application (i.e. 72-05-001)
- 18) Please make comments or make ready request that apply to this pole

Minimum Primary Conductor Heights for Various Pole Sizes and Framing

Height	Vertical			Modified Vertical			Triangular		Modified Triangular		Crossarm
30	23.08	21.08	19.08	25.5	23.08	21.08	25.5	23.08	23.08	21.08	25.17
35	27.58	25.58	23.58	30	27.58	25.58	30	27.58	27.58	25.58	29.67
40	32.08	30.08	28.08	34.5	32.08	30.08	34.5	32.08	32.08	30.08	34.17
45	36.58	34.58	32.58	39	36.58	34.58	39	36.58	36.58	34.58	38.67
50	41.58	39.58	37.58	44	41.58	39.58	44	41.58	41.58	39.58	43.67
55	46.08	44.08	42.08	48.5	46.08	44.08	48.5	46.08	46.08	44.08	48.17
60	50.58	48.58	46.58	53	50.58	48.58	53	50.58	50.58	48.58	52.67
65	55.08	53.08	51.08	57.5	55.08	53.08	57.5	55.08	55.08	53.08	57.17
70	59.58	57.58	55.58	62	59.58	57.58	62	59.58	59.58	57.58	61.67
75	64.08	62.08	60.08	66.5	64.08	62.08	66.5	64.08	64.08	62.08	66.17
80	68.58	66.58	64.58	71	68.58	66.58	71	68.58	68.58	66.58	70.67
85	73.08	71.08	69.08	75.5	73.08	71.08	75.5	73.08	73.08	71.08	75.17

All attachment heights are in feet.

The above table is for wind loading use only. Poles requiring Make-Ready will require accurate measurements of primaries.

Wind load factor for common Telephone, CATV and Telecom cable bundle diameters

Bundle Size (inches)	Wind Load Factor
0.25	0.1875
0.5	0.375
0.75	0.5625
1.0	0.75
1.5	1.125
2.0	1.5
2.5	1.875
3.0	2.25

**SECTION III. C. 3.
CLEARANCES**

Included in this section are:

- 1) A drawing and table of clearances entitled "Clearances of Foreign Communication Cables to FPL & Other Foreign Utilities"
- 2) A table entitled "Abbreviations For Use With FPL Permit Packages"

It is the responsibility of the Licensee to ensure that attachments are designed and constructed in accordance with the National Electric Safety Code and these guidelines, and to secure any necessary permit, consent or certification from state, county or municipal authorities or from the owners of the property to construct and maintain attachments to FPL poles.