

# EXHIBIT D



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June 17, 2015

VIA U.S. MAIL AND E-MAIL

Christopher S. Huther, Esq.  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006  
Email: [chuther@wileyrein.com](mailto:chuther@wileyrein.com)

RE: *Verizon Florida, L.L.C. v. Florida Power and Light Company*; FCC Docket No. 15-73; File No. EB-15-MD-002

Dear Mr. Huther:

We have fully reviewed Verizon Florida, L.L.C.'s ("Verizon" or "Complainant") responses to Florida Power and Light Company's ("FPL" or "Respondent") discovery requests in the above-captioned proceeding. As previously discussed in our teleconferences and as explained more fully below, the responses are deficient in several respects. Although we have discussed FPL's position on these matters with you twice before verbally, Verizon has not provided the necessary responses and therefore this letter will serve to set forth in writing FPL's position on the parties' discovery differences.

As detailed more fully below, the discovery requests to which Verizon has failed to provide a substantive response seek information directly related to the benefits that Verizon enjoys under to the parties' joint use agreement. In its order dismissing Verizon's previous complaint against FPL, the Federal Communications Commission's Enforcement Bureau ("Bureau") specifically identified these benefits as a significant issue with respect to the parties' dispute. *In the Matter of Verizon Florida LLC*, Memorandum Opinion and Order, 30 F.C.C. Rcd. 1140, ¶ 24 (2015). The Commission also concluded that Verizon is not similarly situated to a CLEC. *Id.*, ¶ 24, n.83. Moreover, Verizon itself has repeatedly asserted in its pending Complaint that it receives no material benefit from its attachments to FPL's facilities, because it has overpaid for the advantages that it has received under the parties' agreement. *See e.g.*, Complaint ¶¶ 34 & 40.

Each of FPL's discovery requests at issue goes directly to whether Verizon has received a calculable financial and/or operational benefit from privileges under the joint use agreement. Verizon's refusal to honor its discovery obligations will materially hinder FPL from responding to assertions that Verizon chose to place into issue in this matter. The requested information is important to the ability of FPL's expert witness to prepare a valuation of the benefits at issue in this litigation based on data available solely to Verizon. Verizon's continued refusal to provide

the requested information will mean that FPL's witness must prepare his valuations without data from Verizon and may also prevent FPL from developing key points for its own case in this proceeding. FPL therefore requests that for the foregoing reasons and as stated more fully below, Verizon provide responses to the specified discovery requests and this correspondence by the close of business on June 19, 2015.

### INTERROGATORIES

Following are the interrogatories at issue, Verizon's objections and Verizon's responses (if any).

#### **Interrogatory No. 6:**

For each of the preceding ten years, please identify the average incremental borrowing rate for Verizon.

#### **Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks confidential information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

#### **Interrogatory No. 7:**

Please state whether Verizon has ever been required to obtain a performance bond or letter of credit in connection with attaching to a utility pole, and if so, please identify the terms and rates at which it was charged for each of the performance bonds and/or letters of credit that it purchased.

#### **Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks confidential information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

#### **Interrogatory No. 8:**

Provide a detailed inventory of Verizon's current fleet of vehicles and equipment used to maintain, access and install its attachments to FPL poles. For purposes of this interrogatory, please describe the size and type of each vehicle / equipment; identify the most recent purchase price for each vehicle / equipment and the number of such vehicles/equipment used by Verizon; identify the annual operations and maintenance cost

for each; and identify the expected life for each vehicle / equipment. See example table below. Use as many rows as necessary to capture all of Verizon's inventory.

Vehicle / Equipment Type	Vehicle / Equipment Size	Most Recent Purchase Price	Annual O&M Expense	Expected Life

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks confidential information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it does not maintain its records or equipment in a manner that allows Verizon to isolate information about the broad category of "vehicles and equipment" requested. Verizon further states that, in addition to its own vehicles and equipment, Verizon relies on the vehicles and equipment of its contractors in the course of maintaining, accessing, and installing attachments to FPL's poles.

Initially, Verizon objected to interrogatories 6, 7 and 8 as vague, overly broad or unduly burdensome, or a combination thereof, without giving any explanation as to the extent of the objections. Moreover, Verizon fails to provide any definition of the terms "vague," "overly broad" and "unduly burdensome" and fails to even attempt to explain how these boilerplate objections would apply to the specific information sought by the discovery requests in question. Accordingly, based on past Commission precedent, these objections have been waived for the purposes of any discovery dispute which may arise as a result of Verizon's failure to remedy the deficiencies outlined in this letter. See *In the Matter of William F. Crowell Application to Renew License for Amateur Radio Serv. Station W6WBJ*, Memorandum Opinion and Order, WT Docket No. 08-20, File No. 0029286842010, WL 10128888, at \*5 (2010)(noting that objections to interrogatories must be specific and rejecting the type of generic and meaningless objections that Verizon has put forth here). In addition, to the extent Verizon claims that it cannot respond to an interrogatory on behalf of all Verizon operating affiliates nationwide, it may be appropriate and acceptable for Verizon to limit its response to Verizon Florida, LLC. Unless, of course, Verizon Florida, LLC has custody, control or possession of discoverable information even though it must be accessed through an affiliate.

With regard to Verizon's further objections as to relevancy and confidentiality, as I noted previously, the information sought by Interrogatory No. 6 relates to FPL's assertion that Verizon's reduced pole ownership infrastructure costs due to the joint use agreement contribute in part to beneficial borrowing rates on Verizon's part. Such information will assist FPL's expert witness with his testimony as to financial benefits received by Verizon. As such, the information Interrogatory No. 6 seeks is indisputably discoverable. The same is equally true regarding Interrogatory No. 7. Your statement that Verizon will refuse to produce the information because FPL refused to produce similar information in the parties' state court proceeding has no bearing or merit at all with regard to *this proceeding before the Federal Communications Commission ("FCC")*.

With respect to confidentiality, Verizon has already produced information that it asserts to be confidential to FPL pursuant to a confidentiality agreement, and Verizon's objections to the above interrogatories fail to make any distinction between the confidential information sought by these requests and the confidential information produced thus far. Thus, Verizon's objections provide absolutely no basis for the withholding of any information or document and production should be made pursuant to the confidentiality agreement.

With regard to Interrogatory No. 8, Verizon's response is non-responsive and facially implausible. It is no secret that Verizon's right to attach under the joint use agreement on the lowest possible point on the pole either greatly reduces or eliminates Verizon's need for bucket trucks, at least certainly its need for bucket trucks capable of reaching higher on a pole than the lowest attachment. This benefit reduces Verizon's capital costs or reduces the costs charged by Verizon's contractors. The information sought and in Verizon's custody, control or possession, whether related solely to FPL's service territory or beyond, must be produced. It bears directly on the costs savings Verizon enjoys under the joint use agreement.

### REQUESTS FOR PRODUCTION

Following are the requests for production at issue, Verizon's objections and Verizon's responses (if any).

#### **Request No. 37:**

Provide copies of any memoranda, reports, notes, business plans, or other documents that relate to whether Verizon choses or chose to set new poles or just attach to FPL poles.

#### **Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 38, 39, 40, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and

unduly burdensome. Verizon further objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 38:**

Provide copies of any and all Verizon strategic planning documents relating to the planning, budgeting, construction, and utilization of poles and pole networks, and pole network costs during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 39, 40, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 39:**

Provide copies of all Verizon capital planning and budgeting documentation, including information relating to the use of corporate resources for poles and pole network construction, and period costs for access to poles and pole networks during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 40, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 40:**

Provide copies of all Verizon budgeting, cost analyses, and opportunity cost analyses of poles and pole networks owned and accessed through joint use agreements or third party attachments during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 41:**

Provide copies of documents concerning or relating to Verizon's analyses of budgeting and the use of corporate resources concerning poles and pole networks owned and accessed through joint use agreements or third party attachments, alternatives for those corporate resources, opportunity costs associated with those resources during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 40, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 42:**

Provide copies of documents concerning or relating to Verizon's analyses of the cost and use of poles and pole networks owned and accessed through joint use agreements or third party attachments during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 40, 41, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 43:**

Provide copies of documents concerning or relating to Verizon's cost of service analyses that reflect the cost of distribution networks including poles and pole networks, whether owned, subject to joint use agreements, and leased attachments during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 40, 41, and 42 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 44:**

Provide copies of all documents of Verizon that relate to or concern Verizon's average incremental borrowing rate over the past five years.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 45 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 45:**

Provide copies of all documents of Verizon that relate to or concern its capital annual budgeting structure including information relating to cash management and borrowing needs.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 44 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and

privileged documents that are not relevant to the material facts in dispute in this proceeding.

Similar to the objections that it raised with respect to FPL's Interrogatories, Verizon objected to FPL's Requests for Production of Documents Nos. 37-45 as vague, overly broad, unduly burdensome or irrelevant, or a combination thereof, without giving any further explanation as to the extent of or justifications for these objections. For the reasons articulated above, these boilerplate objections do not provide sufficient grounds for Verizon's current refusal to provide substantive responses. Again, Verizon Florida, LLC should produce discoverable information subject to its custody, control or possession, even if the information is accessible through an affiliate.

With respect specifically to Verizon's objections as to relevancy, these requests again seek information that is central to FPL's case. For some, all or even the most recent period of the parties' relationship, Verizon has made a business decision that it is in Verizon's best interests to lease space on FPL's poles rather than own poles. Verizon therefore must produce any documents related to that decision. The information sought by FPL will demonstrate the financial benefits that Verizon has received as result of its access to FPL's infrastructure rather than incurring expense required to build and maintain in its own facilities. In addition, as with the interrogatories and indeed all of the requests at issue here, the requested information will FPL's expert witness to prepare his valuations so as to include data which is exclusively in Verizon's possession.

With respect to Verizon's objections as to privilege and confidentiality, as noted above, Verizon has provided no distinction between the confidential information it has already disclosed and the confidential information it refuses to disclose. Finally, with respect to Verizon's objections as to duplicative requests, given that Verizon did not provide a response to any of the requests that it maintains are duplicative, such an objection is specious at best and does not provide any additional support for its failure to adequately participate in the discovery process thus far.

At a minimum, for each objection on the grounds that a request is vague, Verizon should have explained what aspect of the request is "confusing" and/or identify the particular words that Verizon asserts are not adequately defined. For each objection on the grounds that a request is overly broad, Verizon should have identified the specific categories of documents it believes are responsive but outside of the scope of discovery. For each objection on the grounds that a request is unduly burdensome, Verizon should have identified the specific categories of documents it believes are responsive but unduly burdensome to produce and explain why and to what extent their production would be costly and/or time-consuming. For each objection on the grounds that a request is "irrelevant," Verizon should have identified the specific categories of documents it believes are responsive but not relevant to the subject matter of this action. For each objection on the grounds that a request seeks "privileged" or "confidential" documentation, Verizon should produce a log listing each document or category of document that Verizon seeks to withhold and the basis for each claim of privilege or confidentiality asserted.

As I indicated during our previous phone call, to the extent that any discovery request is unclear, which we do not believe they are, FPL would be willing to accept responses which expressly note any reasonable assumptions that Verizon deems necessary in providing a response to a particular discovery request. Moreover, as I have noted in the past, the general instructions to FPL's data requests limit them to "the period commencing five years prior to termination of the Joint Use Agreement between FPL and Verizon through the present." However, FPL would be willing to further discuss any reasonable temporal, geographic, or other limitation that Verizon believes would assist its responses to the above requests.

As a final note, as you know the FCC is not a forum that draws fine lines in discovery disputes; rather, as a federal agency tasked with making fully informed decisions in the best interests of the public, its mandate and preference is to decide matters based on a full and complete record. Verizon's refusal to provide the requested information will frustrate the agency's purposes. Therefore, please provide responses to the specified discovery requests and this correspondence by the close of business on June 19, 2015. If Verizon has not provided a resolution and/or satisfactory responses by then, FPL reserves the right to take any necessary action.

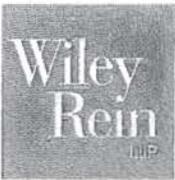
Sincerely,



Charles A. Ziebski

cc: Maria J. Moncada, Esq.  
Alvin B. Davis, Esq.  
Robert J. Gastner, Esq.

# **EXHIBIT E**



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June 19, 2015

VIA EMAIL

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Washington, DC 20006

Christopher S. Huther  
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Re: *Verizon Florida LLC v. Florida Power and Light Company*,  
FCC Docket No. 15-73, File No. EB-15-MD-002,  
Related to FCC Docket No. 14-216, File No. EB-14-MD-003

Dear Mr. Zdebski:

I am in receipt of your letter dated June 17, which covers topics that we discussed in two lengthy telephone calls on May 6 and May 18. At that time, I explained in detail the reasons for Verizon's objections to FPL's interrogatories and document requests. You acknowledged that many of these requests, not unlike FPL's requests for admissions, were overbroad, poorly crafted, or otherwise incapable of response. You promised to confer with FPL to see whether you could narrow or clarify the requests and stated that you would follow up with a letter should FPL decide to press any discovery issues.

Your letter comes more than four weeks after our last telephone conversation and nearly two weeks after you obtained the Commission's approval (over Verizon's objection) to extend the procedural schedule based, in part, on open discovery issues. In spite of your delay, you now demand a detailed and substantive response from Verizon, with an additional document production, within two business days. This is patently unreasonable.

Nonetheless, consistent with Verizon's continued effort to expedite this proceeding, this letter repeats the principal basis for Verizon's objections to FPL's discovery requests.

In addition to the drafting flaws that you acknowledged on the telephone, and as I explained previously, each of the requests identified in your letter seeks information that is wholly irrelevant to this Pole Attachment Complaint proceeding. Your letter states that the discovery requests at issue seek information on "the benefits that Verizon enjoys under the parties' joint use agreement." Letter at 1. But the Enforcement Bureau's February Order made clear that the relevant issue is the value of the "unique benefits," if any, Verizon receives under the joint use agreement. Mem. Op. and Order ¶ 21 (emphasis added); *see also id.* ¶¶ 2 ("benefits

Charles A. Zdebski, Esquire

June 19, 2015

Page 2

under the Agreement that are not available to competitive LECs”), 24 (benefits “that are not provided to other attachers”), 26 (“benefits under the Agreement that were not available to other attachers”). The *Pole Attachment Order* is similarly clear that the key issue for this rate setting exercise is whether there are “differences between incumbent LECs and telecommunications carrier or cable operator attachers.” 26 FCC Rcd 5240, 5333 (¶ 214) (2011).

FPL’s discovery requests seek to remove this comparative analysis from the case and permit inquiry into each and every “benefit” Verizon allegedly receives as a party to the Joint Use Agreement—even if those same “benefits” are provided to Verizon’s competitors. This broad inquiry into irrelevant matters is “beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding” and is not “necessary to the resolution of the dispute.” See 47 C.F.R. § 1.729(a), (b). Therefore, it is outside the scope of permissible discovery.

As next detailed, FPL’s effort to remove the comparative analysis from this case is the principal flaw in each identified discovery request. Verizon also incorporates each additional objection it has previously raised to these requests. Contrary to your assertion, these objections are not waived. The case on which you rely solely states that a party’s objection does not “protect his subsequent answers from being used as admissions.” *In the Matter of William F. Crowell*, 2010 WL 10128888, at \*6 (¶ 16) (2010).

**Budgeting, Costing, And Borrowing Information: Interrogatory No. 6;  
Request Nos. 37-45**

FPL seeks information and documents about Verizon’s budgeting, costing, and borrowing decisions based on a suspicion that “Verizon has made a business decision that it is in Verizon’s best interests to lease space on FPL’s poles rather than own poles.” Letter at 8. FPL’s suspicion is curious given that FPL has never afforded Verizon the opportunity to set new poles as required by the Joint Use Agreement and rebuffed each of Verizon’s offers to purchase poles from FPL in the 2000s to reduce the parties’ pole ownership disparity.

Even if there were any basis for FPL’s suspicion, it is not relevant to this case. As you explain, FPL seeks these documents to try to “demonstrate the financial benefits that Verizon has received as result of its access to FPL’s infrastructure rather than incurring expense required to build and maintain in its own facilities.” [sic] *Id.* Verizon is no different than its competitors in this regard. They too have

Charles A. Zdebski, Esquire  
June 19, 2015  
Page 3

the right to build and maintain their own infrastructure and the right to rely on FPL's and Verizon's utility poles to service their customers.

**Performance Bond Information: Interrogatory No. 7**

FPL seeks information about performance bonds or letters of credit that Verizon has been required to purchase, if any, in connection with attaching to any company's utility poles. This information is only relevant if Verizon's competitors have agreed to purchase a performance bond or letter of credit in order to attach to FPL's poles. The two license agreements available to Verizon show that its competitors have *not* been subject to such a requirement. Verizon is therefore comparably situated and FPL has no basis for inquiring into a topic that is not a "unique benefit."

Importantly, Verizon's objection to producing the requested information is not based on "FPL[']s] refus[al] to produce similar information in the parties' state court proceeding." *Id.* at 4. Rather, when we spoke I pointed out that FPL could have demonstrated relevance by producing its license agreements in the state court proceeding. FPL instead took the position that it would not produce its license agreements, testify about their terms and conditions, or even disclose whether the agreements are covered by a confidentiality provision. Thus, Verizon is left to rely on the two license agreements available to it. Those license agreements establish that the requested information is not relevant.

It also bears noting that Verizon has nonetheless provided FPL relevant information. Dr. Calnon, in his March 13 Affidavit, includes his analysis of the valuation of a performance bond or letter of credit in the amount proposed in FPL's draft license agreement.

**Information About All Vehicles And Equipment Used To Maintain, Access, And Install Attachments: Interrogatory No. 8**

FPL has sought an extraordinarily broad category of information about Verizon's vehicles and equipment "whether related solely to FPL's service territory or beyond." *Id.* at 2-3, 4. This information is not relevant to any comparative analysis between Verizon and its competitors in FPL's service territory. FPL has conceded that Verizon's competitors attach to FPL's poles in the space reserved for Verizon's exclusive use, meaning that Verizon and its competitors require the same types of vehicles and equipment to install, access, and service their respective facilities.



Charles A. Zdebski, Esquire  
June 19, 2015  
Page 4

Best regards,

A handwritten signature in cursive script, appearing to read "C. Huther", with a long horizontal flourish extending to the right.

Christopher S. Huther

cc: Maria J. Moncada, Esq. (by email)  
Alvin B. Davis, Esq. (by email)  
Robert J. Gastner, Esq. (by email)

# **EXHIBIT F**

Kathleen Grillo  
Senior Vice President  
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March 16, 2011

**Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

**Re: Implementation of Section 224 of the Act a National Broadband Plan for Our Future; WC Docket No. 07-245, GN Docket No. 09-51**

Dear Ms. Dortch:

One year ago, the National Broadband Plan recognized that establishing a low, uniform pole attachment rate for all broadband providers was an important part of the Commission's broadband policy agenda. The Plan recommended that the Commission correct a decades-old inequity that results in different broadband providers paying different rates to attach to the same pole. Similarly, Chairman Genachowski has publicly stated his intention to identify and remove regulatory barriers that artificially raise the costs of broadband deployment. As part of that effort, he announced recently that the Commission would tackle reform of the pole attachment process as early as its April open meeting.<sup>1</sup>

Verizon supports the Commission's objectives of eliminating disparities and promoting broadband deployment. However, several parties to this proceeding have tried to defeat the Commission's objectives by asserting that so-called "incumbent" carriers should pay a significantly higher rate for pole attachments than any of their direct competitors. Despite the fact that incumbent carriers pay substantially higher rates than other attachers pay for the same types of attachments – *in some instances as great as 11 times higher* – these parties have asked the Commission to perpetuate this competitive disparity. We urge the Commission to reject these arguments. This proceeding is a unique opportunity for the Commission to remove an obvious regulatory impediment to continued broad deployment and that increases the costs that ultimately are paid by consumers. The Commission should not let it pass. Even worse, the Commission should not make this problem worse by lowering some competitors' rates and leaving other rates unreasonably high.

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<sup>1</sup> Julius Genachowski, Prepared Remarks, Federal Communications Commission Broadband Acceleration Conference (Feb. 9, 2011).

These parties defend this approach by claiming that incumbent carriers derive other benefits from pole attachment arrangements, either because they receive revenue from attachers on their own poles or by virtue of joint use or joint ownership agreements. These arguments are both wrong.

First, even though incumbent carriers may own some of the poles to which their facilities are attached, they do not receive compensation from other attachers at rates sufficient to make up for the disparity in costs of attachment. In fact, given the costs of pole ownership, even after extending lower broadband attachment rates to all broadband providers, Verizon would remain at a competitive *disadvantage* to competitors because the costs of pole ownership exceed the revenues from any potential broadband attachment rate. In other words, it costs Verizon more to attach to our own poles (due to the inherent costs of owning poles), even after subtracting the revenues we receive from third party attachers, than it costs a cable provider to attach to a pole owned by someone else. And, as discussed below, Verizon does not receive any offsetting benefits or cost-savings from joint agreements with electric utilities that remove that disadvantage.

As an example, Verizon calculated its annual pole costs in the states where it operates as an incumbent carrier and the Commission regulates pole attachment rates.<sup>2</sup> These pole costs were then reduced by the total revenues Verizon collected for attachments to those poles to determine Verizon's average *net* pole costs. In each state, Verizon's average net pole costs substantially exceed the attachment rate that a cable company pays for attachment to Verizon's poles. For example, in Maryland, Verizon's average net pole cost is \$25.28 and its cable attachment rate is \$3.81. In other words, it costs Verizon more than six times as much to attach to its own pole as a cable company pays Verizon to attach to that same pole. Similarly, in Rhode Island, Verizon's net pole cost is \$41.84 and its cable rate is only \$3.71. Verizon's net pole costs in Rhode Island are more than eleven times the rate cable companies pay to attach to Verizon's poles. Because of these higher costs of pole ownership, Verizon would not obtain any competitive advantage through paying the same broadband attachment rate as other competitive broadband providers, and instead would remain at a disadvantage to its competitors.

Second, giving incumbent carriers the ability to obtain the broadband attachment rate through renegotiation of joint agreements with electric utilities (backed by the Commission's complaint processes) would not provide incumbent carriers an unfair competitive advantage, nor would it provide incumbent carriers with more favorable terms and conditions under joint agreements with electric utilities than other broadband providers obtain under license agreements. Verizon's joint agreements with electric utilities do not provide significant financial benefits or more favorable terms and conditions because any benefits or favorable terms and conditions are offset by burdens and obligations. For example, some joint agreements require Verizon and the utility to perform make-ready work for each other at no charge. As Messrs.

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<sup>2</sup> See Attachment 1. These costs were calculated using the most recently available data filed with the Commission and the Commission's own methodology for determining gross annual pole costs.

Slavin and Frisbie explained, “when an electric utility . . . upgrades its network, that electric utility will likely notify Verizon that existing poles will need to be replaced with taller poles to accommodate the electric utility’s upgraded facilities” and require Verizon to “participate in the replacement of the poles, transfer its facilities to the new taller pole and often remove the old pole.”<sup>3</sup> Under joint agreements with electric utilities, “Verizon will bear most, if not all, of these make ready costs without reimbursement by the electric utility.”<sup>4</sup> By contrast, “competitive carriers and cable companies that rearrange their facilities in order to accommodate the electric utilities’ network expansion are entitled to full reimbursement of their make ready costs.”<sup>5</sup> The unreimbursed make ready costs that Verizon often bears to accommodate the network expansion of electric utilities makes the effective attachment rate Verizon pays to electric utilities even higher.

Nonetheless, even if some incumbent carrier did have some particular benefit under an existing joint agreement, it should be allowed to forego any such benefit and pay the same Commission-prescribed broadband attachment rate as any other broadband provider. In other words, if an incumbent carrier is willing to accept the same terms and conditions of attachment as any other competitive broadband provider, it should pay the same broadband rate as its competitors. Otherwise, Verizon and other incumbent carriers will remain at a competitive disadvantage under the terms of existing joint agreements. Moreover, if the Commission provides Verizon and other incumbent carriers the ability to obtain the broadband attachment rate under joint agreements with electric utilities, Verizon would attempt to renegotiate those agreements and apply the Commission’s broadband attachment rate formula to electric utilities with appropriate adjustments for the amount of space occupied by their attachments.

Sincerely,



Attachments

cc: Zac Katz  
Sharon Gillett  
Marcus Maher  
Al Lewis  
Christi Shewman

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<sup>3</sup> See Attachment 2. Verizon Reply Comments, Reply Declaration of James Slavin and Steven R. Frisbie, ¶ 12 (copy enclosed).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 13.

## **ATTACHMENT 1**

State*	Gross Avg. Pole Cost (2009)	Avg. Revenue per Pole (2009)	Net Avg. Pole Cost	VZ Cable Attachment Rate (2009)	VZ Pole Costs in Excess of Cable rate
FL	\$42.66	\$14.20	\$28.46	\$6.57	\$21.89
TX	\$27.14	\$6.69	\$20.45	\$3.51	\$16.94
MD	\$40.91	\$15.63	\$25.28	\$3.81	\$21.47
VA	\$27.27	\$17.35	\$9.92	\$2.54	\$7.38
PA	\$30.78	\$12.19	\$18.59	\$2.94	\$15.65
RI	\$50.09	\$8.25	\$41.84	\$3.71	\$38.13

\* States where Verizon operates as an incumbent carrier and the Commission regulates pole attachment rates.

## **ATTACHMENT 2**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY DECLARATION OF JAMES SLAVIN**

**AND**

**STEVEN R. FRISBIE**

1. My name is James Slavin. I am the same James Slavin who filed a declaration in this proceeding on August 16, 2010.

2. My name is Steven R. Frisbie. I am the same Steven R. Frisbie who filed a declaration in this proceeding on August 16, 2010.

**I. Purpose of Reply Declaration**

3. The purpose of our reply declaration is to respond to specific assertions by several electric utility representatives that joint use and joint ownership agreements contain significant financial benefits for incumbent carriers. We show that Verizon is forced to pay unreasonably high attachment rates under joint use and joint ownership agreements and those high rates are not offset by other financial benefits in those agreements. Typically, those other financial terms of joint use and joint ownership agreements are mutual and impose offsetting benefits and burdens. In our experience, joint use and joint ownership agreements do not provide Verizon with significant

financial benefits that offset the often unreasonably high rates that Verizon is forced to pay electric utilities for pole attachments.

4. We also respond to Level 3's assertions that Verizon Pennsylvania Inc. is charging attachment rates that exceed the Commission's authorized rate levels. As we show below, Level 3 makes an invalid comparison between the Commission's rate calculations on 2007 data and the rates Verizon charged to Level 3 in 2010. The attachment rates Verizon charged for 2010 are consistent with the Commission's rate formulas and based on 2009 data.

**Joint Use and Joint Ownership Agreements Do Not Provide Significant Financial Benefits.**

5. As we explained in our declaration, the rates charged under joint use and joint ownership agreements are, in many cases, unreasonably high. The Coalition of Concerned Utilities ("Coalition") suggests that these high rates are offset by other financial benefits that incumbent carriers receive under these agreements. In our experience, these agreements generally do not contain other terms and conditions that offset the financial burden of these high attachments rates. In fact, the other terms and conditions often impose disproportionate burdens on Verizon.

6. The Coalition makes several specific assertions about so-called financial benefits that incumbent carriers like Verizon derive from joint use and joint ownership agreements. We address each of these assertions and show how these so-called financial benefits are actually financial burdens to Verizon.

7. The Coalition claims that "[u]nlike pole attachment agreements, ILECs often are entitled to rent portions of their allocated space to other telecommunications

attachers.” Coalition Comments at 132. The implication of the Coalition’s assertion is that the incumbent carrier can charge other attachers a higher rate for space on the pole than the incumbent carrier is paying to the electric utility for that space on the pole. In virtually all cases, just the opposite is true.

8. Under joint ownership agreements, Verizon is often forced to bear the cost of the entire communications space of the pole – typically about 40 percent of the total pole costs – even if Verizon only needs a foot of space, or about 7.4 percent of the usable space on the pole. Moreover, under the typical joint ownership agreement, if the pole was placed by the electric utility, Verizon’s share of the electric utility’s pole costs are computed under a methodology that produces results far in excess of the costs computed under the Commission’s rate formulas.

9. If the joint ownership agreement allows Verizon to charge another attacher for attaching to the pole, Verizon will only be able to charge the Commission’s cable rate or telecom rate, depending on the attacher. That rate will in nearly all cases be far below the electric utility’s costs borne by Verizon for that same space. In other words, Verizon is forced to share the electric utility costs for the entire communications space on the electric utility’s poles, but is only able to charge a mere fraction of that shared cost to other attachers.

10. The Coalition also asserts that “ILECs pay very little each year in make-ready expenses to accommodate their attachments on electric utility poles, while CLECs and Cable Company competitors pay far higher amounts.” Coalition Comments at 135. The Coalition’s comparison is misleading in at least two respects.

11. First, in comparison to competitive carriers and cable companies, Verizon, as an incumbent carrier, makes very few requests for make ready work on electric utility poles. Verizon's network is already largely built out and Verizon has already attached to most of the electric utility poles to which it needs to attach. Verizon does not very often request to attach to utility poles to which it is not already attached. By contrast, competitive carriers and cable companies are continuing to expand the reach of their networks. These competitors more frequently request "first time" attachments to utility poles and therefore require more make ready work than Verizon.

12. Second, the Coalition's comparison only considers the charges that incumbent carriers supposedly "pay" for make ready work on their behalf. That comparison does not consider the "costs" of make ready work that incumbent carriers, like Verizon, must bear for make ready performed at the request of electric utilities. For example, when an electric utility that is party to a joint ownership agreement with Verizon upgrades its network, that electric utility will likely notify Verizon that existing poles will need to be replaced with taller poles to accommodate the electric utility's upgraded facilities. Under the typical joint ownership agreement, Verizon will participate in the replacement of the poles, transfer its facilities to the new taller pole and often remove the old pole. Verizon will bear most, if not all, of these make ready costs without reimbursement by the electric utility.

13. By contrast, competitive carriers and cable companies that rearrange their facilities in order to accommodate the electric utilities' network expansion are entitled to full reimbursement of their make-ready costs. *See* 47 U.S.C. § 224(i). The unreimbursed

make ready costs that Verizon often bears to accommodate the network expansion of electric utilities makes the effective rate Verizon pays for attachments even higher.

14. Another claim by the Coalition is that “[c]able companies and CLECs are usually required to obtain advance approval from at least one pole owner (and usually two in joint ownership situations) before installing new attachments” and that “ILECs, on the other hand, typically are not subject to that requirement.” Coalition Comments at 136. This comparison is also misleading. Where Verizon makes new attachments, it is typically by overloading its existing facilities. Neither competitive carriers, cable companies, nor incumbent carriers are required to obtain “advance approval” to overload their own facilities.

15. The Coalition also asserts that “[i]n many joint use and joint ownership agreements, the party which owns or is the ‘custodian’ of the pole often is required to obtain rights-of-way, highway permits and other authorizations on behalf of both parties to the joint use or joint ownership agreement” while “[c]able companies and CLECs are required to get their own.” Coalition Comments at 136. This claim is not consistent with our experience with rights-of-way. In general, when either Verizon or an electric utility obtains a right-of-way, highway permit or other authorization, that right, permit or authorization is generally broad enough to cover not only the pole owners, but also the cable companies and competitive carriers that attach to the poles. It would be a rare exception where a competitive carrier or cable company would need to obtain its own separate right, permit or authorization.

16. Another assertion by the Coalition is that “[c]able companies and CLECs generally rent only the one-foot of space on the pole that they currently need” while

“[j]oint use and joint ownership agreements often entitle ILECs to a certain number of feet on the pole, regardless of whether they have a current need for that space.” Coalition Comments at 137. Rather than a financial benefit, this allocation of more space to incumbent carriers is a financial burden.

17. Verizon typically needs only one foot of space on an electric utility pole, which equates to about 7.4 percent of the usable space on a typical pole. Many joint ownership and joint use agreements, however, require Verizon to bear 40 percent or more of the utility’s total cost of the pole. Moreover, the so-called “extra space” that is supposedly available to incumbent carriers is rarely, if ever, needed by Verizon. As we explained above, Verizon can typically expand its network facilities by overlashing its existing facilities within the same one-foot of space.

18. The Coalition also asserts that “[b]ecause [incumbent carriers] are provided the option to attach before other attaching entities, ILECs are allowed to select the preferred attachment height on the pole, which typically is the lowest allowable communications space on the pole.” Coalition Comments at 137. But the fact that incumbent carriers like Verizon typically attach at the lowest position on the pole is not necessarily a choice, but rather the result of standard construction practices that predate third party attachments. The lowest position on the pole does not insulate Verizon from having to rearrange its facilities in order to accommodate new attachments. Where Verizon can move its attachments to an even lower position to accommodate a new attach, Verizon will perform such make ready work.

19. Moreover, the lowest position on the pole can be more costly because it places Verizon’s facilities in a more vulnerable location. At the lowest attachment

height, Verizon's facilities that span a roadway are more susceptible to damage from oversized vehicles than attachments at higher positions. The loading caused by an ice storm may cause Verizon's facilities to sag two or three feet more than the next highest attachment.

20. The Coalition also asserts that "[m]any joint use agreements specify the costs that each pole owner will charge the other for certain tasks" and that "the charges specified in these schedules are low relative to current charges" while "CLECs and Cable Companies, in contrast, pay current rates." Coalition Comments at 138. In our experience, the electric utility charges specified in joint ownership and joint use agreements are frequently updated to current levels. In some cases, these agreements themselves contain formulas and methodologies for updating costs. In other cases, the electric utilities unilaterally update their charges to current levels.

**Verizon is Charging Pole Attachment Rates to Level 3 That Are Consistent with the Commission's Rate Formulas.**

21. Level 3 claims that Verizon Pennsylvania Inc. charged an attachment rate for 2010 that exceeds the rate listed by the Commission in Appendix A of the Commission's *FNPRM*. As we explain below, Verizon has not overcharged Level 3 for pole attachments in Pennsylvania. Verizon correctly follows the Commission's rate formulas to calculate the pole attachment rates charged to Level 3 and other attachers.

22. Level 3 is making an apples-to-oranges comparison. The Commission staff's calculations were based on 2007 financial data, which would have been used for setting attachment rates for the year 2008. Level 3 then attempts to compare the staff's calculation to the rates Verizon billed for 2010. The rates Verizon billed for 2010 must

be based on financial data for 2009, not 2007. Level 3 is therefore making an inappropriate comparison.

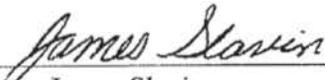
23. For 2010, the rates Verizon billed to Level 3 and other attachers in Pennsylvania were based on Verizon's accounting data for the year 2009. In making the calculations, Verizon followed the Commission's formula and rebutted the Commission's presumed pole height of 37.5 feet. Verizon's actual data show the average pole height in Pennsylvania to be 34.46 feet. Based on the Commission's formula and Verizon's actual data for 2009, Verizon calculated and billed an urban telecom attachment rate of \$3.94 for 2010. Verizon also calculated a non-urban telecom attachment rate of \$5.94 for 2010, but that rate was not applicable to, or billed for, any of Level 3's attachments.

### **III. Conclusion**

24. In many cases, Verizon is forced to pay unreasonably high attachment rates to utilities under the terms of joint use and joint ownership agreements. These agreements do not provide any significant financial benefits that offset the high attachment rates imposed on Verizon. In addition, Verizon correctly follows the Commission attachment rate formulas and bills attachers at rates that are consistent with those formulas.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 2, 2010

  
\_\_\_\_\_  
James Slavin

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 1, 2010



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Steven R. Frisbie

# EXHIBIT G

Before the  
Federal Communications Commission  
Washington, DC 20554

\_\_\_\_\_)  
Verizon Florida LLC )  
 )  
 )  
Complainant, )  
v. )  
 )  
Florida Power & Light Company, LLC )  
 )  
Respondent. )  
\_\_\_\_\_)

**Declaration of Roger A. Spain, CPA, CFA, ABV, CVA**

**Background Information**

1. My name is Roger Spain and I have been engaged to review joint use pole adjustment rates for poles jointly used by Florida Power & Light Company ("FPL") and Verizon Florida LLC ("Verizon"). After performing my review, I have made several observations and reached several conclusions, which are set forth below in this declaration.

2. I am a principal with Aldridge, Borden & Company, P.C. in Montgomery, Alabama. We are a CPA firm providing a wide range of specialized services, including management consulting, strategic planning, litigation consulting, business valuation, mergers and acquisitions consulting, tax planning and compliance, auditing, and information technology consulting.

3. My own areas of expertise include accounting and business consulting in several industries, including the utility industry. As an auditor, I have performed numerous audits of electric distribution utilities, and several other types of utilities over the past 23 years. I have

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also performed numerous consulting engagements in the utilities arena, including cost of service studies, rate analysis and design engagements, property plant and equipment analyses, and feasibility studies. Companies for whom I have performed these services have been electric providers, telephone companies, cable television and satellite dish companies, natural gas companies, retail propane companies and water systems. I also have significant experience in auditing and tax related work in the general business environment. I am a Certified Public Accountant. I hold various business valuation related credentials including the Chartered Financial Analyst designation through the CFA Institute, the American Institute of Public Accounting's Accredited in Business Valuation credential, and the Certified Valuation Analyst designation through the National Association of Certified Valuation Analysts. I have a B.S. in Business Administration (Accounting) from Auburn University.

4. I have testified regarding pole attachment issues before the Federal Communications Commission and in North Carolina and Florida state courts. I have testified concerning various other financial and economic issues in Federal Court, various state courts and before the Alabama Public Service Commission.

### Historical Rates for Joint Use Between FPL and Verizon

5. On January 1, 1975, FPL and Verizon (through its predecessor in interest) entered into a Joint Use Agreement, which was amended by Supplemental Agreement dated March 29, 1978. Under the Joint Use Agreement, each party allows the other to use its utility poles for purposes of attaching facilities to distribute their respective services to customers in their overlapping territories.

6. The Joint Use Agreement set forth a rate of \$6.50 per pole for poles attached by either party and stated that the party with more attachments will pay the net amount due under the terms of the Agreement. In March of 1978, the parties agreed to amend the Agreement to provide for a rate of \$7.27 per pole for the 1977 calendar year. This amendment further provided that the rate in years after 1977 would be 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. The amendment defined the annual cost of joint use poles as the average historical in-place cost of joint use poles, excluding special poles, multiplied by an annual charge rate comprised of: straight line depreciation, investment tax credit, deferred taxes, state and federal taxes, cost of equity (common and preferred), and cost of long term debt.

7. Although the source of the \$7.27 rate set forth in the amendment to the Agreement is not described, this \$7.27 rate is equal to the 1975 rate of \$6.50 brought forward to 1977 using the annual Consumer Price Index ("CPI").<sup>1</sup>

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<sup>1</sup> The Consumer Price Index is a general measure of inflation published by the US Government Bureau of Labor Statistics.

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8. The rate from 1975 of \$6.50 brought forward to 2012 using CPI data yields a rate of \$26.89. Any rate below \$26.89 would place the net payer (owning fewer poles) in a better economic position relative to its position at the onset of the Agreement in 1975.

#### Cost Sharing for a Jointly Used Network of Poles

9. In the case of FPL and Verizon, both entities have needed access to a network of poles to deliver their services. For numerous reasons the parties agreed to share the cost of building one jointly used network suitable to each party. When entering this agreement and relationship, each party knew that it would invest significant up front sums and carry the physical and financial responsibility of pole ownership and maintenance, or that it would pay an agreed upon amount for joint use equity settlement payments in lieu of those investment and ownership costs.

10. Viewed in this important historical context, joint use equity settlement payments are an alternative to the significant costs of pole network construction and ownership. These alternatives cannot be separated because one party has avoided a greater burden of the ownership costs and later deems its joint use cost to be higher than it wishes. It stands to reason that in situations where one party has made very little investment in the jointly used network of poles with another party, the party that has carried a low construction and ownership burden should pay much more in the alternative periodic joint use equity settlement payments.

11. In the event that one party owns substantially less of the joint use network than its allocated share of costs under the joint use agreements, that party will pay a higher equity settlement expense but avoid corresponding construction and ownership costs. In light of these

two alternatives, adjustment rates can be viewed as a proxy for ownership costs, and thus paying an equity settlement is analogous to paying avoided ownership costs.

12. Cost sharing agreements are fundamentally altered when the cost allocation is changed. Had each party constructed and maintained a number of poles equivalent to achieve its allocation percentage, there would be no net joint use equity settlement payments. Rather, each party would be paying for its allocated share of this jointly used network of poles through construction and ownership costs, with no need for a joint use equity settlement payment to adjust for the disparate ownership costs. Only when one party has avoided capital investment in and annual maintenance of its allocated share of the joint use network of poles is there a need for a joint use equity settlement payment.

13. Under the terms of the Agreement, joint use adjustment rates are reflective of the actual costs of constructing and maintaining a shared elevated utility corridor jointly used by both parties. These calculations and rates are not the product of or influenced by other data (such as is the case with the indices). As stated above, any adjustment rate below the 1975 Agreement rate indexed for inflation puts the licensee (as opposed to the pole owner) in a better economic position relative to its position at the onset of the agreements. Additionally, any such rate below the 1975 Agreement rate indexed for inflation will result in an under recovery of costs compared to the manner of cost sharing as it was mutually agreed upon in the Agreement. Simply stated, if the annual pole cost of the pole owner, and the resulting adjustment rate, grows faster than the originally agreed upon rate grown at inflation, the pole owner should be able to recover a minimum of the original rate grown at inflation. Otherwise, the pole owner would be in a worse position as a result of assuming the burden and expense of investing in the jointly used pole network.

### Methodology in the Joint Use Agreement

14. The methodology for calculating the joint use adjustment rate under the amended Agreement is specified as the average historical in-place cost of joint use poles, excluding special poles, multiplied by an annual charge rate comprised of: straight line depreciation, investment tax credit, deferred taxes, state and federal taxes, cost of equity (common and preferred), and cost of long term debt. As a result the adjustment rate and the related annual pole cost do not include all costs to carry and own the network of jointly used poles. Examples of these omitted costs include administrative and general expenses, operating and maintenance expenses, and property taxes.<sup>2</sup>

15. These are clearly costs directly related to the ownership and maintenance of the network of jointly used poles. Further, these costs are substantial components of that overall ownership cost. Therefore, excluding these costs is to the substantial detriment of the party owning more poles, which is FPL in this case.

16. In order to assess the impact of omitting these costs from the joint use adjustment rate between the parties, I have analyzed some information relating to those costs. For the twenty years from 1993 to 2012 the annual carrying charge rates under the provisions of the amended Agreement that excluded the costs noted in paragraph 14 above have been approximately 12%.<sup>3</sup> This annual carrying charge rate is based on the pole costs used in the amended Agreement methodology which is calculated using the gross pole cost for FPL (excluding accumulated depreciation).

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<sup>2</sup> The omitted costs are included in the FCC telecommunications methodology and are customarily included in negotiated joint use agreements.

<sup>3</sup> This carrying charge rate was obtained from FPL's Joint Use Attachment Rate Calculation Worksheet for the 2012 rate.

17. However, using the pole cost net of accumulated depreciation, and accounting for the ownership costs relating the administrative and general, operating and maintenance, and property tax expenses, the annual charge rate is approximately 30%.<sup>45</sup>

18. Applying this revised annual charge rate of approximately 30% to the net cost of a pole yields an annual pole cost for 2012 of \$90.89. Allocating this annual pole cost at 50% to each party to the Joint Use Agreement, results in a joint use adjustment rate of \$45.45, well above the \$36.23 rate under the amended Agreement methodology.<sup>6</sup>

19. Although Verizon has taken exception with the 50/50 allocation of the annual pole cost as provided in the Agreement, this allocation is similar to the parties' expectations as described in the Agreement. Section 1.1.7 provides for standard space for FPL of 6 feet and for Verizon of 4 feet. Assuming an equal allocation for the unusable pole space between the parties to the Joint Use Agreement, the resulting allocation of 50/50 for joint use poles between the parties to the Joint Use Agreement is reasonable. However, setting this aside, consideration of the reasonableness of the 50/50 allocation in the Agreement must be analyzed in light of the previously discussed omission of substantial ownership costs. This is because the 50/50 allocation and the exclusion of certain substantial ownership costs mitigate one another with opposing affects.

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<sup>4</sup> This estimated carrying charge rate was obtained from FPL's alternate Joint Use Pole Attachment Rate Calculation Worksheet that includes carrying charges in accordance with the FCC Formula for the 2012 rate.

<sup>5</sup> The 12% carrying charge rate applicable to the amended Agreement and the 30% carrying charge rate calculated using the administrative and general, operating and maintenance, and property tax expenses and based on pole costs net of accumulated depreciation are not directly comparable due to the difference in calculating pole costs under each method. This information is provided to show the wide variance in the two methodologies.

<sup>6</sup> This annual pole cost is obtained from FPL's alternate Joint Use Pole Attachment Rate Calculation Worksheet that includes carrying charges in accordance with the FCC Formula for the 2012 rate. This worksheet contains notable assumptions for the carrying charge rate prior to 2010, which was estimated at 30% based on the calculations for 2010 to 2012, and the accumulated depreciation on 35', 40', and 45' wood poles, which was estimated at 48% for all vintages of poles. The accumulated depreciation is likely overstated on the most recent and heavily weighted poles in the pole cost and adjustment rate calculation, which would understate the illustrative pole cost and adjustment rate calculations referenced above.

20. Through its consultant, Verizon has offered a description of the calculations that it asserts yield presumptively just and reasonable adjustment rates based on the FCC new and prior telecommunications formulae. Verizon's calculations are based on an average pole size of 41 feet rather than the rebuttable presumption of 37.5 feet. It is my understanding the assumed 41 foot average pole size used by Verizon in its calculation is disputed by FPL.

21. Additionally, Verizon has assumed that the space occupied input into the FCC methodology should be 1 foot. This is contrary to the four feet it reserved in the Agreement.

22. Verizon correctly noted that the 2011 attachment rate applicable to one foot of occupied space was \$9.31 using a presumed 37.5 foot pole under the new FCC methodology, which allows for an Urbanized Service Area Allocation of 66% of the net cost of a bare pole. Using the prior FCC methodology, which did not include an urban allocation, the 2011 attachment rate applicable to one foot of occupied space was \$14.11.

23. Applying the attachment rate of \$9.31 for one foot of space occupied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of \$37.48. The prior FCC attachment rate of \$14.11 for one foot of space occupied applied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of \$56.44.

24. For 2012, applying the calculated attachment rate of \$9.78 for one foot of space occupied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of \$39.12. The prior FCC attachment rate of \$14.83 for one foot of space occupied applied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of \$59.32.

### Investment in the Joint Use Network of Poles

25. Since the beginning of the joint use arrangement between FPL and Verizon, each party has constructed its network of joint use poles to accommodate the joint use of both parties. But for this joint use, FPL would have constructed poles that were shorter and of less strength. This would have resulted in lower capital and ongoing ownership costs to FPL. Additionally, absent providing for joint use under the terms of an agreement, the attaching party would have had to pay for full make ready costs to install the taller and stronger poles needed to accommodate its lines and infrastructure.

26. As a result, the parties have a substantial investment in taller and stronger poles to accommodate the joint use needs of the other participating party. FPL, as the owner of approximately 90% of the joint use poles, has made a much greater investment in that network of taller and stronger poles.

27. Keeping the provisions of the Agreement in effect until the attaching party removes its attachments, protects both parties by ensuring that the attaching party will have access to its intended joint use network of poles, and ensuring the pole owner that cost sharing of the capital and ownership costs will be under the arrangement existing at the time the joint use pole network was constructed.<sup>7</sup>

28. In order to accommodate the requirements of joint use, FPL estimates that it has installed poles that were five feet taller approximately 40% of the time and ten feet taller approximately 60% of the time. FPL has compiled thirteen years of pole cost data comparing 35 foot, 40 foot, and 45 foot wood poles. Assuming that the five foot taller poles installed 40% of the time were split evenly between 40 foot and 45 foot poles and using FPL's pole cost data for 2001 to 2013, FPL's incremental cost to construct the joint use network of poles was approximately 32%

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<sup>7</sup> See Joint Use Agreement, Article XVI.

greater than it would have been without the need for accommodating joint use. This 32% greater required investment in poles also carries some increases in the ownership costs of those same poles due to the increased size of the poles.

29. These higher costs borne by the pole owner and caused by accommodating joint use are part of the cost of the joint use network of poles that is divided among the joint users, as well as other attaching parties. Terminating the applicability of the Agreement to the existing joint use pole attachments and replacing the rate specified under the amended Agreement with a rate similar to the FCC's prior and new telecommunications formulae will significantly reduce the pole owner's ability to recover these incremental pole costs resulting from accommodating joint use. The result in this case will be a substantial shift in the sharing of those incremental costs caused by joint use accommodation from a 50/50 level to a one that places a substantially higher portion of the incremental cost burden on the pole owning party which did not cause the incremental cost.

#### Conclusion

30. Consideration of the issue of whether a rate is just and reasonable as it relates to joint use agreements must weigh the actual costs of the pole owner and the shared nature of the pole network as contemplated and intended at the onset of the joint use relationship. Recognizing that the parties to a joint use agreement entered into that agreement acknowledging the mutual benefit of a joint use network of poles, the original rate indexed for inflation and the actual costs of the pole owner are important relevant factors to consider in the determination of whether a rate is just and reasonable. Further, these rates and related payments are made in lieu of investing in the construction of the jointly used network of poles and the costs of ownership associated therewith.

31. The joint use adjustment rates are reflective of the amended Agreement terms calculated annually using actual costs of construction and ownership. A meaningful comparison for the adjustment rates is to view these rates against the Agreement rate in 1975 of \$6.50 brought forward at an inflationary index. Comparing the actual adjustment rates to the calculated CPI inflated amounts over time provides one a meaningful analysis of the current rate in the context of the parties' original agreement.

32. In the present case, it is also important to consider the original intention of the parties as it relates to allocating 6 feet and 4 feet to FPL and Verizon, respectively. This relative space allocation, the 50/50 cost sharing allocation, and the exclusion of certain substantial ownership costs all should be considered in the analysis of the reasonableness of the methodology and rates between the parties.

33. Reducing dramatically a licensee's adjustment rate by altering the allocation or allowable elements of recoverable costs after many years of joint use accommodation at an increased cost to the net pole owner in a joint use agreement relationship adversely affects that net pole owner whose customers must then bear incremental costs caused by the attaching party. Meanwhile, this modification will benefit the attaching party which caused the higher incremental costs and avoided the burdens of greater pole ownership.

34. In light of the nature and amount of the joint use adjustment rates applicable to the 1975 Agreement between FPL and Verizon, it is my opinion that these rates are just and reasonable.

35. Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury the facts sets forth in this declaration are true to the best of my knowledge. Executed on the 4<sup>th</sup> day of April, 2014.

A handwritten signature in cursive script, appearing to read "Roger A. Spain".

Roger A. Spain, CPA, CFA, ABV, CVA

ROGER A. SPAIN, CPA, CFA, ABV, CVA

Roger Spain is a principal with the accounting firm Aldridge, Borden & Company, P.C., in Montgomery, Alabama. He is a 1990 graduate of Auburn University where he received a Bachelor of Science degree in Accounting.

Roger's area of expertise is in accounting and business consulting. He has significant experience in the utility industries and the business valuation service area. He has worked on various engagements in the utilities industry including audits, cost of service studies, rate design, and feasibility studies. Industries served within the utilities area include electric distribution systems, telecommunications service providers, cable providers, satellite dish service providers, natural gas companies, and water systems. Roger is a Certified Public Accountant (CPA) licensed to practice in Alabama. Also, he has earned the Chartered Financial Analyst (CFA) designation offered by the Chartered Financial Analyst Institute. Roger has also been awarded the Accredited in Business Valuation (ABV) credential by the American Institute of Certified Public Accountants. Additionally, Roger holds the Certified Valuation Analyst (CVA) designation offered by the National Association of Certified Valuation Analysts.

He is active in the Montgomery community through various projects and organizations. Roger is an active board member of several local charities including the River Region United Way, Montgomery Museum of Fine Arts, Blue Gray Collegiate Tennis Tournament and YMCA. He is also an active member of First United Methodist Church.

Education/Certification

Bachelor of Science in Accounting, Auburn University, 1990  
Certified Public Accountant, Alabama, 1992  
Certified Valuation Analyst, 2003  
Chartered Financial Analyst, 2006  
Accredited in Business Valuation, 2006

Areas of Practice

Business Valuation and Related Advisory Services  
Management Advisory and Consulting Services  
Traditional Accounting and Tax Services

Professional Memberships

American Institute of Certified Public Accountants  
Alabama Society of Certified Public Accountants  
National Association of Certified Valuation Analysts  
Chartered Financial Analyst Institute

Teaching

Numerous Courses on Utility Accounting throughout the United States  
Auburn University, Professor for a Day Program

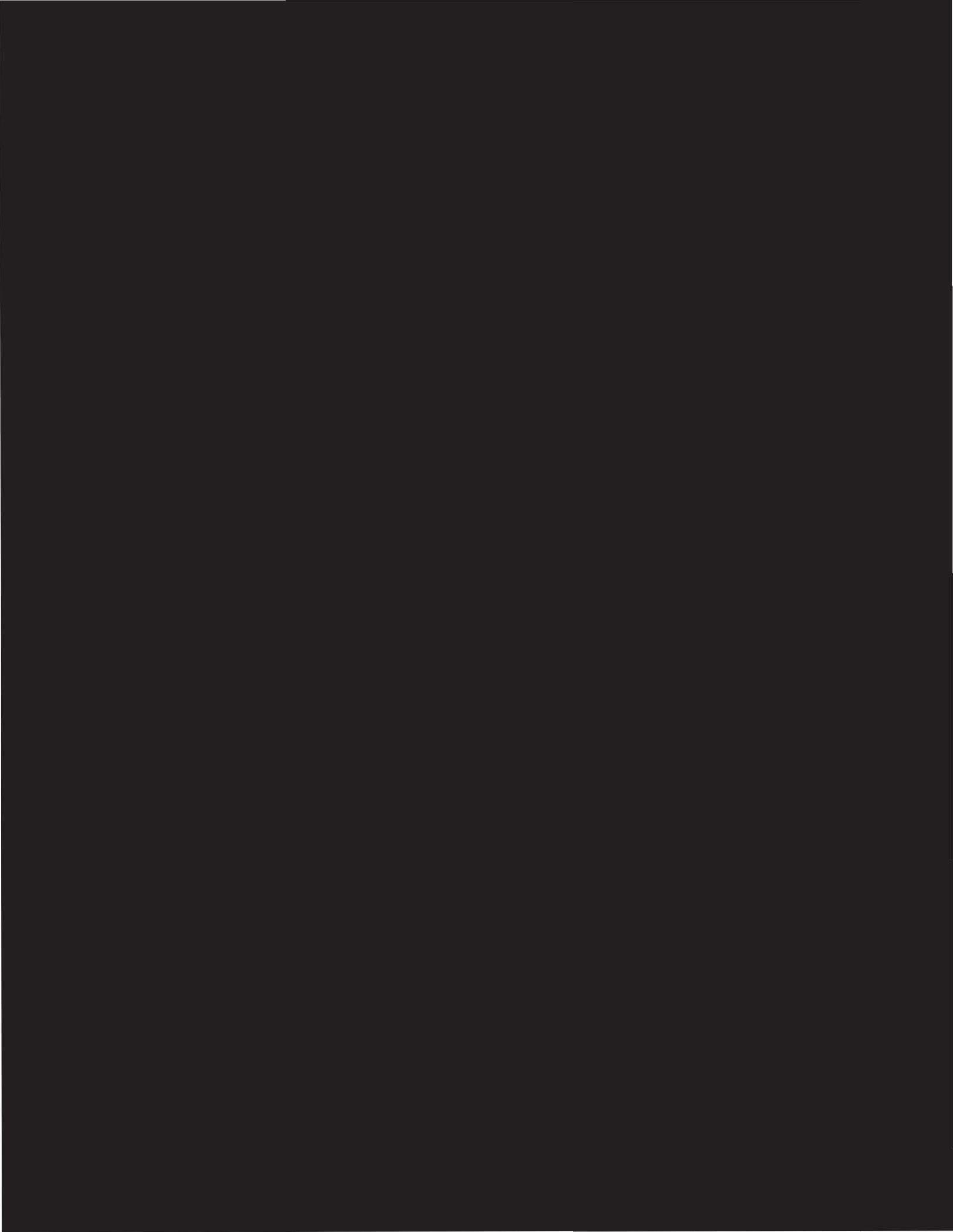
















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CONFIDENTIAL INFORMATION  
- NOT SUBJECT TO PUBLIC  
INSPECTION

## Exhibit 1

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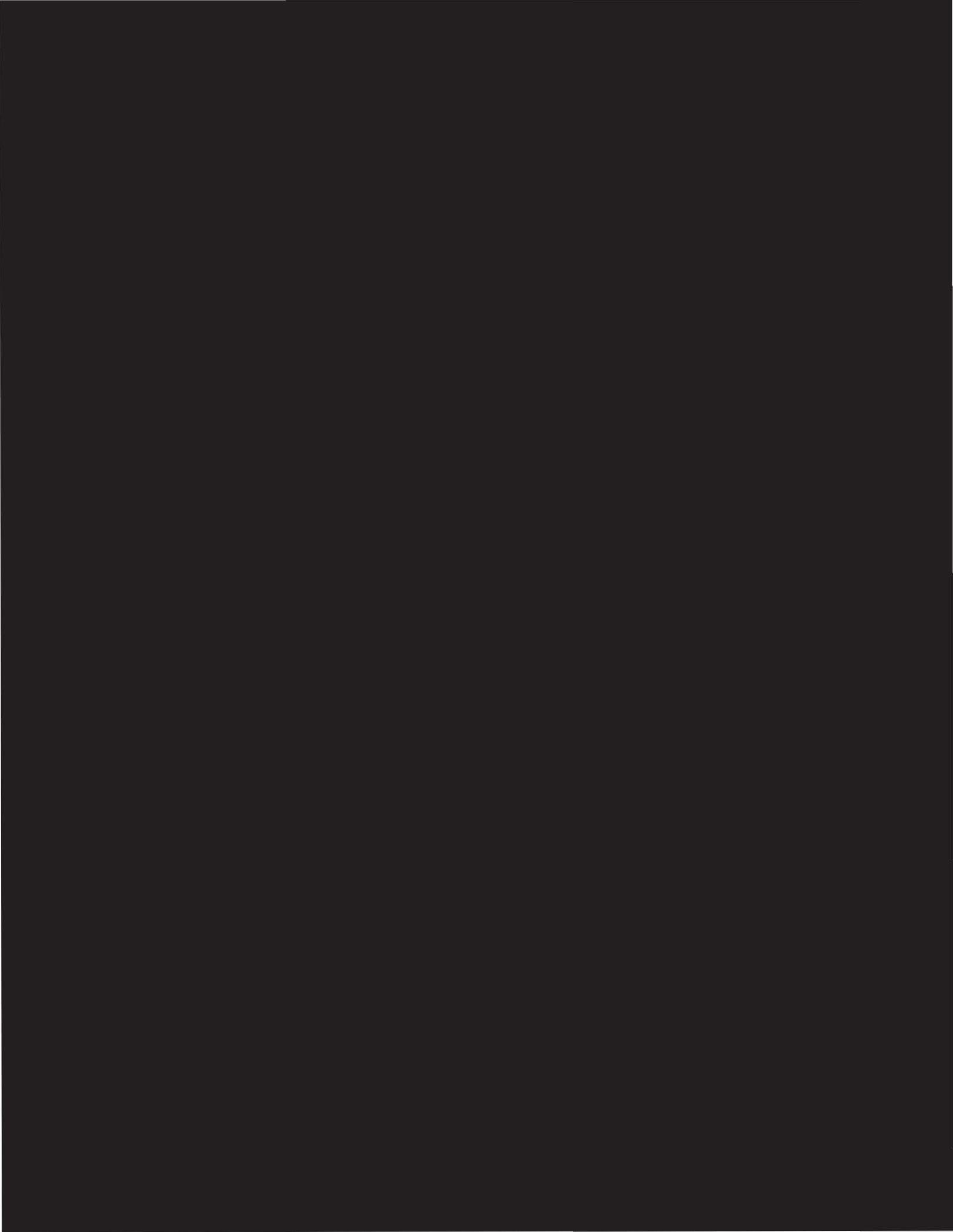
CONFIDENTIAL INFORMATION – NOT SUBJECT TO PUBLIC INSPECTION

**Exhibit 1 – Confidential**

**Email Correspondence between FPL Counsel and Verizon Counsel and FCC**







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Exhibit 2



MBS;ABKlein  
145-112-240

U.S. Department of Justice  
Civil Division, Appellate Staff  
601 "D" Street, N.W., Rm: 9135  
Washington, D.C. 20530

Tel: (202) 514-1597  
Fax: (202) 514-8151

March 29, 1999

Mr. Thomas K. Kahn  
Clerk, United States Court of Appeals  
for the Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303-6147

Re: Gulf Power Co. v. United States,  
No. 98-2403 (11th Cir.)

Dear Mr. Kahn:

By order dated March 5, 1999, this Court asked the parties to address the following question:

Does 47 U.S.C. section 224, or any regulation issued pursuant to that provision, require a utility to provide access to its poles, ducts, conduits, or rights-of-way at a rate below which the utility considers to be just compensation at any time prior to a court determining the just compensation for that access?

We are submitting this letter brief in response to the Court's inquiry and to the letter brief filed by plaintiffs on March 22, 1999.

I. Summary.

Plaintiffs correctly state that § 224(f) imposes a duty on a utility to provide pole access (with certain exceptions). But § 224 and its implementing regulations do not by their own force require a utility to provide access at any particular rate.

The FCC has no general power to set pole attachment rates in the first instance. Its regulatory authority over such rates comes into play when a cable company files a complaint alleging that a rate charged by a utility is not just and reasonable. Thus, in the absence of an FCC adjudication, a cable company seeking pole access must pay the rate that the utility demands.

If the FCC adjudicates a complaint and determines that a pole attachment rate is not just and reasonable, the FCC may order the utility to charge a lower rate. The court of appeals, however, may stay the FCC's rate order pending judicial review. If the court enters such a stay, the cable company must continue to pay the rate that the utility demands, pending the outcome of judicial review. And if the court concludes that the rate set by the FCC is constitutionally inadequate, the court may enjoin the FCC from enforcing its rate order. As a consequence, the cable company would either have to forgo its right of attachment or else pay the rate that the utility demanded (unless and until the

FCC issued a new rate order consistent with the constitutional and statutory requirements). Thus, nothing in § 224 or the implementing regulations prevents a court from hearing a utility's constitutional challenge to a rate order before the rate order takes effect.

## II. Argument.

1. As plaintiffs observe, § 224(f) requires utilities to provide pole access. Section 224(f) states: "A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." Section 224(f) thus imposes a self-executing duty on utilities to provide access to their poles (with certain exceptions). Even in the absence of FCC action, a utility may not deny a cable company pole access.

2. Nothing in § 224, however, imposes a comparable duty on utilities to provide access at a particular rate.

Section 224(b) governs the FCC's authority to ensure that pole attachment rates are "just and reasonable." Section 224(b) does not give the FCC general authority to set pole attachment rates in the first instance; the FCC "is not empowered to prescribe rates, terms and conditions for CATV pole attachments generally." S. Rep. No. 95-580 at 15 (1977). Instead, "FCC

regulation will occur only when a utility or CATV system invokes the powers conferred [on the FCC] to hear and resolve complaints relating to the rates, terms, and conditions of pole attachments." Ibid. See also id. at 22 ("[t]he Commission's adjudicatory authority would not come into play until a complaining party has brought a matter to the Commission's attention"); id. at 15 (the Act "empower[s] the Federal Communications Commission to exercise regulatory authority oversight over the arrangements between utilities and CATV systems in any case where the parties are unable to reach a mutually satisfactory arrangement").

The FCC's regulations implement the "simple and expeditious CATV pole attachment program" that Congress envisioned. Id. at 21. Although plaintiffs suggest that the FCC has imposed a general obligation on utilities to charge particular rates, they simply misunderstand the isolated statement that they quote. See Pl. Letter Br. 8 (quoting an FCC statement that "a utility must charge an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use").

In context, that statement is entirely consistent with Congress's expectation that FCC regulatory authority would come into play when a cable company filed a complaint with the FCC.

In making the statement that plaintiffs quote, the FCC cited 47 C.F.R. § 1.1404. That provision — which is entitled "Complaint" — sets out the allegations that a cable company must make in its complaint when it invokes the FCC's adjudicatory authority. The regulations make plain that the "formula" to which the FCC statement refers is the formula that the FCC will apply "when parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked \*\*\*." 47 C.F.R. § 1.1409(e) (emphasis added). Thus, in the absence of an FCC adjudication on a complaint, a utility is under no obligation to charge a cable company any particular rate for pole access.<sup>1</sup>

Plaintiffs assert that they may not charge a rate above the statutory maximum, even in the absence of an unfavorable FCC adjudication, because no provision in the Pole Act expressly permits them to do so. See Pl. Letter Br. 5 ("[t]he Act and the FCC's regulations and orders are also devoid of any provision

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<sup>1</sup> Plaintiffs note that, in deciding whether a utility's terms and conditions of pole attachment are just and reasonable, the FCC will treat a requirement that the cable company waive its statutory right to file a complaint with the FCC as per se unreasonable. See Pl. Letter Br. 8 n.7. That provision does not require the utility to accept any particular rate in the absence of FCC action, and plaintiffs' reliance upon it is inexplicable.

allowing a Power Company to charge what it believes is just compensation if that amount is higher than the statutory maximum"); id. at 8 (similar), id. at 9-10 (similar). This assertion gets the law exactly backwards. In the absence of a provision restricting the rates that the utilities may charge, the utilities are free to charge any rates they can command.

3. If a cable company files a complaint and the FCC determines that a rate is not just and reasonable, the FCC may order the utility to accept what the FCC determines to be a just and reasonable rate, and may order the utility to pay a refund. See 47 C.F.R. § 1.1410 ("Remedies"). Such an order can be stayed, however, to permit the court of appeals to hear the utility's constitutional challenge before the utility is required to comply with the order.

As an initial matter, the utility may ask the FCC to stay its rate order pending judicial review. The FCC clearly has the power to stay its own orders. See, e.g., 47 U.S.C. § 154(i) (the FCC "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions"). Indeed, Rule 18 of the Federal Rules of Appellate Procedure provides that an application for a stay pending review of an

agency order should be made to the agency in the first instance. See Rule 18(a)(1) ("[a] petitioner must ordinarily move first before the agency for a stay pending review of its decision or order").<sup>2</sup>

Moreover, the court of appeals plainly has the power to stay the FCC's rate order pending judicial review — a proposition that plaintiffs do not and cannot dispute. Under 28 U.S.C. § 2349(b), "the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition." See also Rule 18(a)(2) of the Federal Rules of Appellate Procedure (setting forth the procedures for seeking a stay from the court of appeals). The statutory scheme thus incorporates the usual backstop against irreparable harm: the opportunity to obtain a stay.

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<sup>2</sup> As plaintiffs observe, see Pl. Letter Br. 8 & 5 n.5, an FCC regulation provides that if a utility attempts to remove a cable company's attachment, the cable company may file a "petition for temporary stay" with the FCC to prevent the utility from removing the attachment. See 47 C.F.R. § 1.1403(c), (d). Plaintiffs offer no basis, however, for their assertion that this regulation somehow overrides the FCC's statutory authority to issue other types of stays, including stays of its own rate orders. See Pl. Letter Br. 8.

If an FCC rate order is stayed, a utility is under no obligation to charge a cable company the rate prescribed in that order. Just as if the FCC had never acted, the cable company may not exercise its right of attachment unless it pays the rate that the utility demands.

If the court of appeals were to conclude that the rate set in the FCC's order was constitutionally inadequate, the court could enjoin the FCC from enforcing its rate order as applied in that case. See 5 U.S.C. § 706 (court has the power to "hold unlawful and set aside agency action \*\*\* found to be \*\*\* contrary to constitutional right"); 28 U.S.C. § 2342 (court of appeals may "enjoin, set aside, suspend (in whole or in part), or to determine the validity of \*\*\* all final orders of the Federal Communications Commission"). See also 28 U.S.C. § 2349(a). (similar). Indeed, plaintiffs acknowledge that if compensation is constitutionally inadequate, "the appropriate remedy is for the court to enjoin the taking \*\*\*." Pl. Letter Br. 11.<sup>3</sup>

If the court enjoined the FCC from enforcing its rate order, the utility would have no obligation to provide access at any particular rate. Thus, the cable company would be left with two

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<sup>3</sup> Per the Court's instructions, we are assuming for the sake of argument that § 224(f) effects a taking.

options: either forgo the right of access, or else pay the rate demanded by the utility (unless and until the FCC issued a new rate order consistent with the constitutional and statutory requirements).

\* \* \*

In sum, § 224 and its implementing regulations do not prevent a court from hearing a utility's constitutional challenge to an FCC rate order before the utility is required to comply with that order.

Respectfully submitted,

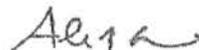


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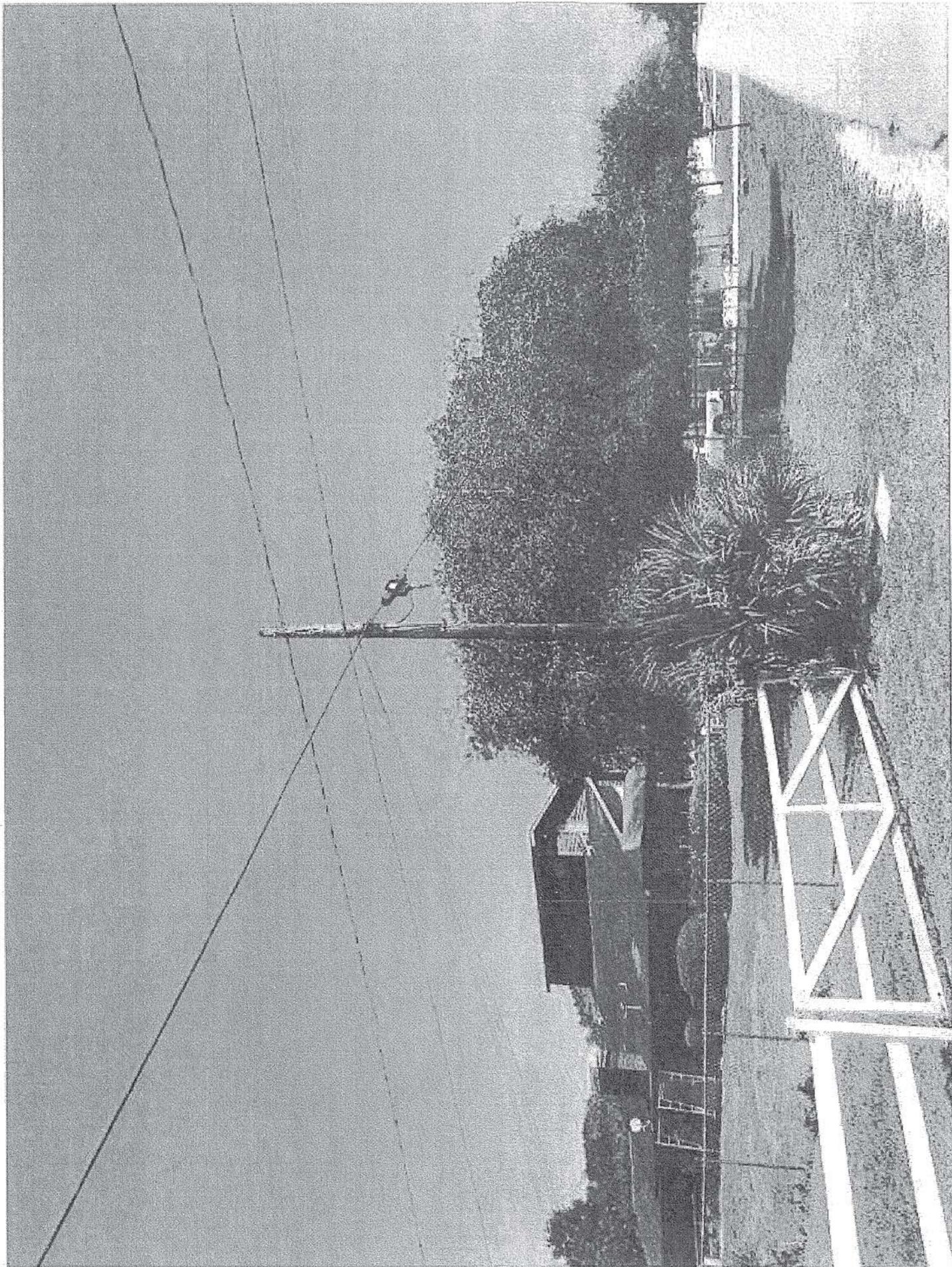
ALISA B. KLEIN  
(202) 514-1597

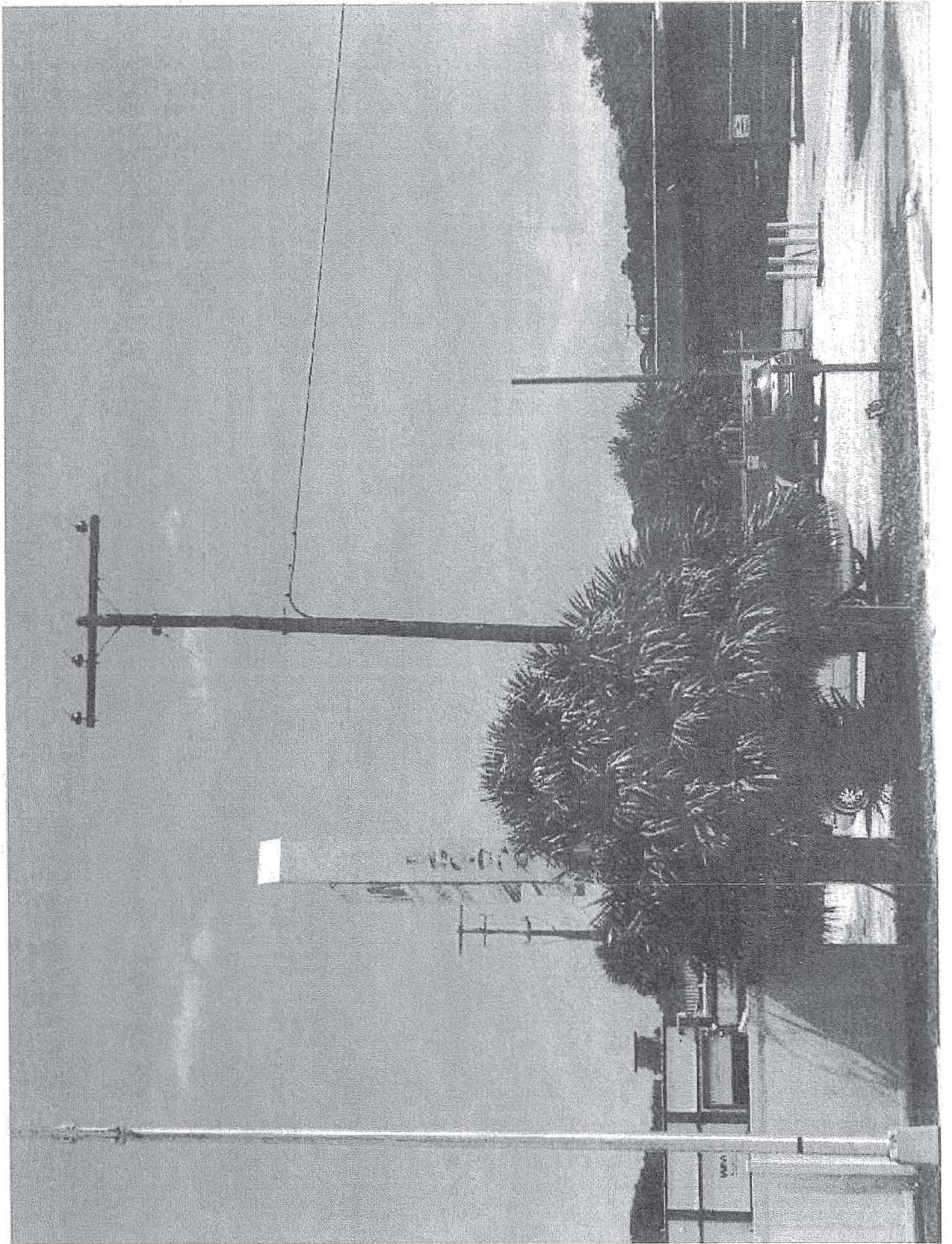
Attorneys, Appellate Staff  
Civil Division  
Department of Justice  
601 D St., N.W. Room 9135  
Washington, D.C. 20530-0001

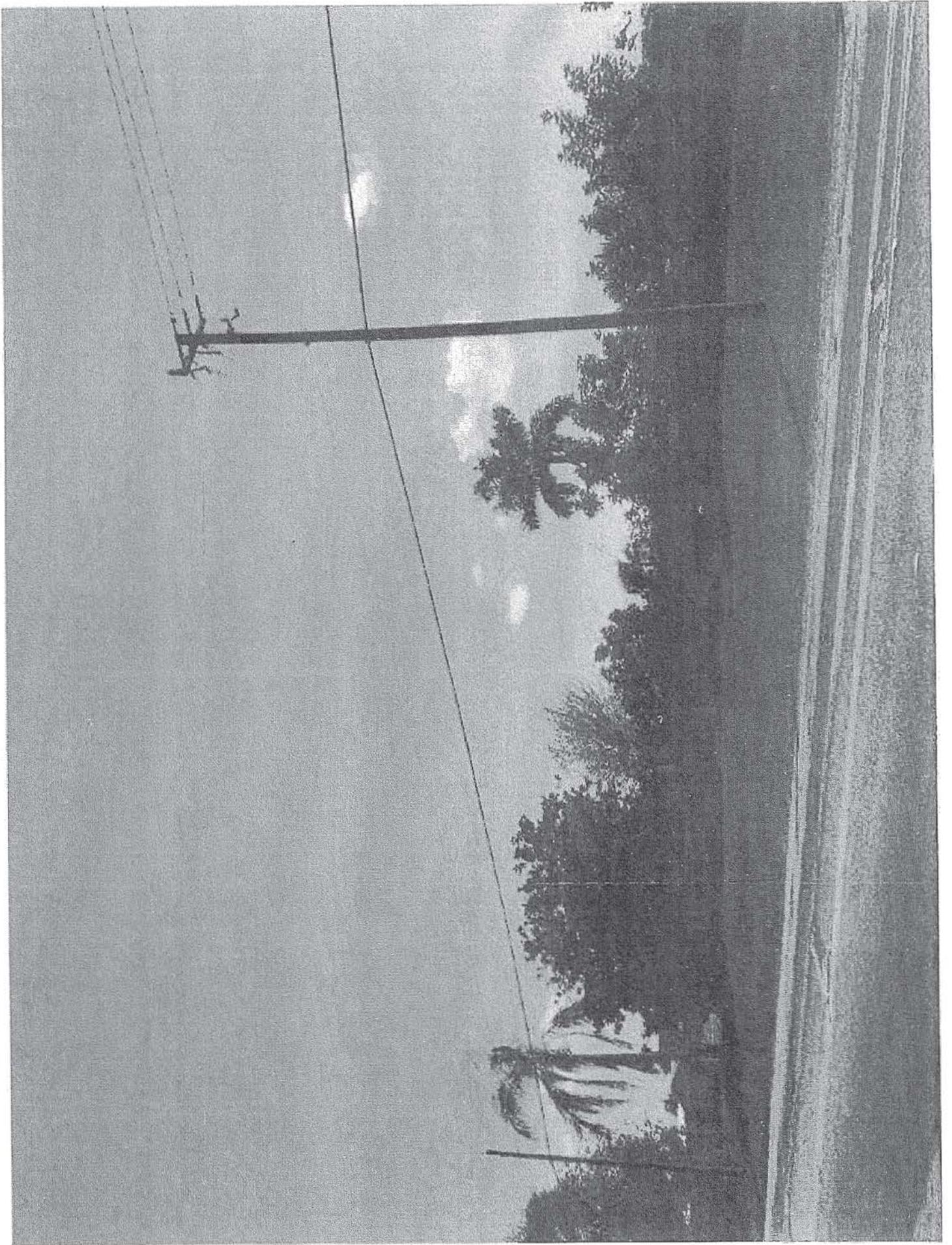
cc: J. Russell Campbell, Esq.  
Anthony C. Epstein, Esq.  
John D. Seiver, Esq.

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## Exhibit 3

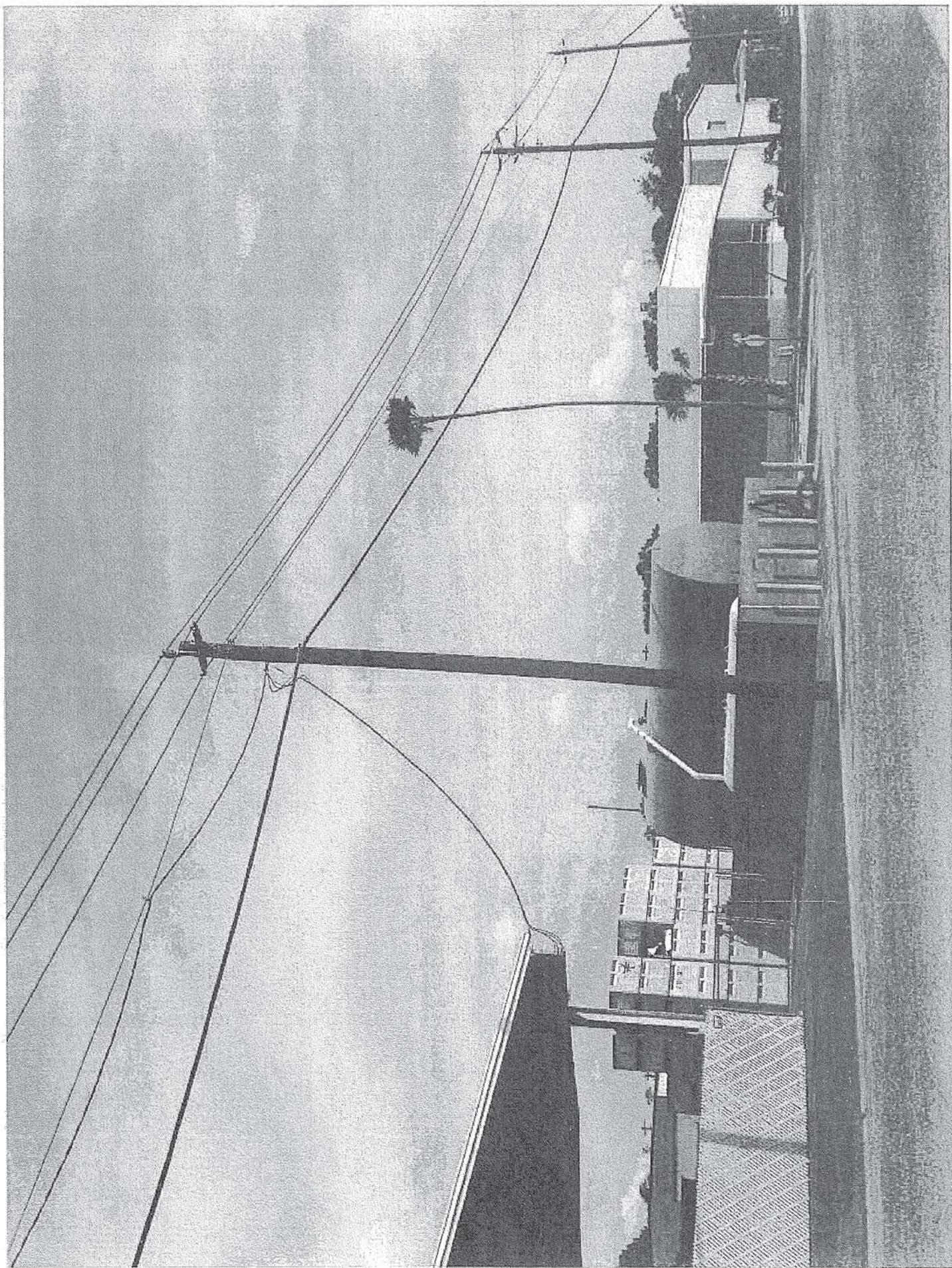


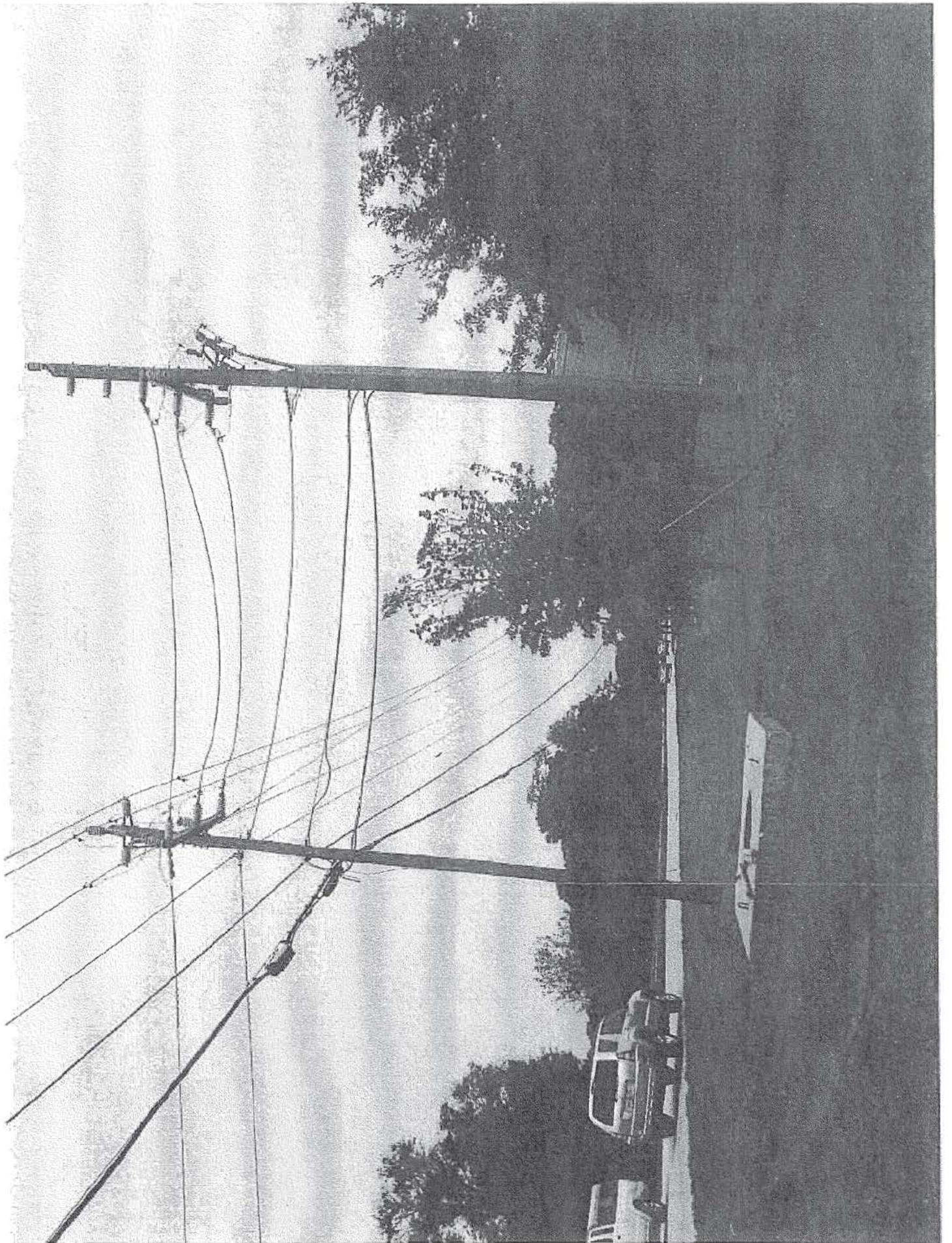












# EXHIBIT H

## Charles A. Zdebski

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**From:** Charles A. Zdebski  
**Sent:** Tuesday, February 24, 2015 4:27 PM  
**To:** Preiss, Tamara; Lia Royle; 'Rosemary McEnery' (Rosemary.McEnery@fcc.gov)  
**Cc:** Christopher Killion; Pachulski, James G; 'Moncada, Maria'; Saunders, Katharine; Evans, Claire; Huther, Christopher; alvin.davis@squiresanders.com; Litland, Roy E  
**Subject:** RE: Verizon Florida LLC v. Florida Power & Light company, File No. EB-14-MD-003, Docket No. 14-216

Lia and Rosemary:

I am writing on behalf of Florida Power & Light in response to the email from Tamara last Wednesday.

Verizon is obligated by 47 C.F.R. § 1404(k) to engage in the executive level resolution process outlined in the regulation prior to filing any complaint. Verizon's prior case was dismissed by the Commission, but apparently Verizon intends to file soon a new complaint containing evidence which it did not present previously and, consequently, positions and arguments it did not address with FPL. Respectfully, we do not believe that would be productive for the parties or the Commission.

We trust that rather than immediately opening a new proceeding before the Commission, Verizon will comply with Section 1.1404(k), discuss the bases of its new complaint and provide the parties the opportunity to engage in executive-level discussions in the hope of resolving all or part of the parties' disagreement. FPL stands ready and willing to do so and looks forward to hearing from Verizon.

Regards

~ Charlie

**Charles A. Zdebski, Esq.**  
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[czdebski@eckertseamans.com](mailto:czdebski@eckertseamans.com)



---

**From:** Preiss, Tamara [mailto:[tamara.preiss@verizon.com](mailto:tamara.preiss@verizon.com)]  
**Sent:** Wednesday, February 18, 2015 5:30 PM  
**To:** Lia Royle; 'Rosemary McEnery' (Rosemary.McEnery@fcc.gov)  
**Cc:** Christopher Killion; Pachulski, James G; Charles A. Zdebski; 'Moncada, Maria'; Saunders, Katharine; Evans, Claire; Huther, Christopher; alvin.davis@squiresanders.com; Litland, Roy E  
**Subject:** Verizon Florida LLC v. Florida Power & Light company, File No. EB-14-MD-003, Docket No. 14-216

Lia – In light of last week's order in this matter, Verizon plans to re-file its complaint in early March, and we have informed the court of that intent. Please let us know if you have any questions.

Thanks very much.

-Tamara

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[tamara.preiss@verizon.com](mailto:tamara.preiss@verizon.com)

# EXHIBIT I

## Charles A. Zdebski

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**From:** Charles A. Zdebski  
**Sent:** Tuesday, February 24, 2015 4:27 PM  
**To:** Preiss, Tamara; Lia Royle; 'Rosemary McEnergy' (Rosemary.McEnergy@fcc.gov)  
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Regards

~ Charlie

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**Sent:** Wednesday, February 18, 2015 5:30 PM  
**To:** Lia Royle; 'Rosemary McEnergy' (Rosemary.McEnergy@fcc.gov)  
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Lia – In light of last week's order in this matter, Verizon plans to re-file its complaint in early March, and we have informed the court of that intent. Please let us know if you have any questions.

Thanks very much.

-Tamara

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# EXHIBIT J



specific objections set forth herein to up to ten written interrogatories, with subparts counted as separate interrogatories.

3. Verizon objects to the Interrogatories because FPL has not shown that the information sought is both necessary to the resolution of the dispute and not available from any other source. *See, e.g., id.* § 1.729(b) (requiring respondents in other complaint proceedings to explain “why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source”).

4. Verizon objects to the Interrogatories to the extent that they are “employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.” *Id.* § 1.729(a).

5. Verizon objects to the Interrogatories to the extent that they seek information that is not within Verizon’s possession, custody, or control or information that is not within Verizon’s present knowledge.

6. Verizon objects to the Interrogatories to the extent that they call for information that is already within FPL’s possession, custody, or control.

7. Verizon objects to the Interrogatories to the extent that they seek discovery of legal conclusions, contentions, or information that is publicly available.

8. Verizon objects to the Interrogatories to the extent that they are vague, ambiguous, overbroad, unduly burdensome, oppressive, unreasonably cumulative, or duplicative.

9. Verizon objects to the Interrogatories to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.

10. Verizon objects to the Interrogatories to the extent that they seek information that is protected from discovery by the attorney-client privilege, the work-product doctrine or any

other applicable privilege. Nothing contained in Verizon's objections is intended to, or in any way shall be deemed, a waiver of such available privilege or doctrine. Verizon will not provide privileged or otherwise protected information.

11. Verizon objects to the Interrogatories to the extent that they seek confidential or proprietary information. Verizon will not provide responsive, non-privileged confidential or proprietary information unless it is protected by the terms of a mutually agreeable Confidentiality Agreement.

12. Verizon objects to FPL's definition of "you," "your," and "Verizon" because it is overbroad, unduly expansive and burdensome, and seeks to impose obligations to provide information that has no relevance to the material facts in dispute in this proceeding. Verizon will not provide information beyond that involving Verizon's joint use relationship with FPL.

13. Verizon objects to the Interrogatories to the extent that they seek to impose requirements or obligations on Verizon in addition to or different from those imposed by the Commission's rules. In responding to the Interrogatories, Verizon will respond as required under the Commission's rules.

14. Verizon reserves the right to change or modify any response should it become aware of additional facts or circumstances following the filing of these responses.

15. The foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.

### **RESPONSES TO INTERROGATORIES**

#### **Interrogatory No. 1:**

If you deny any part of FPL's Request for Admissions that has been served contemporaneously with these interrogatories, please explain the basis for your denial.

**Objections:**

Verizon objects to this Interrogatory because it is unreasonably cumulative and duplicative in that it seeks information that Verizon has already provided in its Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon further objects to this Interrogatory because Requests for Admissions have not been authorized by the Commission and are not necessary to the resolution of this dispute. Verizon also objects to this Interrogatory because it is overbroad and unduly burdensome, seeks information that is not relevant to the material facts in dispute in this proceeding, seeks discovery of legal conclusions and contentions, and/or seeks information that should already be within FPL's possession or is available from a public source.

**Interrogatory No. 2:**

Explain in detail Verizon's process and steps for engineering associated with utility poles under the Joint Use Agreement ("JUA").

**Objections:**

Verizon objects to this Interrogatory because it is unreasonably cumulative and duplicative in that it seeks information that Verizon has already provided in its Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon further objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Interrogatory because it seeks information that is not relevant to the material facts in dispute in this proceeding and seeks information that should already be within FPL's possession and/or is available from a public source.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to the documents produced in response to Requests for Production 3, 4, 5, 6,

and 18 and further states that Verizon follows an engineering process that can vary based on the unique characteristics of the particular utility pole. In each case, Verizon surveys the pole, completes a pole sounding test, looks for base rot, measures the new attachment's effect on the wind loading for all facilities on the pole, ensures that there will be the required vertical clearance between the ground and Verizon's cable, and complies with any other minimum design and structural stability requirements for the pole. Verizon's construction, operations, and engineering employees are well-versed in the applicable wind loading and safety standards that apply to the installation, operation, and maintenance of communications lines and equipment.

Verizon's engineers play a significant role in the engineering process and, as FPL is aware, often coordinate with FPL's engineers regarding proper pole design and engineering. For example, Verizon and FPL are members of the Florida Utilities Coordinating Committee, which coordinates large utility projects Statewide. Verizon also participates in the National Joint Utilities Notification System, which facilitates Verizon's coordination with FPL on matters that include pole transfers, pole attachments, and project notification. After a new attachment to an FPL-owned pole is made or removed, it is also Verizon's practice to submit to FPL a Form P-58, which includes information about the location of the pole and the addition or removal of Verizon's facilities.

**Interrogatory No. 3:**

Please explain in detail the steps and processes as to how Verizon identifies where it wants to attach to utility poles.

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks information

that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that, to the extent that FPL seeks information about where geographically Verizon identifies utility poles for possible use, Verizon selects the location of the utility pole based on the location of its customer. To the extent that FPL seeks information about where on a particular utility pole Verizon places its facilities, Verizon directs FPL to Section 1.1.7 of the JUA, which speaks for itself, and further states that Verizon places its facilities on the utility pole consistent with its obligations under the JUA, engineering practices, and the unique characteristics of the particular pole.

**Interrogatory No. 4:**

Please provide in detail the calculations performed by Verizon, including the assumptions and inputs, that establish the difference in costs incurred between an attacher on the lowest part of the pole compared to other attachers and how that calculation supports that the lowest attacher spends as much as the pole owner to relocate facilities forced by external agencies.

**Objections:**

Verizon objects to this Interrogatory because it is unreasonably cumulative and duplicative in that the same information appears to have also been requested in Request for Production No. 12 and further objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Interrogatory because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting

Affidavits, seeks information that is not relevant to the material facts in dispute in this proceeding, and/or is not necessary to the resolution of this dispute.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it has not performed any responsive calculations.

**Interrogatory No. 5:**

Describe in detail all steps associated with Verizon obtaining right-of-way access or land access, including details for all costs expended for each step, including but not limited to the costs expended on internal and external attorney's fees.

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to the documents produced in response to Requests for Production 15, 16, and 17 and further states that Verizon follows a process that can vary based on the unique characteristics of the particular utility pole location. Utility poles on public land are generally covered by municipal right-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, and which 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, 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. Verizon further states that it did not separately track the cost, if any, that it incurred as a pole owner during the period commencing five years prior to termination of the JUA through the present in order to obtain non-exclusive easements, if any, in its overlapping service territory with FPL.

**Interrogatory No. 6:**

For each of the preceding ten years, please identify the average incremental borrowing rate for Verizon.

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks confidential information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

**Interrogatory No. 7:**

Please state whether Verizon has ever been required to obtain a performance bond or letter of credit in connection with attaching to a utility pole, and if so, please identify the terms and rates at which it was charged for each of the performance bonds and/or letters of credit that it purchased.

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks confidential information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

**Interrogatory No. 8:**

Provide a detailed inventory of Verizon's current fleet of vehicles and equipment used to maintain, access and install its attachments to FPL poles. For purposes of this interrogatory, please describe the size and type of each vehicle / equipment; identify the most recent purchase price for each vehicle / equipment and the number of such vehicles/equipment used by Verizon; identify the annual operations and maintenance cost for each; and identify the expected life for each vehicle / equipment. See example table below. Use as many rows as necessary to capture all of Verizon's inventory.

Vehicle / Equipment Type	Vehicle / Equipment Size	Most Recent Purchase Price	Annual O&M Expense	Expected Life

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Interrogatory because it seeks confidential information that is not relevant to the material facts in dispute in this proceeding and is not necessary to the resolution of this dispute.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it does not maintain its records or equipment in a manner that allows Verizon to isolate information about the broad category of “vehicles and equipment” requested. Verizon further states that, in addition to its own vehicles and equipment, Verizon relies on the vehicles and equipment of its contractors in the course of maintaining, accessing, and installing attachments to FPL’s poles.

**Interrogatory No. 9:**

Explain in detail the calculations to support Verizon’s conclusion that FPL’s average pole height is 41 feet. In this explanation, please explain the statistically valid basis for Verizon’s use of an average pole height of 41 feet.

**Objections:**

Verizon objects to this Interrogatory because it is unreasonably cumulative and duplicative in that it seeks information that Verizon has already provided in its Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon further objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Interrogatory because it seeks information that is or should be within FPL’s possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that the details of its calculation appear at lines 43 to 48 of Exhibit C-1 to Dr. Calnon’s January 31, 2014 Affidavit, which is attached as Exhibit B to Verizon’s Pole Attachment Complaint. Verizon hereby corrects a typographical error on lines 45 and 46 of Exhibit C-1, which incorrectly identifies the years used in the 5-year average as 2006-2011 and

2006-2012, respectively. Lines 45 and 46 of Exhibit C-1 should each identify 2006-2010 as the years used in calculating the 5-year average.

Verizon further states that its calculation is based on pole height data for poles placed by FPL during the 2006-2010 period that FPL created and provided to Verizon in support of FPL's 2011 rate calculation. FPL's data appear at Exhibit E to Exhibit 7 of Verizon's Pole Attachment Complaint in Docket No. 14-216, File No. EB-14-MD-003. Because FPL requested confidential treatment of this data in the parties' pending state court litigation (even though FPL had previously provided the data to Verizon in the normal course of business without a similar restriction), Verizon will not repeat the calculation or its supporting data in this Response.

Verizon states that its calculation is reasonable and statistically valid because it is corroborated by the average pole height of data provided by FPL for poles placed during a longer 2001-2013 period. *See* Attachment F to Mr. Spain's April 4, 2014 Declaration, attached as Exhibit B to FPL's Response in Docket No. 14-216, File No. EB-14-MD-003. FPL has estimated in its rate calculation materials that these 2001-2013 pole placements represent over 55 percent of the poles on which FPL bases its annual rental rate calculation.

**Interrogatory No. 10:**

Please explain in detail the "significant training, maintenance and oversight costs" incurred by Verizon in 2011 and 2012, as described in paragraph 38 of the Complaint.

**Objections:**

Verizon objects to this Interrogatory because it is unreasonably cumulative and duplicative in that it seeks information that Verizon has already provided in its Pole Attachment Complaint and supporting Affidavits and Exhibits.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it did not separately track the costs that it incurred for the training, maintenance, and oversight required to ensure the safety and reliability of the parties' joint use network in 2011 and 2012. Verizon further states that its costs include those associated with formal and informal training and oversight of its construction, operations, and engineering employees to ensure that they comply with Verizon's safety, reliability, and quality standards, follow proper facility and pole design, and satisfy the applicable wind loading and safety standards that apply to the installation, operation, and maintenance of communications lines and equipment. Verizon's costs also include those associated with the need to replace a utility pole because it poses a safety hazard (typically because of age or damage from car accidents, storms, or vandalism) or because it is 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.

**Interrogatory No. 11:**

Please refer to paragraph 53 of Verizon's Complaint. Identify in detail Verizon's costs for the past ten years associated with "damage from oversized vehicles, vandalism and similar hazards" for the FPL/Verizon joint use poles, including identification of the documents used to support such costs.

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it did not separately track the costs that it incurred as a result of “damage from oversized vehicles, vandalism and similar hazards” in its overlapping service area with FPL during the past ten years or maintain its records in a manner that allows Verizon to readily isolate damage claims related to poles in the parties’ overlapping service area from the past ten years. Verizon, however, directs FPL to documents produced in response to Requests for Production 11 and 19, which include documents that Verizon was able to locate that show examples of the types of aerial damage that Verizon has recently suffered.

**Interrogatory No. 12:**

Please refer to paragraph 53 of Verizon’s Complaint. For all of the FPL/Verizon joint use poles, provide the annual number of requests Verizon received to raise its cables to accommodate oversize loads, whether other attachers were also asked to raise their cables, the associated costs to Verizon and the amount recovered by Verizon through reimbursement and identify all documents to support Verizon’s answer to this interrogatory.

**Objections:**

Verizon objects to this Interrogatory because it is vague, ambiguous, overbroad, and unduly burdensome.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it did not separately track the requests received or costs incurred due to the need to raise Verizon’s cables in order to accommodate oversize loads during the period commencing five years prior to termination of the JUA through the present. Verizon cannot

attest to whether or not in every instance another attacher was also asked to raise its cables. Verizon further states that it did not seek reimbursement from, or recover reimbursement for, the costs it incurred due to a request to raise Verizon's cables in order to accommodate oversized loads during the period commencing five years prior to termination of the JUA through the present.

**Interrogatory No. 13:**

Please delineate each activity and each associated cost that makes up Verizon's approximate \$300 per pole make-ready cost and identify all documentation relied upon by Verizon.

**Objections:**

Verizon objects to this Interrogatory because it is vague and ambiguous, overbroad, unduly burdensome, and seeks confidential information.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to the documents produced in response to Requests for Production 31 and 32 and states that the approximation includes estimates of \$70 for engineering, \$115 for travel, set up, and traffic conditioning, and \$115 for pole related work associated with the move or transfer of a cable, such as positioning the winch or hand line on the cable, drilling a new through bolt, moving the cable to the new location, and securing the cable.

Respectfully submitted,

By:



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Dated: May 7, 2015

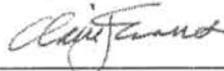
**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2015, I caused a copy of the foregoing Responses to FPL's Interrogatories to be served on the following via email:

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