

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

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FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., et. al.

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Office of Secretary

E.B. Docket No. 04-381

Complainants,

v.

GULF POWER COMPANY,

Respondent.

**GULF POWER COMPANY'S MOTION TO COMPEL COMPLAINANTS
TO PRODUCE JOINT USE AGREEMENTS WITH
CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC. AND OTHER UTILITIES**

Gulf Power Company ("Gulf Power") moves this Court to enter an Order compelling complainants to produce copies of their joint use agreements with Choctawhatchee Electric Cooperative, Inc. ("CHELCO") and other utilities. In support of this motion, Gulf Power says the following:

The CHELCO Agreements

1. During the depositions of complainants on February 20-21, 2006, Gulf Power learned that at least three of the complainants (Cox, Mediacom, Brighthouse) have joint use pole attachment agreements with CHELCO, an electric co-op servicing an area more or less surrounded by Gulf Power's service territory. CHELCO, unlike Gulf Power and the incumbent local exchange carriers (like Bellsouth), is not subject to the mandatory access and subsidized attachment rate requirements of 47 U.S.C. § 224.

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2. At least two of the complainants (Cox and Brighthouse) have negotiated to pay CHELCO a rate in the \$15-16 per attachment range for attachments *identical* to their attachments on Gulf Power's poles. (Deposition of Bruce Burgess, Brighthouse, p. 19; deposition of Mark O'Ceallaigh, Cox, p. 16).¹ Gulf Power has reason to believe Mediacom is paying \$17.50 per attachment, and already has agreed to pay \$20 per attachment beginning in 2008.

3. Despite their payments approaching \$20 per attachment to CHELCO, complainants contend in this case that the rate they pay Gulf Power (in the \$6 range) more than provides fair value for forced access to Gulf Power's poles -- even poles which are "crowded"/at "full capacity." Considering this context, it is no wonder complainants now resist producing their recently-disclosed agreements with CHELCO.

4. Gulf Power requested complainants' joint use agreements earlier during paper discovery:

REQUEST: Produce all joint use pole agreements, including but not limited to all drafts thereof, between you and any entities other than Gulf Power.

RESPONSE: Complainants object to this document request on the grounds that its request for pole agreements that do not involve Gulf Power are not relevant to this case. For example, rates paid by Complainants to other utilities are irrelevant to rates on Gulf Power poles (different electric utilities would use different cost accounts from different Federal Energy Regulatory Commission ("FERC") Form 1 statements, and telephone utilities would use Automated Reporting Management Information System ("ARMIS") accounts not used by electric utilities). Complainants further object to this request on the grounds that it is overly broad (it literally calls for potentially thousands of pole agreements), unduly burdensome, and is not limited as to time. Moreover, this request is unduly vague in its use of the phrase "joint use"; it is not clear what Gulf Power intends that term to mean. Subject to and

¹ Cited portions of the depositions of Bruce Burgess and Mark O'Ceallaigh are attached as Exhibits A and B, respectively. Cited portions of the deposition of Jeff Smith (Comcast) and Shayne Routh (Mediacom) are attached as Exhibits C and D, respectively.

without waiving the foregoing objections, Complainants respond as follows:

To the best of Complainants' knowledge, Complainants have no "joint use" pole agreements with other entities where "joint use" has the meaning often ascribed by Gulf Power of co-owning or jointly controlling poles.

(Complainants' Responses to Gulf Power's Second Set of Interrogatories and Request for Production).

5. At best, this answer is cagey and inaccurate; at worst, it is misleading. Complainants specifically refer in their answer to regulated cost account rate methodologies based on ARMIS (ILECs) and FERC Form 1 (investor owned utilities). This would *exclude* utilities who are not subject to 47 U.S.C. § 224 (in other words, utilities who charge a market rate free of government regulation) -- namely co-ops and municipally owned electric distribution systems ("munis").² With the clear implication being that complainants had no such agreements, Gulf Power did not move to compel in November 2005 when complainants served their response.³

6. Gulf Power now knows that complainants have agreements with CHELCO -- an entity free from the constraints of 47 U.S.C. § 224 -- and are paying CHELCO between \$15 and \$20 per attachment. Complainants should be compelled to produce those agreements.⁴

Agreements With Other Entities

7. To the extent complainants argue that their joint use agreements with CHELCO, other co-ops or munis, ILECs, or anyone else, are irrelevant their own expert establishes

² *Inclusio unius est exclusio alterius.*

³ Agreements with ILECs and other IOU's subject to rate regulation/subsidization under 47 U.S.C. § 224 were of marginal interest. What Gulf Power wanted (and what complainants obviously did not want to produce) were agreements with non-regulated entities, like co-ops and munis.

⁴ Gulf Power attempted to resolve this issue without involving the Court, but to no avail.

otherwise. Complainants' recently disclosed engineering expert, Mickey Harrelson, intends to testify that certain Gulf Power specifications (an integral part of the "crowding" analysis) are "unreasonable" and inconsistent with "industry standard." (Harrelson Summary, pp. 3, 5, 6 & 11). This position opens the door to discovery of complainants' other joint use agreements and the "industry standards" and specifications they agreed to therein. Complainants cannot be allowed to offer expert testimony about "industry standards" and then hide their *own* industry practices.⁵

⁵ Harrelson's opinion also belies the testimony of complainants' own witnesses. Cox's own construction standards actually include the Gulf Power specifications. (Deposition of Mark O'Ceallaigh, Exhibit 18). Cox testified:

Q: I notice that there are some Gulf spec plates that are included at the end of this?

A: Yes, there are.

Q: Is that because you expect your contractors to follow Gulf specs when they're dealing with Gulf poles?

A: Yes.

Q: Do you also use Gulf's construction specs on other poles, on poles owned by entities other than Gulf Power?

A: Yes. This is the bible for pole attachments.

(Deposition of Mark O'Ceallaigh, pp. 54-55). Similarly, Brighthouse testified:

Q: Does Brighthouse follow the Gulf Power specs that are included in Exhibit 13?

A: As a general rule, I will say yes.

Q: I guess I should be more specific. When Brighthouse is doing construction on Gulf's poles, does it follow Gulf Power specs?

A: Yes.

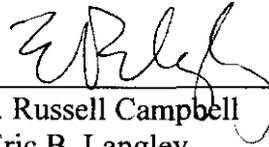
Q: Are Brighthouse construction standards consistent with Gulf Power's specs?

A: Yes.

(Deposition of Bruce Burgess, p. 67). Comcast testified:

Q: Is there a written set of Comcast safety codes or construction standards?

8. For the reasons set forth above, Gulf Power respectfully requests that the Court enter an Order compelling complainants to immediately produce their joint use agreements with CHELCO and other entities.



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A: They have them, yes, sir.

* * * *

Q: Do you know if those construction standards of Comcast differ in any way from the NESC standards and from Gulf Power's specs?

MR. SEIVER: Objection as to form.

THE WITNESS: They're basically all the same.

(Deposition of Jeff Smith, pp. 29-30). Despite specific requests (and follow-up), Gulf Power was not favored with a copy of the construction standards of Mediacom, Comcast and Brighthouse prior to the depositions. In fact, Gulf Power was told:

In accordance with our answer to your Document Request No. 4, we sent you all of the documents that we received, after specifically checking with each of our clients.

(February 2, 2006 e-mail from Geoff Cook to Nathan Chapman). At deposition, however, each of the complainants testified that such documents exist, and that they are easy to locate. (Deposition of Shayne Routh, pp. 34-36; Deposition of Jeff Smith, p. 29; Deposition of Bruce Burgess, pp. 59-61). Comcast's witness even volunteered in deposition that he had *never been asked* to provide the construction standards. (Deposition of Jeff Smith, p. 29). Complainants have since produced Mediacom's, Brighthouse's and Comcast's construction standards.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion To Compel has been served upon the following by Electronic Mail and by United States Mail on this the 10th day of March, 2006:

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OF COUNSEL

Exhibit A

**Bruce Burgess
(Brighthouse)**

Deposition Excerpts

1 Q Do y'all rely on Bill Shaw to handle those
2 issues?
3 A I rely -- he is in the loop on it, but it
4 goes between him and our legal group.
5 Q When you say your legal group, are you
6 talking about your outside counsel or someone in-house at
7 Bright House?
8 A No, our -- the out house, sorry.
9 MR. SEIVER: I was waiting for that,
10 outhouse counsel.
11 THE WITNESS: Bermant, Gould -- the legal
12 firm that the company uses.
13 BY MR. LANGLEY:
14 Q Are you talking about Cole Raywid?
15 MR. SEIVER: Sabin, Bermant, Gould is the
16 firm up in New York that does their work for
17 them.
18 BY MR. LANGLEY:
19 Q Do you know if the annual per pole
20 attachment fee includes any charges for grounds and
21 arresters?
22 A I do not remember seeing anything like
23 that. So to my knowledge, no. But I wouldn't know that.
24 I do not believe it is.
25 Q Are you familiar with something called the

1 FCC cable formula?
2 A I've heard of it. I've read it, I think at
3 one time or another. I just cannot recollect the
4 contents right now.
5 Q Do you know generally how the FCC cable
6 formula is structured?
7 A No.
8 Q I guess it stands to reason that you don't
9 know the particular input that goes into the FCC cable
10 formula?
11 A That is correct.
12 Q For example, are you familiar with FERC
13 account 364?
14 A No.
15 Q Do you know what amount Bright House pays
16 to Choctawhatchee on a per pole basis for attachments?
17 A Yes.
18 Q What is that amount?
19 A \$15 per pole annually.
20 Q Do you know what amount Bright House pays
21 annually on a per pole basis for attachments to BellSouth
22 poles?
23 A Approximately.
24 Q What is that?
25 A I believe it was \$3.48 or \$3.84, something

1 like that. It was three dollars and something is what I
2 recollect the charge to be on an annual basis.
3 Q Are you sure that wasn't semiannually?
4 A I believe it was annual.
5 Q Okay. What about the other co-ops or munis
6 with which Bright House has attachment agreements?
7 A I believe the municipalities are around the
8 \$9 rate. The other ones I cannot remember exactly where
9 they are.
10 Q Is Choctawhatchee the most that Bright
11 House pays on a per pole basis?
12 A No.
13 Q What is the most that Bright House pays on
14 a per pole basis?
15 A It's 18 and some change, and I believe it's
16 Florida Electric and I don't know if I even listed that
17 one. I think it's Florida Electric.
18 Q You're talking about Florida Public
19 Utilities, FPU?
20 A That would be it, yes, sir.
21 Q What's the least amount that Bright House
22 pays on a per pole basis?
23 A BellSouth.
24 Q Something that you think is in the \$3 and
25 change range?

1 A Yes.
2 Q Do you know how the annual per pole charge
3 of \$15 with Choctawhatchee is computed?
4 A No.
5 Q What about the annual charge with Florida
6 Public Utilities?
7 A No.
8 Q What about the munis, which you believe are
9 in the \$9 range?
10 A No.
11 Q I think you already told me you do not know
12 how the BellSouth rate is computed?
13 A No, I don't. They send something along
14 with their invoicing, and I send it up to, you know,
15 legal for review, and if everything is fine, then we pay
16 the bills.
17 Q What kind of services does Bright House
18 provide?
19 A We do cable and high speed Internet
20 service. Are you talking about in the panhandle?
21 Q Yes.
22 A At this point that's all we're -- that's
23 what we do, cable and high speed.
24 Q Do you know what is meant by the word
25 telecommunications?

1 looking for detail there.

2 BY MR. LANGLEY:

3 Q That would be your engineers, the ones you

4 mentioned earlier in DeFuniak and Cantonment?

5 A Yes. That would be the ones that go out in

6 the field to do that field work. I would not have been

7 with them during that process.

8 Q They're the ones that would have supervised

9 the contractor?

10 A Yes.

11 Q Okay. How about 1-C?

12 A As far as the audits or inspections of

13 such, I don't know -- I don't have any -- we did some

14 research work that we provided to legal counsel some time

15 ago that had information on the last audit. I do not

16 have the details of that, any of that with me.

17 Q Are you talking about a special audit that

18 you did of ten random poles?

19 A No, sir, if that's what you're talking

20 about here, I did -- I'm aware of the random poles that

21 we did for this report.

22 Q I wasn't talking about those. I wanted to

23 make sure you weren't.

24 A No.

25 Q You're talking about a normal audit like on

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1 a cyclical basis? That was yes?

2 A I don't have the information. I had -- I

3 have pulled, researched and provided that to legal some

4 time ago. I don't have, nor do I remember what the

5 details of that were.

6 Q Who at Bright House would know something

7 about that?

8 A At Bright House would be me, but I would

9 have to go back and review my notes and file on it to get

10 the information.

11 Q So you're the right person to ask, you just

12 aren't prepared to testify about it because you haven't

13 looked at the stuff lately?

14 A That's partially correct. The other thing

15 is my memory isn't what it used to be. So as far as the

16 details, I sometimes can't remember it all.

17 Q Understood. What about 1-D.

18 A 1-D, safety codes and construction

19 standards, our contractors have in their contract, there

20 is -- we do have some construction standards that are

21 addressed in the contracts with our contractors.

22 Q These are Bright House construction

23 standards?

24 A It was provided by our VP of engineering.

25 So it came down through Bright House. I don't know where

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1 he got the information, but there is some standards that

2 we do have to include with our contracts.

3 Q This is the VP of engineering of Syracuse?

4 A VP of engineering in Birmingham.

5 Q Who is that?

6 A Garland Thomas.

7 Q Garland Thomas?

8 A Yes.

9 Q Those are construction standards you expect

10 your contractors to follow when they're building?

11 A Yes.

12 Q How big is that document, the construction

13 standards?

14 A You know, I don't know.

15 Q Inch thick?

16 A Yeah, an inch thick would be approximate.

17 Q What are they called?

18 A I don't know the exact name, but it's the

19 standard construction practices that we utilize. There's

20 other -- there are other things that we use that we get

21 from our suppliers, such as Com Scope or Times Fiber.

22 There are a couple of cable providers, the coax, and they

23 give us some construction guidelines. In the past,

24 although I don't have anything from Bright House, we've

25 previously with Time Warner and Advance New House in the

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1 past, we used to have some construction standards that

2 the company used to have, but since we have moved over to

3 Bright House, I don't have any kind of a formal

4 construction manual that we give to all of our employees.

5 But our construction crews all have a copy of this, what

6 our standards are.

7 Q And the standards, what you're talking

8 about is about an inch thick?

9 A Yes.

10 Q It's given to Bright House construction

11 employees and to Bright House contractors who are

12 building?

13 A That is correct. I would say my technical

14 managers have the copy, and I'm assuming that their

15 construction people have copies as well.

16 Q Is that something you could put your hands

17 on pretty quickly at your office?

18 A Yes.

19 Q Do you also follow the National Electric

20 Safety Code?

21 A Yes.

22 Q You're familiar with that code?

23 A Yes.

24 Q You understand what the clearance

25 requirements are in that code?

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1 A I think I'm fairly familiar with most of
2 them. That's a pretty thick code book. I guarantee, I
3 don't know all that stuff. As far as our communication
4 conductors, most of that stuff I'm familiar with.
5 Q Are you familiar with the 40-inch clearance
6 requirement between utility secondary and the uppermost
7 communications attacher?
8 A Yes.
9 Q Is that something that's also in the Bright
10 House construction standards?
11 A I have to believe it is. All I know,
12 they've had it. I have not gone through that manual in
13 any kind of detail. But I would be highly surprised if
14 it's not in there. I'm assuming all that is in there,
15 should be included.
16 Q Is it fair to say that you rely on your
17 engineers to make sure that the National Electric Safety
18 Code and Bright House standards are being followed when
19 there's a build-out?
20 A Yes.
21 Q Are you familiar with the 30-inch clearance
22 requirement between the bottom of the transformer and the
23 uppermost communications?
24 A Yes.
25 Q Are you familiar with the 12-inch

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1 separation requirement between the streetlight drip loop
2 and the uppermost communications attacher?
3 A Yes.
4 Q Are you familiar with the 40-inch clearance
5 requirement between the top of an electric riser and the
6 uppermost communications attachment?
7 A Yes.
8 Q Are you familiar with DOT clearance above
9 grade requirements?
10 A Yes.
11 Q What's your understanding of what those are
12 in the Northwest Florida area?
13 A At least crossing the state highways, it's
14 18 feet minimum clearance for our cable is what I
15 understand it to be.
16 Q What about for not crossing a street, what
17 if it's on the side of the street?
18 A If it's backside of the curb or backside of
19 the ditch line, then it would be 15 and a half feet.
20 (Exhibit 13 was marked for identification)
21 BY MR. LANGLEY:
22 Q Let me show you what I've marked as Exhibit
23 13. Take a moment to flip through those, and I'm going
24 to ask you some questions about them.
25 Have you seen Exhibit 13 before?

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1 A Yes.
2 Q What are they?
3 A What are these that you gave me?
4 Q Yes. Let me ask the question again. What
5 is Exhibit 13?
6 MR. SEIVER: If you know.
7 THE WITNESS: This was included in our
8 agreement with Gulf Power and was an exhibit
9 placed there in the back to identify -- I guess,
10 so that there was an understanding what our
11 separation clearances should be between power or
12 between the power, the cable and/or other
13 companies.
14 BY MR. LANGLEY:
15 Q What is the typical order on a pole from
16 the bottom up?
17 A Usually it's -- what I normally would see
18 is your phone company and then cable and then power.
19 Q If a phone company is on a pole that Bright
20 House is attaching to, does Bright House ever go
21 underneath the phone company?
22 A It would be -- it would have to be an
23 exceptional, exceptional rule. I've seen it happen
24 before, not that I can think of in the panhandle. It
25 would be an exception to rule and something that you

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1 would have to negotiate something between the different
2 utilities to agree upon that.
3 Q Is that generally considered bad
4 engineering?
5 A I wouldn't call it -- I think there ought
6 to be a certain level of consistency in engineering, and
7 that is the way they have always done that; but if there
8 was an exception, it might not be that it might not be
9 bad, if that's the route everyone decided we needed to
10 do. There might be a good reason for it.
11 Q Do you have an understanding of the
12 relationship between phone companies and the power
13 company?
14 A I do not know what the full relationship
15 is.
16 Q Have you ever heard of the term joint use
17 agreement?
18 A Yes.
19 Q Do you know what is meant by joint use
20 agreement?
21 A Well, yes. Or I have -- there's a certain
22 amount of each of that pole that belongs to each. If you
23 have joint ownership, maybe you own two-thirds, they own
24 a third, but there's a certain percentage of that pole
25 that belonged to the other utility.

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17 (Pages 62 to 65)

1 Q How much of the pole typically belongs to
2 the phone company?
3 A Without seeing that contract, I would not
4 know.
5 Q Have you ever seen one of the joint use
6 agreements?
7 A It's been a lot of years ago. The last one
8 I saw was in up in New York back in the '70s somewhere.
9 I cannot remember how that was done, but I have not --
10 since 1981, I know I have not seen a contract. So I
11 don't know what it is.
12 Q So that means you have not seen, for
13 example, Gulf Power's agreements with Sprint?
14 A No.
15 Q GT Com or BellSouth?
16 A No.
17 Q You don't know what the agreement is
18 between Gulf and those entities for what space it gets on
19 Gulf's poles?
20 A No.
21 Q You do know when Bright House goes out
22 there to attach and the phone company is already there,
23 Bright House is going above the phone company?
24 A Yes.
25 Q What is the general separation between

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1 phone company and Bright House?
2 A That's 12 inches.
3 Q Is that the same whether it's a drop pole
4 or a main line pole?
5 A Yes.
6 Q Does Bright House follow the Gulf Power
7 specs that are included in Exhibit 13?
8 A As a general rule, I will say yes.
9 Q I guess I should be more specific. When
10 Bright House is doing construction on Gulf's poles, does
11 it follow Gulf Power specs?
12 A Yes.
13 Q Are Bright House construction standards
14 consistent with Gulf Power's specs?
15 A Yes.
16 Q As far as you know, are Gulf Power specs
17 consistent with what is required by the National Electric
18 Safety Code?
19 A On the poles themselves, there could be a
20 variance there.
21 Q Are you aware of any particular variance?
22 A As far as on the poles, you know, I've
23 looked at these. Let's say, on C-5 you got a 40-inch
24 clearance between the neutral there and the
25 communications cable, and the measurement they're using

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1 there is from the bottom of that insulator --
2 Q Uh-huh (affirmative).
3 A -- to the top of that three-bolt clamp that
4 you see there. And I don't have the -- in the National
5 Electric Code, they're actually referred to the actual
6 attachment itself. So I'm not sure everyone has that
7 same understanding as to whether the conductors in this
8 situation are actually more than 40 inches in this
9 particular picture. I'm just not sure, and I don't have
10 that -- he wouldn't let me bring anything with me, or I
11 would have a copy of the code here with me.
12 The National Electric Safety Code, the way
13 they write that, I'm not sure I'm in 100 percent
14 agreement with how that's written. But I'm just saying,
15 there could be some variations there, and that's one
16 example. But I don't know if I'm 100 percent sure that
17 that really is what's written in the National Electric
18 Code. I don't know if your interpretation, of Gulf
19 Power, is exactly what the code is.
20 Q Let me make sure I understand what you're
21 saying. On C-5 you're telling me that you're not sure
22 that the way Gulf is describing schematically the
23 clearance requirement is entirely consistent with how the
24 NESC describes it?
25 A That is correct.

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1 Q And to carry that one step further, you're
2 saying that Gulf's may be more conservative?
3 A Yes.
4 Q It may make the difference in a couple of
5 inches?
6 A At most in the situation. Anyway, that's
7 an example of what I would consider -- I'm not 100
8 percent sure that is interpreted correctly. I don't know
9 that.
10 Q Who at Bright House would be in the best
11 position to answer questions about the National Electric
12 Safety Code and what it requires?
13 A I'm not sure. I don't know who. Because
14 if it takes an interpretation of what it is, that might
15 be something that goes to legal for interpretation
16 because I'm not sure there is anybody that could answer
17 that directly. I mean, if I take it the way it was
18 written in the code, it doesn't to me appear that this
19 would be drawn correctly. So I don't know if I there is
20 anybody within Bright House themselves that could answer
21 that question.
22 Q In the real world, when Bright House is
23 building out, are there ever disagreements with Gulf
24 Power about what make-ready is required?
25 MR. SEIVER: Let me just object to be sure.

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Exhibit B

**Mark O’Ceallaigh
(Cox)**

Deposition Excerpts

1 A Pensacola.
 2 Q When you say Fort Walton, are you including
 3 within that Mary Esther, Destin and Fort Walton?
 4 A Yes.
 5 Q Does Cox own any of its – does Cox own any
 6 aerial plant in Pensacola?
 7 A Well, sure, we own all of our aerial plant.
 8 Q That was a bad question. Does Cox have any
 9 poles that support its aerial?
 10 A Under a dozen.
 11 Q Under a dozen poles?
 12 A Yes.
 13 Q From whom does Cox lease pole space?
 14 A Gulf Power, Sprint.
 15 MR. SEIVER: Just in Pensacola?
 16 MR. LANGLEY: Right now I'm just talking
 17 about Pensacola.
 18 THE WITNESS: Scratch the Sprint part.
 19 It's just Gulf Power and BellSouth.
 20 BY MR. LANGLEY:
 21 Q What about Fort Walton?
 22 A Then you can add Sprint to that and CHELCO.
 23 Q Is that a co-op?
 24 A It's a co-op.
 25 Q Do you know who that is?

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1 A Choctawhatchee Electric Company, I believe.
 2 Q Are those the only four entities with whom
 3 Cox has pole attachment agreements?
 4 A Yes.
 5 Q None of the munis in North Walton County?
 6 A No.
 7 Q Do you know what Cox pays in annual rent to
 8 Gulf Power for its attachment?
 9 A \$6 and change. I'm not sure, \$6.46.
 10 Q Do you know what Cox pays to BellSouth for
 11 its pole attachments?
 12 A Something along the lines of \$3.48 for coax
 13 cable poles and four something for what they term urban
 14 poles.
 15 Q What about Sprint?
 16 A I can't tell you that. I don't know.
 17 Q You don't know?
 18 A No.
 19 Q Do you know if it's in the same range of
 20 what you pay BellSouth?
 21 A I would be guessing.
 22 Q Do you know if it's more than what you're
 23 paying Gulf Power?
 24 A I couldn't tell you. I would be guessing.
 25 Q You don't know if it's \$2 or \$20?

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1 A I would suggest it's not \$20. I just don't
 2 know. I don't know why I don't. I've never looked at a
 3 Sprint bill, to be honest with you.
 4 Q What about Choctawhatchee Electric Company?
 5 A We're paying, I think, roughly somewhere in
 6 the neighborhood of \$16 right now, 15 or 16.
 7 Q Are the attachments that Cox makes to poles
 8 owned by Choctawhatchee Electric any different than the
 9 attachments Cox makes to Gulf Power owned poles?
 10 MR. SEIVER: Objection as to form.
 11 THE WITNESS: No.
 12 BY MR. LANGLEY:
 13 Q Any different physically?
 14 A No.
 15 Q How many attachments does Cox have with
 16 Choctawhatchee Electric?
 17 A Approximately 4,000.
 18 Q What is the Choctawhatchee Electric service
 19 territory?
 20 A It's little sporadic pieces of each little
 21 city out there. They're largely in Freeport. They have
 22 some smattering of poles in Crestview and Niceville.
 23 Q How many pole attachments does Cox have
 24 with Sprint?
 25 A About 4,000.

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1 Q And are those mostly in the Destin area?
 2 A Yeah. Well, anything from Mary Esther down
 3 is almost all Sprint.
 4 Q Okay. And how many with BellSouth?
 5 A 14,000.
 6 Q As I understand, Cox has something in the
 7 65 to 70,000 attachments with Gulf Power?
 8 A Yes.
 9 Q So by far most of Cox attachments are to
 10 Gulf Power poles?
 11 A Yes.
 12 Q In the five years you've been with Cox, has
 13 it always been known by the name Cox Communications Gulf
 14 Coast, LLC?
 15 A Yes.
 16 Q I ask that because I've seen Cox
 17 Communications of Pensacola, Inc. Are you familiar with
 18 that?
 19 A I've not heard that one.
 20 (Exhibit 16 was marked for identification)
 21 BY MR. LANGLEY:
 22 Q Let me show you what I've marked Exhibit
 23 16. Do you recognize this document?
 24 A I do now just reading it.
 25 Q Is this at least an attachment agreement

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1 you, I can assume what it was, but I don't know if that's
 2 appropriate.

3 Q You can tell me what you think it was.

4 A This may have been cribbed from a cable
 5 manufacturing company spec sheet, something of that
 6 nature, and we surmise that the first 33 pages are drop
 7 related.

8 Q Oh, drop pole?

9 A Just aerial installation to a customer's
 10 house type specifications.

11 Q But they're not specifications that you use
 12 or follow currently?

13 A They could be. I don't know what they are.
 14 The bulk of what I do involve what's in here.

15 Q This is a document that you would give to
 16 your contractor?

17 A Quality.

18 Q They have a copy of this?

19 A Yes, they do.

20 Q And to the extent Cox does any maintenance
 21 or make-ready, it would follow these standards also?

22 A Yes.

23 Q I notice that there are some Gulf spec
 24 plates that are included at the end of this?

25 A Yes, there are.

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1 Q Is that because you expect your contractors
 2 to follow Gulf specs when they're dealing with Gulf
 3 poles?

4 A Yes.

5 Q Do you also use Gulf's construction specs
 6 on other poles, on poles owned by entities other than
 7 Gulf Power?

8 A Yes. This is the bible for pole
 9 attachments.

10 Q Turn to Page 37 of Exhibit 18. Are you
 11 there?

12 A Yeah.

13 Q Look down at numbered Paragraph 7 where it
 14 says verticals and ground shall be installed pursuant to
 15 Cox specifications. What are Cox specifications for
 16 installing grounds?

17 A We're supposed to bond at any ground that
 18 the power company has.

19 Q Do you?

20 A Yes.

21 Q Does Cox ever install its own grounds?

22 A Not anymore.

23 Q Did it ever?

24 A I think prior to my getting here they did.

25 Q Do you know if any of those grounds were

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1 installed on poles owned by Gulf Power?

2 A One would assume.

3 Q But you don't know that for a fact?

4 A Not for a fact.

5 Q How often are there ground wires?

6 A Well, every time the power company has a
 7 ground wire, we're going to bond to it. How often that
 8 is is depending on where the power company puts them.

9 Q Is there sort of an industry practice,
 10 though, as to how often you ground a pole?

11 A We used to go by a rule of — it's changed
 12 so frequently, it would be difficult to pin it down.
 13 It's been kind of a moving target based on plant
 14 conditions. It was first pole, fifth pole and tenth
 15 pole, but we don't like to run ground separately from the
 16 power company. That causes safety concerns. So we try
 17 to stay with the power company grounds.

18 Q What are those safety concerns?

19 A Giving a difference of potential. Someone
 20 goes up the pole, I've got a ground, the power company
 21 has got a ground. My potential is different than the
 22 power company's potential. You don't want the gentleman
 23 climbing the pole or the woman climbing the pole to come
 24 into contact with any energized ground that has a
 25 difference of potential. Shock hazard, that's why we

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1 don't run grounds, separate grounds.

2 Q Do you know if Cox pays anything for
 3 bonding to Gulf Power's grounds?

4 A No, I don't believe we do. I think it's a
 5 specification the power companies ask for as well.

6 Q You believe Gulf has asked for Cox to bond
 7 to its grounds?

8 A Yes.

9 Q Do you know if it's in the contract?

10 A I don't know if it's verbiage in the
 11 contract or if it's a plate or if it's in the document as
 12 a diagram. But I know it's a requirement.

13 Q Will you take a look at the spec plates and
 14 tell me if you can see that in there?

15 A Well, I can see one here on the
 16 underground. That's a bond.

17 Q You're referring to the first spec plate —
 18 first Gulf Power spec plate behind the Cox spec plates?

19 A Yes, that would be the one.

20 Q What about for overhead?

21 A That's an example of one that's
 22 underground. I will have to see if I can find one here.
 23 You want me to look in the power company specs, Gulf
 24 specs or our specs?

25 Q Gulf specs. Look at Plate C-5, the numbers

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Exhibit C

**Jeff Smith
(Comcast)**

Deposition Excerpts

1 have to look at my mailbox, the address thing, to see the
 2 other ones. That's the ones that come to mind. I know
 3 there's seven or eight of them.

4 Q In connection with make-ready, do you
 5 personally have any problems in your dealings with these
 6 people?

7 MR. SEIVER: Objection as to form. Answer
 8 as best you can.

9 THE WITNESS: No, sir.

10 BY MR. LANGLEY:

11 Q Any problems other than just the day-to-day
 12 logistical issues?

13 A No, sir.

14 Q Are they pretty easy to work with?

15 A Yes, sir.

16 Q To your knowledge has Gulf Power ever
 17 denied a request to perform make-ready?

18 A Not to my knowledge.

19 Q When was the last time that Gulf Power did
 20 any make-ready work for Comcast?

21 A I can't really remember the exact date.
 22 Probably six, eight months ago.

23 Q Do you remember where in the territory that
 24 was?

25 A It was in Panama City, I believe. Panama

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1 City, yeah.

2 Q Do you remember the engineer at Gulf that
 3 you dealt with?

4 A I can't recall right now.

5 Q Look at category 1-B, it's at the top of
 6 Page 2 of Exhibit 2. I gather from our discussion
 7 already you do know a thing or two about that?

8 A Yes, sir.

9 Q Same is true for 1-C?

10 A Yes, sir.

11 Q What about 1-D?

12 A Yes, sir.

13 Q What are the safety codes and construction
 14 standards applicable to Comcast attachments?

15 A We have to stay 40 inches away from Gulf
 16 Power's secondaries on their poles; 30 inches from the
 17 base of their transformer, whichever is greater;
 18 12 inches away from the streetlight bracket, or 12 inches
 19 away from the drip loop or the wire coming out of the
 20 bottom of the streetlight, we have to stay 12 inches away
 21 from that. Thirty inch mid-span clearance or any lines
 22 running parallel with Gulf Power's lines down the road,
 23 across the easement or across the highway or anything,
 24 we've got to maintain 30 inches separation between them.
 25 Basically that's it.

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1 Q Where do those come from?

2 A They're guidelines that Gulf Power gave us
 3 whenever we done a construction rebuild in 1989, 1990.
 4 It also follows along with the NESC, National Electrical
 5 Safety standards or code.

6 Q NESC, the National Electrical Safety Code?

7 A Yes, sir.

8 Q Is that something that you're familiar
 9 with?

10 A We practice it.

11 Q When you say you practice it, does that
 12 mean Comcast actually has a copy of it in your office?

13 A Yes, sir.

14 Q You refer to it when you're doing work on
 15 poles?

16 A In the past we have. Basically we know
 17 what it reads now.

18 Q You said y'all follow the specs given to
 19 you by Gulf Power?

20 A Yes, sir.

21 Q And you follow the NESC?

22 A Yes, sir.

23 Q Does Comcast have any of its own safety
 24 codes or construction standards?

25 A Basically it's the same as the NESC

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1 standards.

2 Q Is there a written set of Comcast safety
 3 codes or construction standards?

4 A They have them, yes, sir.

5 Q What's the name of that document?

6 A What do they call that? It's a
 7 construction manual, but they may have another technical
 8 name for it, but that's what we call it, construction
 9 manual. It's guidelines that we give our contractors to
 10 build cable to our specifications and it's whenever
 11 they're attaching to the power company, Southern Bell,
 12 AT&T, Gulf Coast Electric, whoever's pole they're
 13 attaching to.

14 Q How big is that document?

15 A I'm not sure.

16 Q Is it a four-inch binder, 20 inches?

17 A It may be an inch binder.

18 Q But that's something you could put your
 19 hands on pretty easily at your office?

20 A Yes, sir.

21 Q Do you know why that has not been provided
 22 to Gulf Power?

23 MR. SEIVER: Objection as to form.

24 THE WITNESS: It hasn't been asked for.
 25 Hasn't been asked -- nobody has asked me for it.

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1 **BY MR. LANGLEY:**
 2 **Q** Okay. Do you know if those construction
 3 standards of Comcast differ in any way from the NESC
 4 standards and from Gulf Power's specs?
 5 **MR. SEIVER:** Objection as to form.
 6 **THE WITNESS:** They're basically all the
 7 same.
 8 **BY MR. LANGLEY:**
 9 **Q** The construction standards for Comcast, is
 10 this something that is universal to all Comcast entities,
 11 or is this something specific to Comcast of Panama City?
 12 **A** The Comcast construction practices are
 13 universal. The guidelines Gulf Power requires us to use
 14 to attach to their poles, which has been put into effect
 15 that everything we do in the Panama City/Dothan area, the
 16 whole area around here, that's the way we build
 17 everything that's been attached to it in Panama City. As
 18 far as any other area, I couldn't tell you.
 19 **Q** Do you ever attend any construction
 20 practices or safety meetings put on by Comcast?
 21 **A** I've been to a couple in the past. I
 22 haven't been to one in the last couple of years.
 23 **Q** Is this something where you travel out of
 24 town for it?
 25 **A** They have them where we travel out of town,

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1 or they do them locally.
 2 **Q** What's the last such meeting you attended?
 3 **A** It's probably been three years ago in
 4 Atlanta.
 5 **Q** Was that just Comcast employees?
 6 **A** Yes, sir.
 7 **Q** I assume Comcast employees from around the
 8 country or the Southeast?
 9 **A** Yes, sir.
 10 **Q** What did y'all talk about at the meeting?
 11 **A** Anything and everything safety related.
 12 **Q** For example, the 40-inch clearance
 13 requirement?
 14 **A** Yes, sir.
 15 **Q** The 30-inch clearance requirement?
 16 **A** Yes, sir.
 17 **Q** The 12-inch clearance requirements?
 18 **A** Yes, sir.
 19 **Q** Mid-span clearance requirements?
 20 **A** Yes, sir.
 21 **Q** What about the separation required between
 22 attachments?
 23 **A** Twelve inches.
 24 **Q** That's something Comcast follows?
 25 **A** Yes, sir.

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1 **Q** Do you know if that comes from the National
 2 Electric Safety Code, from Comcast construction
 3 standards, from Gulf Power specs or all of the above?
 4 **A** I've seen it in all of the above.
 5 **Q** Are you familiar with the term best
 6 engineering practices?
 7 **A** No, sir.
 8 **Q** Have you ever heard that term?
 9 **A** No, sir.
 10 **Q** Earlier you made reference to contractors
 11 that Comcast used to do some of its build-out. Does
 12 Comcast always use contractors for build-outs?
 13 **A** Any new construction, 95 to 99 percent of
 14 it is done by contractors. We do very little cable
 15 construction in-house. If it is, it's one span here, one
 16 span there to service a customer.
 17 **Q** Who are the contractors that you use?
 18 **A** Currently it's Kennedy Network Services.
 19 **Q** Kennedy Network Services?
 20 **A** Yes, sir.
 21 **Q** Where are they based?
 22 **A** In Georgia, where they grow the onions.
 23 **Q** Vidalia?
 24 **A** Vidalia, Valdosta, Savannah. It's
 25 Savannah, a little town outside of Savannah is their home

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1 office.
 2 **Q** They grow onions in Savannah?
 3 **A** Somewhere around there. He sends me onions
 4 all the time.
 5 **Q** Red or white? I'm kidding.
 6 **A** The vidalia type.
 7 **Q** Who is your contact at Kennedy Network
 8 Services?
 9 **A** Locally is Billy, I can't think of his last
 10 name. Billy, Billy. We call him so many other things
 11 besides that.
 12 **Q** Things that can be repeated in mixed
 13 company?
 14 **A** Some things that can't be repeated. Billy,
 15 I can't think of his last name. And his wife is in
 16 Tallahassee. Kennedy has got services -- they do
 17 construction in Tallahassee and Panama City, and one of
 18 them operates the construction group out of Tallahassee,
 19 and he operates Panama City's area.
 20 **Q** Are they an exclusive contractor right now
 21 for new construction?
 22 **A** Yes, sir.
 23 **Q** How long have they been Comcast's exclusive
 24 contractor?
 25 **A** For the Panama City area, last two years.

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Exhibit D

**Shayne Routh
(Mediacom)**

Deposition Excerpts

1 Q In violation of the NESC?
 2 A That's correct.
 3 Q Thus, the National Electric Safety Code?
 4 A That's correct.
 5 Q Does Mediacom follow the National Electric
 6 Safety Code clearance requirements?
 7 A Yes, we do.
 8 Q Is that considered the standard in the
 9 industry?
 10 A Yes, to get a pole permit and to get
 11 onto — to get access from those poles, you've got to
 12 meet those requirements when you fill your application
 13 out with the power company.
 14 Q That's true whether you're attaching to a
 15 power company pole or a phone company pole, correct?
 16 A That's correct.
 17 Q Does Mediacom have any of its own
 18 construction standards or clearance requirements?
 19 A We follow the NESC guidelines.
 20 Q Is there a document at Mediacom called
 21 Mediacom construction standards?
 22 A We have layouts, yes, of how we want our
 23 equipment configured on a pole. You know, you've got a
 24 clamp and a piece of strand, and then you've got the
 25 cable and then you've got straps and spacers and stuff to

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1 make it all look pretty. So we have pictures and
 2 documents to show what we want our plant to look like
 3 that we give to our workers.
 4 Q Do you also have some specs on how to
 5 install a down guy?
 6 A Those are all followed by the NESC
 7 guidelines.
 8 Q Does Mediacom have its own publication that
 9 incorporates those standards?
 10 A It is not a publication like a book. It is
 11 just guidelines for doing this, yeah. We have guidelines
 12 to show us how to make attachments, frame certain types
 13 of equipment on the pole, yes.
 14 Q What is that set of documents called?
 15 A It's just our construction practices, or
 16 splicing construction documentation that we have.
 17 Q How big is that document?
 18 A It's just a few pages.
 19 Q Less than an inch thick?
 20 A Oh, yeah.
 21 Q Is that something you have at your office?
 22 A I believe that there's a copy over there,
 23 yes.
 24 Q Is it something that you refer to on a
 25 pretty regular basis?

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1 A Not anymore because you pretty much know
 2 what needs to be done. The contractors that we use know
 3 what the specs are. So if you get a new contractor, you
 4 may have to review that with them. But basically it's
 5 something that everyone already knows what to do, so we
 6 haven't had to review that in quite some while.
 7 Q So if I asked you for Mediacom's
 8 construction standards, you would know what document to
 9 go get?
 10 A I could get you the drawings of our
 11 specifications, yes.
 12 Q That's what you would interpret I meant by
 13 construction standards?
 14 A Right.
 15 Q Does Mediacom follow Gulf Power's specs
 16 when it attaches to Gulf Power poles?
 17 A As far as NESC or as far as — yes, we have
 18 an agreement with them, and we're going to attach 40 down
 19 from neutral or 30 from a can, 12 from the streetlight,
 20 or in a lot of cases they have a tag that they put on
 21 their pole that we do not go above that attachment tag.
 22 Q Have you seen a set of Gulf Power spec
 23 plates before?
 24 A Spec plates?
 25 Q Do you know what I mean by spec plates?

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1 A Their attachment guidelines.
 2 Q I tell you what. I'm going to show you
 3 Exhibit 13. Take a moment to look at that and tell me if
 4 you've ever seen it before.
 5 A I can't say that I've seen all of these,
 6 no.
 7 Q Earlier you told me that you would from
 8 time to time refer to various attachment agreements for
 9 operational purposes?
 10 A Right.
 11 Q Do you know if these spec plates are
 12 attached to any agreement that Mediacom or its
 13 predecessor had with Gulf Power?
 14 A Yes. That's why I said I've viewed some of
 15 these, but some of them I've not. I remember looking at
 16 some of these, yes. The one here with the transformer,
 17 the second to last one right here C-10, C-11. That was
 18 the pole tag I was telling you about that you cannot
 19 attach above that tag.
 20 Q Looking at C-1, which is the first page of
 21 Exhibit 13, there is some clearance requirements as set
 22 forth there. Do you see those?
 23 A Uh-huh (affirmative).
 24 Q Are those clearance requirements that
 25 you're familiar with?

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