

Matilda Sanders

From: terry.scobie@verizon.com
Sent: Monday, October 02, 2006 2:11 PM
To: Filings@psc.state.fl.us
Cc: de.ororark@verizon.com; David Christian; frank.app@verizon.com
Subject: Docket Nos. 060173-EU/060172-EU - Post-Hearing Comments of Verizon Florida Inc.

Attachments: 060173 VZ FL PostHearing Comments 10-2-06.pdf



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The attached filing is submitted in Docket Nos. 060173-EU/060172-EU on behalf of Verizon Florida Inc. by

Dulaney L. O'Roark III
Six Concourse Parkway
Suite 600
Atlanta, Georgia 30328
(770) 284-5498
de.ororark@verizon.com

The attached .pdf document contains 18 pages - transmittal letter (1 page), certificate of service (1 page), service list (1 page) and Post-Hearing Comments (15 pages).

(See attached file: 060173 VZ FL PostHearing Comments 10-2-06.pdf)

Terry Scobie
Executive Adm. Assistant
Verizon Legal Department
813-483-2610 (tel)
813-204-8870 (fax)
terry.scobie@verizon.com

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FPSC-COMMISSION CLERK

Dulaney L. O'Roark III
Vice President & General Counsel, Southeast Region
Legal Department



Six Concourse Parkway
Atlanta, Georgia 30328

Phone: 770-284-5498
Fax: 770-284-5488
de.oroark@verizon.com

October 2, 2006 – VIA ELECTRONIC MAIL

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 060173-EU
Proposed amendments to rules regarding overhead electric facilities to allow
more stringent construction standards than required by National Electric Safety
Code

Docket No. 060172-EU
Proposed rules governing placement of new electric distribution facilities
underground, and conversion of existing overhead distribution facilities to
underground facilities, to address effects of extreme weather events

Dear Ms. Bayo:

Enclosed are the Post-Hearing Comments of Verizon Florida Inc. for filing in the above
matters. Service has been made as indicated on the Certificate of Service. If there are
any questions regarding this filing, please contact me at 770-284-5498.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

Enclosures

DOCUMENT NUMBER - DATE
09089 OCT-28
FPSC-COMMISSION OF FLORIDA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent via U.S. mail on October 2, 2006 to the parties on the attached list.

s/ Dulaney L. O'Roark III

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Ausley Law Firm
Lee Willis/Jim Beasley
P. O. Box 391
Tallahassee, FL 32302

BellSouth Telecomm.
James Meza III
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Beggs & Lane Law Firm
Russell Badders
P. O. Box 12950
Pensacola, FL 32576-2950

Boca Woods Emergency
Power Committee
Alan Platner
11379 Boca Woods Lane
Boca Raton, FL 33428

Embarq Florida, Inc.
Charles J. Rehwinkel
FLTLHZ0501
315 S. Calhoun Street
Suite 500
Tallahassee, FL 32301

Florida Cable Telecomm. Assn.
Michael A. Gross
246 E. 6th Avenue
Suite 100
Tallahassee, FL 32303

Florida Electric Cooperative Assn.
Bill Willingham
2916 Apalachee Parkway
Tallahassee, FL 32301

Florida Municipal Elec. Assn.
Frederick M. Bryant/
Jody Lamar Finklea
P. O. Box 3209
Tallahassee, FL 32315-3209

Florida Power & Light Company
Natalie F. Smith/John Butler
700 Universe Boulevard
Juno Beach, FL 33408

H.M. Rollins Company, Inc.
H. M. Rollins
P. O. Box 3471
Gulfport, MS 39505

Lee County Elec. Coop. Inc.
Donald Schleicher
William Hamilton
P. O. Box 3455
North Fort Myers, FL 33918

North American Wood Pole
Council
Dennis Hayward
7017 NE Highway 99
Suite 108
Vancouver, WA 98665

Pennington Law Firm
Howard E. Adams
P. O. Box 10095
Tallahassee, FL 32302-2095

Southern Pressure Treaters
Association
Carl Johnson
P. O. Box 3219
Pineville, LA 71360

TDS Telecom/Quincy Telephone
Thomas M. McCabe
P. O. Box 189
Quincy, FL 32353-0189

Town of Jupiter Island
Donald R. Hubbs
P. O. Box 7
Hobe Sound, FL 33475

Town of Palm Beach
Thomas G. Bradford
P. O. Box 2029
Palm Beach, FL 33480

Treated Wood Council
Jeff Miller
1111 19th Street, NW
Suite 800
Washington, DC 20036

Western Wood Preservers
Institute
Todd Brown
7017 NE Highway 99
Suite 108
Vancouver, WA 98665

Young Law Firm
R. Scheffel Wright
John LaVia
225 South Adams Street
Suite 200
Tallahassee, FL 32301

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events)	Docket No. 060172-EU Filed: October 2, 2006
and))
In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code)	Docket No. 060173-EU)

POST-HEARING COMMENTS OF VERIZON FLORIDA INC.

Verizon Florida Inc. ("Verizon") submits these Post-Hearing Comments in compliance with the Commission's instructions at the hearing in this docket and its initial Order and Second Order Establishing Procedures to be Followed at Rulemaking Hearing. For the reasons described below, the proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115 and proposed new Rules 25-6.0341 and 25-6.0342 (collectively, the "Proposed Rules") should not be adopted in their current form.

As a company that has made substantial investments in utility poles and attachments in Florida, Verizon shares the Commission's concern about network reliability and storm readiness and supports storm hardening that is done in a fair and equitable manner and that benefits the public.¹ Verizon opposes the Proposed Rules

¹ Verizon owns approximately 107,863 poles in Florida, almost 30,000 of which bear attachments by electric utilities. Hearing Exh. 1, Tab 10, Lindsay Aff. ("Lindsay Aff.") ¶ 2. Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of poles Verizon owns. *Id.* Verizon's affiliates MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services attach to an additional 3,000 electric utility poles. *Id.* Verizon already has placed a substantial part of its Florida network underground and is rapidly installing additional facilities below ground as part of its FiOS project. *Id.* ¶3. FiOS, which provides fiber to customers' homes, is provisioned almost entirely underground, which protects it from storms. *Id.* ¶¶ 3, 8. Verizon thus has made, and continues to make, significant strides toward a storm-hardened network.

as currently drafted because they are neither fair nor equitable and would disserve the public interest. To explain why, Verizon will first address several issues that were raised at the hearing before discussing each of the Proposed Rules in more detail.

A. Issues raised at hearing

Chairman Edgar noted at the hearing that the Proposed Rules raise issues concerning delegation of authority, cost-benefit analysis, jurisdiction and the extent of collaboration among utilities that should be required.² Each of these issues is addressed below.

1. The Proposed Rules would give the appearance of requiring electric utilities to storm harden their networks, but in fact would unlawfully delegate authority to electric utilities

At the heart of the Proposed Rules is a contradiction in terms – a provision that each utility “shall . . . be guided by the extreme wind loading standards,” but only to the extent the electric utilities deem those standards “reasonably practical, feasible, and cost-effective.”³ The rule thus on the surface appears to give the electric utilities a mandate from the Commission to storm harden their networks. This supposed mandate would put the utilities in a position to claim that any storm hardening they choose to do has been required by the Commission, and thus to support their attempts to force attachers to share in the cost under their joint use agreements. But the “mandate” provided by the Proposed Rules is illusory. The electric utilities need only be “guided” by the extreme wind loading standards and even then only “to the extent reasonably

² Transcript, pp. 175-76. (Subsequent references to the transcript will be abbreviated as “T. ____.”)

³ Likewise, Proposed Rule 25-6.034(6) provides that for the construction of underground distribution and related facilities, “each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.”

practical, feasible, and cost-effective.” The supposed mandate comes with no strings attached because the utilities are free to do as much or as little storm hardening as they wish. The Proposed Rules thus permit the utilities to have it both ways – to claim a mandate they may attempt to use to seek reimbursement from attachers (and possibly to justify rate increases as well), and unfettered discretion to do however much storm hardening suits their purposes.

Neither of these outcomes should be permitted. Electric utilities should not be given an illusory mandate that only serves the purpose of providing them arguments to support their efforts to shift costs to others, including attachers. To the extent the Proposed Rules serve that purpose, they are unfair and inequitable. Nor should the Proposed Rules simply confer unlimited discretion on the electric utilities.⁴ In their current form they do just that, effectively delegating the Commission’s rulemaking power to the electric utilities in violation of Florida law.⁵

2. The Commission cannot possibly assess the costs and benefits of the Proposed Rules

Because of the discretion that would be vested in the electric utilities by the Proposed Rules, the Commission currently has no basis for rationally assessing the costs and benefits of adopting them. The parties have attempted to provide estimates of the costs the New Rules would generate – and those figures demonstrate the costs would be high⁶ – but, at best, only wide ranges of estimates can be given because no one (other than perhaps the electric utilities) knows how much storm hardening the electric utilities may choose to do or the manner in which they may choose to do it.

⁴ Although SB 888 authorized the *Commission* to adopt construction standards that exceed the NESC, it did not authorize the Commission to permit electric utilities to establish those standards.

⁵ See T.75-77.

⁶ See, e.g., T. 25-30; Lindsay Aff. ¶¶ 6, 7 and Attachment A.

Potential benefits are likewise unknown, again in part because of the wide latitude given the electric utilities under the Proposed Rules. As a result, it is impossible at this stage for a statement of estimated regulatory costs to be done that complies with Florida law.⁷

3. The Commission lacks jurisdiction to regulate pole attachment rates, terms and conditions

Giving broad discretion to the electric utilities is problematic for the additional reason that the Commission lacks jurisdiction to regulate the rates, terms and conditions of pole attachments, and it therefore cannot authorize electric utilities to revise attachment standards in a manner that alters the terms of the parties' joint use agreements. Under federal law, the FCC has jurisdiction over pole attachment rates, terms and conditions unless "such matters are regulated by a State." 47 U.S.C. § 224 (b)(1) and (c)(1). Whether a state may be said to regulate such rates, terms and conditions is not left in doubt because a state that regulates pole attachments is required to file a certification to that effect with the FCC. 47 U.S.C. § 224 (c)(2). There can be no dispute, therefore, that the Florida legislature has not authorized the Commission to regulate pole attachments. When the Commission issued an order more than 25 years ago certifying that it had such authority, the Florida Supreme Court quashed the order. *Teleprompter Corp. v. Hawkins*, 384 So.2d 648 (Fla. 1980). To Verizon's knowledge, the Commission has not issued any subsequent order certifying its authority to regulate pole attachments, and no party to this docket has asserted otherwise. Thus, only the FCC may regulate the rates, terms and conditions of pole

⁷ See Fl. Stat. § 120.541; T.77-78. Any cost-benefit analysis, moreover, must take into account the testimony of Dr. Slavin that the extreme wind loading envisioned by the Proposed Rules would only make matters worse. See, e.g., T.37. Dr. Slavin's testimony is discussed in detail below.

attachments in Florida, and to the extent that proposed Rule 25-6.0342 purports to regulate such rates, terms and conditions, it has no lawful basis.

4. The issues raised in this docket should be addressed by an Infrastructure Advisory Committee

At the hearing, several parties, including Verizon, proposed establishing a multi-industry Infrastructure Advisory Committee (“IAC”) that would identify key issues, including construction standards, attachment standards and the efficiency of restoration efforts; evaluate storm hardening needs; develop construction, attachment and joint trenching standards; and monitor pole inspection data to identify additional projects.⁸ This proposal provides a path forward that would lead to more balanced standards that take into account the needs of affected parties across industries, and would have the added benefit of facilitating coordination during and immediately after storms and assessment and improvements on an ongoing basis. Verizon continues to endorse this approach.

B. Proposed Rules

Verizon addresses each of the Proposed Rules in more detail below.

1. Proposed Amendments to Rule 25-6.034

The proposed amendments to Rule 25-6.034 would vest electric utilities with the authority to establish construction standards for overhead and underground electrical transmission and distribution facilities. Electric utilities would be required to develop these standards within 180 days, after seeking input from other entities with joint use agreements, but without any requirement that the electric utilities accept any of the input

⁸ T.33-34.

they receive. No prior Commission approval of the standards is contemplated, whether for the initial standards or any subsequent revisions. Nor would the electric utilities be required to provide the Commission with access to a copy of the standards unless the Commission so requested. Only broad guidance is provided as to what requirements the standards must meet – each utility “at a minimum” must comply with the 2002 version of the National Electrical Safety Code (“NESC”), but the electric utility is free to impose whatever additional standards it chooses. An attacher or other party that is dissatisfied with electric utility’s standards may challenge them before the Commission, but the disputed standards apparently would remain in effect until the Commission resolved the dispute, which could take several months, if not a year or more.

The proposed amendments to Rule 25-6.034 give far too much discretion to the electric utilities to determine construction standards. There is a significant risk that electric utilities could abuse their discretion by adopting construction standards that could harm attachers, for example by potentially increasing pole costs that the electric utilities could attempt to pass through to the attachers.⁹ As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers. The attachers would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. The Proposed Rules would prevent attachers from effectively protecting their legitimate interests and thus would be manifestly unfair.

Most troubling of all, Rule 25-6.034(5) would call for electric utilities to be guided by extreme wind loading standards, “to the extent reasonably practical, feasible, and

⁹ Whether electric utilities could actually pass through such costs would depend on the terms of the applicable joint use agreements.

cost-effective” for the construction of distribution facilities. Electric utilities would be required to include in their construction standards guidelines and procedures governing the use of extreme wind loading standards for “new construction”; “major planned work, including expansion, rebuild, or relocation of existing facilities”; and “targeted critical infrastructure facilities and thoroughfares.” In other words, electric utilities arguably would be free to apply extreme wind loading standards to almost any distribution facilities they wish, regardless of pole grade and height. As Dr. Slavin testified, applying the extreme wind loading standards in this manner would constitute a radical departure from the NESC, and could result in dramatically higher pole costs as well as significant unintended consequences.¹⁰

To determine pole strength requirements for Grade B and C poles,¹¹ the NESC requires that two types of storms be taken into account: (i) combined ice and wind storms, governed by NESC Rule 250B; and (ii) extreme wind storms, governed by NESC Rule 250C. The combined ice and wind storm standards apply to Grade B and C poles regardless of their height, so all such poles, including distribution poles, must meet the standards outlined in Rule 250B.¹² Because the extreme wind loading standards only apply to poles that are at least 60 feet high, on the other hand, Rule 250C does not apply to most distribution poles, which typically are shorter than 60

¹⁰ T.36-37. In Docket No. 060512-EU, the Florida Electric Cooperatives Association, Inc. has filed comments that raise concerns similar to those raised in Dr. Slavin’s testimony. The utilities in this docket stand alone in attempting to justify this misguided storm hardening technique.

¹¹ Grade B and C poles carry primary power (more than 750 volts). Most distribution poles carrying primary power are Grade C poles, with the Grade B classification applying when greater reliability is required, such as at railroad crossings. Grade N applies to poles if they carry secondary power (less than 750 volts) or only support telecommunications cables, corresponding to the lowest level of reliability. T. 46-47; Hearing Exh. 4, pp. 27-28; Hearing Exh. 1, Tab 10, Slavin Affidavit, Appendix 1 (“Slavin Report”) § 2.3.

¹² T. 39; Slavin Report § 2.1.

feet.¹³ Indeed, the NESC subcommittee responsible for wind loading issues has studied this issue carefully and has chosen this height exclusion so that the extreme wind loading standards would not apply to distribution poles.¹⁴ The proposed amendment to Rule 25-6.034(5), which would require that electric utilities be guided by extreme wind loading standards when constructing distribution facilities, thus would mark a major departure from the NESC.¹⁵

The NESC subcommittee that addresses extreme wind loading has recently considered and rejected a much less drastic proposal that would have applied extreme wind loading to structures less than 60 feet high (that is, distribution poles).¹⁶ That proposal would have limited wind pressure for Grade C poles to 15 pounds per square foot, which is lower than the standard already in place for Grade C poles today in Florida (18 pounds per square foot). The reason for the limitation is that once wind pressure reaches approximately 15-20 pounds per square foot, the wind will blow tree branches and other debris that can knock down poles even though they have been made strong enough to withstand the wind force acting alone.¹⁷ The subcommittee rejected the proposal despite the limitation, for the following reasons:

Utility experience has demonstrated that electrical distribution and communication line structures, under 60 ft in height, are damaged during extreme wind events by trees, tree limbs, and other flying debris. Designing structures with heights less than 60 ft for extreme winds will increase pole strengths for distribution systems resulting in large increases in cost and design complexity without commensurate increase in safety. Safety of employees and the public is provided using the current NESC loading requirements.¹⁸

¹³ T.39; Slavin Report § 2.2.

¹⁴ Slavin Report § 3.1.

¹⁵ *Id.*

¹⁶ T.37.

¹⁷ T.49, 63, 68.

¹⁸ Hearing Exh. 4, p. 6.

The proposal was strongly opposed by commenters, many of whom were from the power industry, and was voted down in committee 17-7.¹⁹ Dr. Slavin opined that had a more extreme storm hardening proposal been made, along the lines of the Proposed Rules, the comments would have been even more strongly against it and the committee vote would have been more one-sided.²⁰

To the extent electric utilities determine that applying the extreme wind loading standards of NESC Rule 250C would be “reasonably practical, feasible and cost-effective,” and thus decide to be guided by them, one result would be a substantial increase in pole size (or stronger poles made of different materials) or in the number of poles, which would dramatically increase costs.²¹ Stouter or more numerous poles also would lead to a number of unintended consequences, including an increase in the number or severity of traffic accidents.²² Obviously, the more poles there are, the greater the likelihood there is that an automobile will collide with one and the driver will experience bodily harm or death. Moreover, increasing the number of poles can multiply the number of poles that are knocked down by flying debris during high wind storms, making the recovery process much more difficult and time consuming.²³ And the complexity of applying the high wind loading standards would lead to confusion and delay, and possible errors in implementation, to the detriment of consumers.²⁴ The Commission thus should proceed with great caution when it considers substituting its judgment for that of the NESC subcommittee that addresses wind loading, which has carefully taken these factors into account.

¹⁹ T.50-51.

²⁰ T.52. As Dr. Slavin noted, the committee avoids dramatic changes, preferring to move gradually so that unintended consequences can be avoided.

²¹ T.54-55; Slavin Report § 4.1.

²² T.56; Slavin Report § 4.2.

²³ T.55; Slavin Report § 4.2.

²⁴ *Id.*

The costs of adopting wind loading standards (to the extent the electric utilities choose to implement them under the Proposed Rules) would be incurred with little or no corresponding benefit. As previously noted, in Florida Grade C poles are required to be engineered to withstand wind forces of 18 pounds per square foot, but flying debris results from wind forces of 15-20 pounds per square foot.²⁵ If poles are designed above Florida's current standards, therefore, the strengthening will do little good because much of the damage will be caused by flying debris rather than wind forces.²⁶ Counsel for Florida Power & Light took issue with this conclusion, asserting that stronger poles may withstand "at least moderate levels of impact from debris" and that a significant percentage of pole failures during Hurricane Wilma were caused by wind alone.²⁷ Neither of these assertions was supported by expert testimony at the hearing. Moreover, the statement concerning wind-blown debris was not quantified or backed by any empirical evidence, so it does not provide evidence of any substantial benefit. And even if the statement concerning wind-only damage from Hurricane Wilma is taken at face value, at best it represents observations from a single storm. The NESC incorporates experience with storms over many decades and thus provides a far more reliable guide to optimal storm hardening.

Because proposed Rule 25-6.034(5) represents such a dramatic change that could result in serious negative consequences, the best course of action would be for the Commission not to adopt this proposed amendment to Rule 25-6.034.²⁸ If the Commission nonetheless determines that it wishes to make changes, then at the least it should attempt to reduce the dramatic impact of the changes by making the following

²⁵ T. 63, 68.

²⁶ T.68.

²⁷ T.156, 163-64.

²⁸ T.57; Slavin Report § 5.

modifications: (i) it should make clear that extreme wind loading standards do not apply to Grade N poles (to which neither NESC Rule 250C nor NESC Rule 250B apply); (ii) the application of Rule 250C should be modified to lessen its impact, for example by using the reduced loads for Grade C poles from the 2007 edition of the NESC; and (iii) the changes should be applied on a trial basis and initially limited to a geographic area and a defined period, such as one to two years.²⁹

2. Proposed Rule 25-6.0341

Proposed Rule 25-6.0341 states as a general principle that “to the extent practical, feasible, and cost-effective,” electric distribution facilities normally should be placed in front of customers’ premises, adjacent to public roads. Three subsections apply this principle to scenarios involving (1) construction of overhead facilities; (2) installation of underground facilities; and (3) conversion of overhead facilities to underground facilities. In the third scenario, a local government requesting the conversion must meet the electric utility’s financial and operational requirements before the electric utility must place facilities in road rights of way. When the projects described in proposed Rule 25-6.0341 affect third-party attachments, the electric utility must seek input from the third-party attachers, but it is not required to take any action based on the input it receives. The electric utility also must, “to the extent practical, coordinate the construction of its facilities with the third-party attacher,” but the timing and extent of the required coordination are not specified.

Proposed Rule 25-6.0341 fails to take into account sufficiently the burdens that could be placed on third-party attachers by electric utility construction, installation and

²⁹ T.59; Slavin Report § 5.

migration projects. For example, by failing to specify the amount of notice that must be given or the extent of the coordination that must be afforded in connection with such projects, the proposed rule leaves electric utilities free to move forward with little regard for the operational disruption that could result to attachers. As noted above,³⁰ Verizon is in the midst of a massive project to bring its FiOS network to customers' homes. To the extent electric utilities were to rely on this proposed rule to install or move their own facilities, Verizon would require extensive notice (at least 12 months) and effective coordination so Verizon could make any necessary adjustments to its plans. For instance, Verizon would want to avoid relocation of copper facilities when its plans call for replacing those facilities with fiber in the near future. With effective coordination, such costly duplication of effort could, at least to some extent, be avoided. Further revisions to the rule are necessary to ensure that the required notice is specified and the duty to coordinate is described in detail.

The proposed rule also does not address the costs that would be incurred by third-party attachers. To the extent electric utilities add poles when moving them from the back property line to the front, the additional costs to attachers could be enormous. If Verizon were required to place attachments on 10% more poles, its costs would increase by some \$20 million, most of which would be one-time engineering and transfer costs.³¹ If the number of poles to which Verizon attaches was increased by 50%, Verizon's cost would be \$50 million.³² Moving facilities underground also entails tremendous costs. In a feasibility study Verizon conducted to determine the cost of

³⁰ See footnote 1.

³¹ Lindsay Aff. ¶ 6 and Attachment A. Note that this figure represents the costs that would be experienced during the first year after installation. This figure assumes an increase to attachment fees, which, if imposed under the applicable joint use agreement, would continue on a recurring basis, raising Verizon's costs further still.

³² The potential for increasing the number of pole attachments by 50% or even more becomes greater when the extreme wind loading standards addressed in proposed Rule 25-6.034 are taken into account.

moving the existing copper network underground on Davis Islands, it determined the cost to be \$4,000 per household.³³ Placing copper facilities underground would be particularly expensive and wasteful for Verizon because of its plans to install underground fiber facilities. If, on the other hand, Verizon decides not to migrate its facilities, it may be required to buy the poles that have been abandoned and pay for easement rights.³⁴ Although the proposed rules provide compensation to the electric utilities, no similar provision is made for attachers, nor are attachers given any right to object to electric utilities' plans to migrate facilities. Proposed Rule 25-6.0341 should be revised to take into account the costs that would be imposed on third-party attachers.

Proposed Rule 25-6.0341 also raises serious concerns with respect to Verizon's carrier-of-last resort obligations under Florida law, which among other things require local exchange telecommunications companies, until January 1, 2009, "to furnish basic local exchange telecommunication service within a reasonable time period to any person requesting such service within the company's service territory."³⁵ To the extent that standards under the proposed rule disrupt Verizon's ability to fulfill its carrier-of-last-resort obligations, the standards would conflict with Florida law. The proposed rule should be revised to prevent such a conflict.

3. Proposed Rule 25-6.0342

Proposed Rule 25-6.0342 requires electric utilities to include in their construction standards "safety, reliability, pole loading capacity, and engineering standards and procedures for" third-party attachments. Thus, electric utilities would be required to develop these standards within 180 days, after seeking input from other entities with

³³ Lindsay Aff. ¶ 7.

³⁴ *Id.* ¶ 5.

³⁵ Fla. Stat. § 364.025(1).

joint use agreements, but without any requirement that the electric utilities accept any of the input they receive and without prior Commission approval. Only broad guidance is provided as to what requirements the third-party attachment standards must meet. They are required to “meet or exceed” the applicable edition of the NESC, as well as other applicable standards under state and federal law to ensure “as far as reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility’s service territory.” Disputes concerning the attachment standards are to be resolved by the Commission.

Proposed Rule 25-6.0342 is problematic because of the jurisdictional issue discussed above and because it gives far too much discretion to the electric utilities to determine third-party attachment standards. There is a significant risk that electric utilities could abuse that discretion by adopting standards that could harm attachers by requiring them to upgrade, rearrange or remove their attachments. The standards adopted by electric utilities apparently would remain in place until the completion of a dispute resolution proceeding, which could take several months, if not a year or more. As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers. Again the attachers would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. In short, giving electric utilities broad discretion to define and implement their own standards is particularly inappropriate in this context and should not be permitted.

Verizon's pole attachment rates in Florida already are the highest of any operating company in the Verizon West (former GTE) footprint, and those rates are increasing at an alarming pace.³⁶ Proposed Rule 25-6.0342 threatens to accelerate the rate of increase by imposing even greater costs on attachers. Unlike rate-regulated electric utilities, telecommunications carriers cannot simply pass these cost increases on to their customers. The cost impact of the proposed rule to third-party attachers should be taken into account before any final rule is adopted.

4. Proposed amendments to Rules 25-6.064, 25-6.078 and 25-6.115

Verizon concurs with and adopts the arguments advanced in the Direct Testimony of Kirk Smith (at pages 19-22) filed by BellSouth concerning the proposed amendments to Rules 25-6.064, 25-6.078 and 25-6.115.³⁷

For the foregoing reasons, Verizon respectfully submits that the Proposed Rules should not be adopted in their current form. Further consideration of the interests and concerns of third-party attachers and other interested parties should be given before final rules are adopted.

Respectfully submitted on October 2, 2006.

By: s/ Dulaney L. O'Roark III
Dulaney L. O'Roark III
6 Concourse Parkway, Suite 600
Atlanta, Georgia 30328
Phone: (770) 284-5498
Fax: (770) 284-5488
Email: de.orroark@verizon.com

Attorney for Verizon Florida Inc.

³⁶ Lindsay Aff. ¶ 10.

³⁷ Hearing Exh. 1, Tab 12.