

Before the
Federal Communications Commission
Washington, DC 20554

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

Complainant,

v.

FLORIDA POWER AND LIGHT
COMPANY,

Defendant.

Proceeding No. 20-214
Bureau ID No. EB-20-MD-002

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

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

GENERAL OBJECTIONS

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

1. AT&T objects to the Interrogatories because FPL has not provided any explanation as to why "the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source." 47 C.F.R. § 1.730(b). The Interrogatories are therefore facially deficient under the Commission's rules.
2. AT&T objects to FPL's definition of "you," "your," and "AT&T" because it is overbroad, unduly expansive and burdensome, and seeks to impose obligations to provide

information that has no relevance to the material facts in dispute in this proceeding. FPL's definition of "you," "your," and "AT&T" is not limited to BellSouth Telecommunications, LLC d/b/a AT&T Florida, but broadly includes all "persons working for or on behalf of any" "affiliated company or business" which is not party to this dispute. AT&T will not provide non-confidential and non-privileged information beyond that involving AT&T's joint use relationship with FPL.

3. AT&T objects to the Interrogatories to the extent that they are "employed for the purpose of delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the proceeding." *Id.* § 1.730(a). For example, in a dispute about the just and reasonable default and pole abandonment terms, conditions, and practices that apply to AT&T's use of FPL's poles, FPL seeks detailed information about AT&T's inspection, replacement, and maintenance of AT&T-owned poles. Such information is not relevant to, or likely to lead to the discovery of admissible evidence regarding the unjust and unreasonable default and pole abandonment terms, conditions, and practices that FPL has imposed with respect to AT&T's facilities on FPL-owned poles.

4. AT&T objects to the Interrogatories to the extent that they seek information that is not within AT&T's possession, custody, or control or information that is not within AT&T's present knowledge.

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

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

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

8. AT&T objects to the Interrogatories to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.

9. AT&T objects to the Interrogatories to the extent that they seek information that is protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Nothing contained in AT&T's objections is intended to, or in any way shall be deemed, a waiver of such available privilege or doctrine. AT&T will not provide privileged or otherwise protected information.

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

11. AT&T objects to the Interrogatories to the extent that they seek to impose requirements or obligations on AT&T in addition to or different from those imposed by the Commission's rules. In responding to the Interrogatories, AT&T will respond as required under the Commission's rules.

12. AT&T reserves the right to change or modify any objection should it become aware of additional facts or circumstances following the service of these objections.

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

SPECIFIC OBJECTIONS TO INTERROGATORIES

Interrogatory No. 1:

Fully describe and identify any and all plans, programs, systems, protocols or processes AT&T had or has since 2011, through the present and for the next five years to inspect, maintain and replace joint use poles owned by AT&T and subject to the 1975 JUA.

Objections:

AT&T objects to this Interrogatory because the phrases “plans, programs, systems, protocols or processes” and “had or has since 2011, through the present and for the next five years” are vague and ambiguous. AT&T also objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b) for AT&T’s use of FPL’s poles. AT&T further objects to this Interrogatory to the extent it seeks information that is already in FPL’s possession, custody, or control through the National Joint Utilities Notification System (“NJUNS”) and/or testimony from AT&T’s witnesses in *BellSouth Telecommunications, LLC d/b/a AT&T Fla. v. Fla. Power and Light Co.* (“*AT&T v. FPL*”), Proceeding No. 19-187, Bureau ID No. EB-19-MD-006 that it is AT&T’s practice to inspect every pole before and after attaching its facilities and to complete random inspections of its poles and facilities thereafter. AT&T also objects to this Interrogatory to the extent it seeks information that is protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege.

Interrogatory No. 2:

Pursuant to any plan, program, system, protocol or process described in response to Interrogatory No. 1, fully describe and identify the number of poles inspected, the number of poles failing inspection, the number of poles replaced, the precise reason for the replacement and the cost of the replacement.

Objections:

Because this Interrogatory incorporates Interrogatory No. 1, AT&T incorporates by reference its objection to Interrogatory No. 1. AT&T also objects to this Interrogatory as vague, ambiguous, overly broad, and unduly burdensome to the extent it seeks information about poles that are not covered by the parties' JUA or asks AT&T to predict actions that may occur during the next five years. AT&T further objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b) for AT&T's use of FPL's poles. AT&T also objects to this Interrogatory to the extent it seeks information that is already in FPL's possession, custody, or control through NJUNS and/or testimony from AT&T's witnesses in *AT&T v. FPL*, Proceeding No. 19-187, Bureau ID No. EB-19-MD-006 that it is AT&T's practice to inspect every pole before and after attaching its facilities and to complete random inspections of its poles and facilities thereafter.

Interrogatory No. 3:

With respect to all poles failing inspection and replaced as described and identified in response to Interrogatory No. 2, describe and identify the average time that AT&T took to replace all poles after failing inspection.

Objections:

Because this Interrogatory incorporates Interrogatory No. 2, which incorporates Interrogatory No. 1, AT&T incorporates by reference its objections to Interrogatory Nos. 1 and 2. AT&T also objects to this Interrogatory because the term “failing inspection” is vague and ambiguous. AT&T further objects to this Interrogatory because the “time that AT&T took to replace all poles after failing inspection” is a single number and not an “average.” AT&T further objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b) for AT&T’s use of FPL’s poles. AT&T also objects to this Interrogatory to the extent it seeks information that is already in FPL’s possession, custody, or control through NJUNS.

Interrogatory No. 4:

With respect to all poles failing inspection as described and identified in response to Interrogatory No. 2 but that were not or have not been replaced, identify and describe the average time that such poles have remained in service since they failed inspection.

Objections:

Because this Interrogatory incorporates Interrogatory No. 2, which incorporates Interrogatory No. 1, AT&T incorporates by reference its objections to Interrogatory Nos. 1 and 2. AT&T also objects to this Interrogatory because the terms “failing inspection” and “remained in service” are vague and ambiguous. AT&T further objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b) for AT&T’s use of

FPL's poles. AT&T also objects to this Interrogatory to the extent it seeks information that is already in FPL's possession, custody, or control through NJUNS.

Interrogatory No. 5:

Identify and fully describe the average age of all joint use poles owned by AT&T and subject to the 1975 JUA.

Objections:

AT&T objects to this Interrogatory as vague, ambiguous, overly broad, and unduly burdensome because it is not limited in time so seeks information about all joint use poles owned by AT&T at any point during the last 45 years. AT&T also objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b) for AT&T's use of FPL's poles.

Interrogatory No. 6:

Regarding the following allegations in paragraph 35 of the Complaint, fully describe and identify the number of pole transfers made by AT&T and the time period in which those transfers were made:

AT&T also continued to "promptly" transfer its facilities to the replacement poles as required by Section 3.3 of the JUA, thereby reducing the pending transfers by over 50% (from 11,142 to 5,230 poles) at FPL's self-serving 60-day deadline. AT&T continues to transfer its facilities from the poles that FPL replaced, many where AT&T could not make the transfer until recently because the facilities of other attachers were still attached to the pole. By the end of June 2020, AT&T completed transfers for 99 percent of the poles on FPL's list that were ready for AT&T to complete its transfer.

Objections:

AT&T objects to this Interrogatory because the term “pole transfers” is vague and ambiguous and because the quoted text appears to already answer the Interrogatory. AT&T also objects to this Interrogatory because it seeks information about FPL’s poles that is already within FPL’s possession, custody, or control, is available through NJUNS, and/or has already been provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits.

Interrogatory No. 7:

Fully describe and identify the number of transfers AT&T has made, pursuant to the 1975 JUA, of its facilities on FPL poles each year from 2011 to 2020, the average length of time to perform such transfers since the pole was first assigned to AT&T for transfer and the methodology AT&T used to identify the number of transfers made.

Objections:

AT&T objects to this Interrogatory because the phrases “transfers AT&T has made ... of its facilities on FPL poles,” “pole was first assigned to AT&T for transfer,” and “methodology AT&T used to identify the number of transfers made” are vague and ambiguous. AT&T also objects to this Interrogatory as overly broad, unduly burdensome, and because it seeks information about FPL’s poles that is already within FPL’s possession, custody, or control, is available through NJUNS, and/or has already been provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits.

Interrogatory No. 8:

Fully describe and identify the number of transfers, pursuant to the 1975 JUA, AT&T has pending of its facilities on FPL poles.

Objections:

AT&T objects to this Interrogatory because the phrase “transfers ... AT&T has pending of its facilities on FPL poles” is vague and ambiguous. AT&T also objects to this Interrogatory as overly broad, unduly burdensome, and because it seeks information about FPL’s poles that is already within FPL’s possession, custody, or control, is available through NJUNS, and/or has already been provided by AT&T in its Pole Attachment Complaint and supporting Affidavits and Exhibits.

Interrogatory No. 9:

Fully describe and identify all documents evidencing, constituting or establishing the AT&T internal audit report Diane Miller described at the December 7, 2018 upper-level management meeting between the parties, which audit report included findings associated with the parties’ joint use billings and allegedly was part of the basis for AT&T’s nonpayment of the 2017 joint use invoice and which FPL requested a copy of multiple times.

Objections:

AT&T objects to this Interrogatory because it incorrectly assumes that there is an “internal audit report” that “included findings associated with the parties’ joint use billings and allegedly was part of the basis for AT&T’s nonpayment of the 2017 joint use invoice.” AT&T also objects to this Interrogatory because it suggests that AT&T did *not* pay the 2017 joint use invoice when AT&T paid the invoice in full even though AT&T was entitled to a lower pole attachment rate. *See AT&T v. FPL*, 35 FCC Rcd 5321 (2020). AT&T further objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the “just and reasonable” default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b)

for AT&T's use of FPL's poles. AT&T also objects to this Interrogatory to the extent it seeks information that is protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege.

Interrogatory No. 10:


Identify any invoice issued to AT&T pursuant to a joint use agreement or pole attachment license agreement since 2011 for which AT&T disputed the amount invoiced. For each such invoice, please specifically provide: 1) the name of the entity that issued the invoice; 2) the date on which the invoice was issued; 3) the amount for which the invoice was issued; 4) the payment terms of each invoice; 5) the amount of payments AT&T made; 6) the dates on which AT&T made such payments; and 7) a brief description of the dispute.

Objections:

AT&T objects to this Interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to, or likely to lead to the discovery of admissible evidence regarding, the "just and reasonable" default and pole abandonment terms, conditions, and practices required by 47 U.S.C. § 224(b) for AT&T's use of FPL's poles.

Respectfully submitted,

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Dated: November 2, 2020

*Attorneys for BellSouth Telecommunications,
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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2020, I caused a copy of the foregoing AT&T's Objections to Florida Power and Light Company's First Set of Interrogatories to be served on the following (service method indicated):

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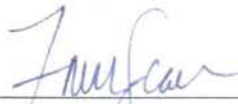
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