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September 8, 2006

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

In re: 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

Docket No. 061073-EU - Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code

Dear Ms. Bayo:

Enclosed are BellSouth Telecommunications, Inc.'s Comments/Testimony for Rule 25-6.0343, which we ask that you file in the captioned dockets.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III/V.F.

James Meza III

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
DOCKET NO. 060172/060173-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and/or Electronic Mail and (*) facsimile (where applicable) this 8th day of September, 2006 to the following Interested Persons:

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FLORIDA PUBLIC SERVICE COMMISSION

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
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
	)	Filed: September 8, 2006

BELLSOUTH TELECOMMUNICATIONS, INC.'s
COMMENTS/TESTIMONY FOR RULE 25-6.0343

On August 4, 2006, BellSouth Telecommunications, Inc. ("BellSouth") filed the Direct Testimony of Kirk Smith and Pam Tipton regarding proposed Rules 25-6.0341, 25-6.0342 and proposed amendments to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115 in the above-captioned dockets. Because that Direct Testimony applies to proposed Rule 25-6.0343 as well, BellSouth hereby adopts *in toto* and refiles the testimony of witnesses Smith and Tipton herein.

In addition to the comments contained in the previously filed Direct Testimony, BellSouth submits that the unique laws regarding municipalities present additional arguments for the Florida Public Service Commission ("Commission") to consider in evaluating proposed Rule 25-6.0343. Specifically, Section 337.401, Florida Statutes, sets out clear parameters for municipalities when exercising their police power over the use of streets and public rights-of-way by providers of communications services. For example, subsection (3)(b) of that statute mandates that rules and regulations that govern occupation of its

roads and rights-of-way "must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality...". *See* Section 337.401(3)(b), Florida Statutes. To the extent municipal electric cooperatives establish and maintain standards and procedures for aerial or underground construction, or that otherwise impact third party attachments, such standards and procedures constitute regulations that are subject to these statutory strictures.

Additionally, Section 350.81, Florida Statutes, addresses conditions by which government entities must abide in providing communications services over government-owned networks. Subsection (3)(d) of the statute requires such a governmental entity to apply its rules and regulations regarding subjects such as access to public rights-of-way and matters concerning use of governmental entity-owned poles in a non-discriminatory manner. Thus, to the extent municipal electric cooperatives that operate government networks establish and maintain standards and procedures for aerial or underground construction, or that otherwise impact third party attachments, such standards and procedures would be subject to the mandates of Fla. Stat. § 350.81.

Accordingly, in addition to all of those arguments, comments, and evidence that BellSouth previously presented and adopts herein, the

Commission should consider these additional statutory strictures in evaluating the validity of proposed Rule 25-6.0343.

Respectfully submitted this 8th day of September, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

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BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF KIRK SMITH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

AUGUST 4, 2006

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Kirk Smith. I am employed by BellSouth as Supervising Manager – Network Staff Support on the Network Operations and Industrial Engineering Staff for the nine-state BellSouth region. My business address is 3535 Colonnade Parkway, Rm. W3D, Birmingham, Alabama 35243.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Auburn University in 1973 with a Bachelor of Science degree in Industrial Engineering. I became employed by BellSouth in June 1973. I have held various line and staff positions with the Company, including positions in Construction, Engineering, Installation, Maintenance, Mechanization (Deployments and Support) and Contract Administration (Outside Plant Construction, Facility Locates, Engineering and Joint Use). I managed Regional Emergency Generator

Pools that deploy emergency generators in large scale power outages throughout BellSouth's nine-state region. I provided support in my capacity as Manager– Network Operations Support for BellSouth to the BellSouth Regional Emergency Control Center and have field experience in storm restoration, including hurricanes, ice storms and tornadoes. I assumed my current position as Supervising Manager – Network Staff Support on the Network Operations and Industrial Engineering Staff in October 2002, and my current responsibilities include supervising a team of BellSouth managers responsible for bidding and negotiating contracts for Outside Plant Construction, Facility Locating, Engineering, and Joint Use. The team is also responsible for administration of CATV license agreements, agreements for CLECs pertaining to pole attachments and conduit occupancy, agreements for attachments to towers on some central offices, and BellSouth regional damage prevention activities. I participated at the workshop held in this matter on July 13, 2006. I also participated in the workshop held in Docket 060077-TL regarding the mandated pole inspection cycle on February 21, 2006.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain how proposed new Rules 25-6.0341 and 25-6.0342, and proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115 of the Florida Administrative Code (the "Proposed Rules")[1] will impact

[1] Pursuant to Order No. PSC-06-0646-PCO-EU, BellSouth is required to file comments as to Proposed Rules 25-6.034, 25-6.0345, 25-6.064, 25.6.78, and 25-6.115 on August 11, 2006. For ease of convenience, BellSouth files comments for all of the Proposed Rules it takes issues with herein, except for Proposed Rule

BellSouth from an operational and cost perspective.[2] BellSouth owns approximately 459,000 poles in the state of Florida, with 307,459 of these bearing attachments placed by electric utilities. BellSouth's lines and facilities are attached to approximately 756,000 electric utility poles, including poles owned by investor-owned companies, municipal electrics and rural electric cooperatives. While the Proposed Rules, on their face, impose requirements on electric utilities, the Proposed Rules will significantly impact BellSouth and other entities that attach to electric utility poles.

Q. PLEASE PROVIDE AN OVERVIEW OF BELLSOUTH'S CONCERNS REGARDING THE PROPOSED RULES.

A. BellSouth appreciates the Commission's interest in minimizing widespread power outages in the state following hurricanes or other extreme adverse weather conditions. BellSouth is concerned, however, that the Proposed Rules are premature, upset the status quo of using the National Electric Safety Code ("NESC") as the uniform national standard by which power and telephone companies operate, and give each power company the license to unilaterally create its own construction standards for overhead and underground facilities. BellSouth is also concerned that the Florida Public Service Commission ("Commission") has not adequately assessed or considered the operational and cost implications the

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25-6.0343. Per Order No. PSC-06-0632-PCU-EU, Rule 25-6.0343 will be addressed in a separate hearing, with initial comments due on September 8, 2006.

[2] My testimony on costs is based on estimates and assumptions because, until such time as we know how each electric utility will implement the Proposed Rules, it is impossible to identify the particular costs that BellSouth may experience.

Proposed Rules will have on BellSouth and other attaching entities, and; that, through the Proposed Rules, the Commission is effectively regulating pole attachments, even though, as explained by Ms. Tipton, it has no jurisdiction to do so. Finally, pole attachments are currently governed by joint use and pole license agreements between pole owners and attaching entities. The Proposed Rules will likely impact, and could interfere with, these contracts.

Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE PROPOSED RULES ARE PREMATURE.

A. Just six months ago, in February 2006, the Commission ordered electric utilities and telecommunications companies to inspect their poles every 8 years and conduct "both remaining strength assessments as well as pole attachment loading assessments." *See In re: Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program,* Docket No. 060077-TL, Order No. PSC-06-0168-PAA-TL (Issued March 1, 2006) (hereinafter "*Telecom Inspection Order*") and *In re: Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection program,* Docket No. 060078-EI, Order No. PSC-06-0144-PAA-EI (Issued February 27, 2006) (hereinafter "*Electric Utility Inspection Order*"). The Commission also imposed significant and detailed reporting requirements on the parties. Specifically, both industries had to file an initial "comprehensive wood pole inspection plan." *See Telecom Inspection Order* at p. 11; *see also Electric Utility Inspection Order* at p. 11. They also have to

file an annual report on a going forward basis that includes a review of the methods we used to determine NESC compliance for strength and structural integrity (taking into account pole loading where required), and summary data and results of the prior year's inspections, addressing the strength, structural integrity, and loading requirements of the NESC. *See Telecom Inspection Order* at p. 9; *see also Electric Utility Inspection Order* at p. 10. From participating in the Commission's workshop on the proposed pole inspection plan and reading the *Telecom Inspection Order* and the *Electric Utility Inspection Order*, I understood that one of the primary purposes of the pole inspection process was for pole owners to review their poles to assure that the poles are "reasonably robust" and that pole loadings are appropriate, presumably so that if problems were identified, they could be addressed.

BellSouth worked very successfully with several major electric companies in the State to approach this pole inspection process in a joint fashion. The early results of the pole inspections are just now starting to come in, and the first report is due to the Commission in March 2007. Instead of first reviewing the data before implementing new rules, the Commission has adopted rules which result in electric companies adopting new overhead construction, pole loading capacity, and engineering standards and procedures. Indeed, the Proposed Rules specifically call for electric utilities to adopt standards for third party pole attachments that "meet or exceed" NESC requirements, presupposing that third-party attachments on poles cause safety and reliability problems. There has been no evidence presented to the Commission, nor any data compiled, indicating that this is the case. The Proposed

Rules do not take into account that the chief stress on the distribution infrastructure results from the significant load placed by the power industry – not telephone or cable. Moreover, additional factors, such as vegetation, affect the reliability of the electric infrastructure. Without reviewing the pole inspection data and looking at all of these factors, the Commission is putting the cart before the horse.

Additionally, as the Commission is aware, BellSouth owns approximately 40% of the poles in its serving area in the State. These Proposed Rules, therefore, do not address a large percentage of Florida's poles and the attachments on those poles. It seems logical and more efficient for the Commission to collect data from the mandated pole inspection process and conduct a comprehensive analysis, taking into account the interests and concerns of all pole owners and attaching entities, their respective differences (i.e., price cap regulated vs. rate-of-return regulated), before adopting rules that upset long-standing uniform construction standards that, on their face, apply only to a portion of the poles in the State.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO RULE 25-6.034.

A. Both the power and telecommunications industries currently follow the NESC as the rule of thumb, nationally. The Proposed Rules alter that national uniform scheme and allow each power company to set its own standards. Specifically, Proposed Rule 25-6.034(2) allows each investor-owned electric utility to establish and

maintain its own construction standards for overhead and underground facilities. Given this broad discretion, electric utilities may use the Proposed Rules as an opportunity to enhance their infrastructure and pass the associated costs along to attaching entities. For instance, the electric utilities could demand that attachments be upgraded, rearranged or removed, or that poles be replaced, and then attempt to impose those costs on attaching entities, like BellSouth, despite the fact that BellSouth might not be the cost-causer or the beneficiary of the taller or stronger poles. In particular, to the extent that joint use agreements expressly address, among other things, which entity is responsible to pay for the costs of upgrades, replacement, and taller/stronger poles, the Proposed Rules could have an unintended consequence. While BellSouth does not concede the argument and specifically claims that such an argument would be inappropriate[3], the electric utilities could attempt to use the Commission's Proposed Rules to claim that, under existing joint use agreements, BellSouth is responsible for some portion of the costs of the upgrades -- costs that the electric utilities ordinarily pay per the agreements -- despite the fact that BellSouth would not be the cost-causer nor the beneficiary of the taller or stronger poles.

The electric companies might also attempt to use their leverage as the majority pole owners to amend existing agreements so that they can recover the costs resulting

[3] By acknowledging the existence of this argument, BellSouth does not concede it or believe that it is appropriate. In fact, in an abundance of caution, BellSouth denies the argument and reserves all rights and defenses associated with its joint use agreements and any claim that the Proposed Rules impact said agreements.

from the Proposed Rules. This is surely an unintended consequence of the Proposed Rules which needs to be considered.

The Commission should be cognizant of this cost-shifting risk, which potentially results in the electric utilities recovering all of the additional costs mandated by the Proposed Rules from attaching entities, and the electric utility rate payers through rate-of-return regulation.

Additionally, if electric utilities place new taller or stronger poles, BellSouth and other attaching entities will certainly face higher pole rental rates as electrics will argue that their average historical pole costs and associated carrying costs have increased. To the extent this does occur and as later referenced in my testimony regarding Proposed Rule 25-6.064, BellSouth should receive a credit or reduction against the historical cost of the electric utility's average historical pole cost for the customers' contribution-in-aid of construction, and payments made by other attachers, to ensure that pole rental fees are not further skewed.

Furthermore, the fact that the Proposed Rules allow each of the 40-plus electric utilities in Florida to set its own construction standards will also impact the design and construction processes of attaching entities, like BellSouth, and will certainly lead to cost increases that are not insignificant. For example, in implementing the Proposed Rules, the electrics may decide to enhance their infrastructure by placing non-wood poles, like steel, fiberglass or concrete poles. Currently, BellSouth

technicians are not adequately equipped with the tools to place attachments on these types of poles. Taking into account BellSouth providing its technicians with the proper tools and training, and the increase in the time it would take to place attachments on these poles, BellSouth's cost to place attachments could increase by approximately $55 per attachment.

BellSouth will likely not only be faced with the increased expense of designing and installing facilities to meet standards that are excessive in light of its infrastructure requirements, but we will also incur the added costs of training our thousands of employees on the potential 40-plus differing standards and any subsequent revisions to those standards. BellSouth technicians assigned to one wire center generally work on poles owned by multiple power companies operating within the geographical boundaries of that wire center. Currently, technicians rely on the NESC as the uniform construction standard. Under the Proposed Rules, each electric utility within the wire center boundaries could have its own set of standards. Also, though less common, as BellSouth places facilities, especially aerial facilities, it could move from one electric company's serving area into another such that poles one through five in a pole line might be governed by one power company's standards and poles six through ten in the same pole line, by another. It will be a challenge to adhere to differing standards within one wire center and communicate each power company's differing standards to the field technicians to ensure compliance.

Additionally, changes in construction standards and procedures could translate into a significant increase in BellSouth's workload. The Company might have to hire additional management and non-management employees, as well as buy more equipment and vehicles. We are unable to estimate the potential increase in these types of expenses because, again, we do not yet know how the electrics will implement the Proposed Rules.

To add to the uncertainty, there are no guidelines governing how often an electric utility can revise its standards or how quickly BellSouth and other attachers would have to change their operations to comply with those revisions. As a point of interest, Proposed Rule 25-6.034(4) contemplates that the electrics use the 2002 edition of the NESC as a baseline for developing their individual construction standards. My understanding is that the NESC is revised every 5 years, so we can expect an updated edition in 2007. According to the Proposed Rules, the electrics have 6 months to develop construction standards, putting their deadline in 2007. At a minimum, the Commission should consider postponing adoption of the Proposed Rules until it has had a chance to review the 2007 edition of the NESC to avoid another mandate from this Commission for changes to the electric utilities' newly-issued standards.

BellSouth is also concerned that Proposed Rule 25-6.034(4)(b) expressly grandfathers electric facilities constructed prior to the 2002 edition of the NESC, providing that such facilities are governed by the edition of the NESC in effect at

the time of the initial construction. The specific reference to the electric facilities implies that the pre-2002 facilities of the other attaching entities do not enjoy the same grandfathering protection. This is contrary to standard language in joint use contracts that the attachments of all pole users should be governed by the edition of the NESC in effect at the time the attachment was placed.

Further, Proposed Rule 25-6.034(4)(b), together with Proposed Rules 25-6.0342 and 25-6.0343 which require electrics to establish and maintain standards and procedures for third-party attachments, could be read to justify, or even require, random inspections of third-party attachments by the electric utilities to ensure that third party attachments comply with the latest edition of the NESC and the electric utilities' standards. The electric utilities would likely try to pass the cost of these inspections on to the attaching entities – again, through a creative, unreasonable interpretation of an existing provision in the joint use and pole attachment license agreements, or by using their leverage to amend those agreements.

Moreover, Proposed Rule 25-6.034(5) provides that each investor-owned utility shall "establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times" for three different classes of construction: new construction, "major planned work" and "targeted critical infrastructure facilities." The Proposed Rules are overbroad and vague because these terms are not defined. Planned work that is "major" could include distance in feet or miles, number of lanes, length of

construction or other factors. "Targeted critical infrastructure" could include electrical substations or gas stations, all community hospitals or some neighborhood walk-in facilities. Again, the Proposed Rules give each electric utility *carte blanche* to determine where extreme wind loading standards will be applied.

Proposed Rule 25-6.034(6) requires electric utilities to establish guidelines and procedures to prevent damage to underground and overhead facilities from flooding and storm surges. The Commission should consider the impact of this proposed rule on all entities in these geographical areas with underground and overhead facilities, not just electric utilities.

Proposed Rule 25-6.034(7) requires the electric utilities to "seek input" from attaching entities when developing construction standards, but the rule does not require that the electric utilities collaborate with, or obtain the approval of, the attaching entities. Thus, on a case by case basis, BellSouth will have to balance whether to install attachments in accordance with construction standards it may not agree with, or seek relief from the Commission (assuming the Commission had jurisdiction), presumably with the expense and burden of proving to the Commission why the standards in question are unreasonable. I anticipate that giving the electric utilities broad discretion over construction standards, with no parameters and no mandated level of collaboration from the attaching entities, will likely result in contentious relationships between the parties when, in fact, it is in the best interest of the public for them to act in cooperation.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH PROPOSED NEW RULE 25-6.0341.

A. Proposed Rule 25-6.0341 calls for electric utilities, as a general rule, to place overhead and underground facilities adjacent to public roads in front of customers' premises. If the electric utility moves its aerial facilities from the rear of a property to a pole line in the front, BellSouth would have to decide whether to stay on the abandoned pole, or relocate to the new pole. It would cost BellSouth an average of $250 - $300 per pole to remain on the abandoned pole and assume ownership of it, along with resulting administrative costs. BellSouth, as the new pole owner, may also have to expend time, manpower, and money to secure an easement from the property owner. These newly obtained poles would increase BellSouth's pole inspection costs by roughly $30 per pole; and BellSouth would have to expend the time, manpower, and money to negotiate new agreements with the other cable and communications providers attached to the poles.

BellSouth's lines and facilities are attached to approximately 756,000 electric utility poles, including poles owned by investor-owned companies, municipal electrics and rural electric cooperatives The following table represents assumptions that the electric companies will abandon between 10% and 40% of poles that have BellSouth attachments. It also provides a forecast of cost to BellSouth to assume ownership of those poles for a per pole cost within a range of $250 - $300.

Cost Per Pole	10% Abandon Rate	20% Abandon Rate	30% Abandon Rate	40% Abandon Rate
$250	$18,900,000	$37,800,000	$56,700,000	$75,600,000
$275	$20,790,000	$41,580,000	$62,370,000	$83,160,000
$300	$22,680,000	$45,360,000	$68,040,000	$90,720,000

So, if we assume that the electric utilities will abandon 10% of their poles to BellSouth in a given year, BellSouth could potentially face a minimum cost of $18,900,000, which does not include payments made to property owners to secure easements, resources expended to negotiate easements and new pole attachment agreements, and associated administrative costs.

BellSouth's other option would be to relocate its attachments to the new pole at the front of the property.[4] We estimate the cost of placing the new aerial facility to be anywhere between $25 and $40 per foot. If we assume that BellSouth relocated 10% of its existing aerial cable attached to electric utility poles in a given year (which equates to 18,900,000 feet of aerial facilities) to follow the electrics' move to front property lines, BellSouth would face a minimum cost of $472,500,000. The following table provides an impact based on a range of possibilities:

Cost Per Foot	10% of Existing Aerial Cable Replaced	20% of Existing Aerial Cable Replaced	30% of Existing Aerial Cable Replaced	40% of Existing Aerial Cable Replaced
$25.00	$472,500,000	$945,000,000	$1,417,500,000	$1,890,000,000
$30.00	$567,000,000	$1,134,000,000	$1,701,000,000	$2,268,000,000
$35.00	$661,500,000	$1,323,000,000	$1,984,500,000	$2,646,000,000
$40.00	$756,000,000	$1,512,000,000	$2,268,000,000	$3,024,000,000
$45.00	$850,500,000	$1,701,000,000	$2,551,500,000	$3,402,000,000

[4] It is not unreasonable to think that BellSouth might be forced to choose relocation, even if its facilities on the rear pole line are in excellent condition, if a property owner refuses to grant BellSouth a new easement or seeks to take economic advantage of BellSouth's situation.

$50.00	$945,000,000	$1,890,000,000	$2,835,000,000	$3,780,000,000

If the electric utility chooses to move aerial facilities from the rear property and bury them in the front and BellSouth chooses to join in the conversion, the costs would increase by approximately $10 per foot so that the cost of conversion would be between $35 and $50 per foot.

Alternatively, should an electric company choose to replace existing poles with taller, stronger poles to strengthen an existing pole line, BellSouth would be required to transfer its facilities. Using the same assumption that the electric utilities will replace between 10% and 40% of their poles, the following table represents an estimate of cost to BellSouth to transfer facilities from one pole to the other. The BellSouth cost per transfer represents the price range from a simple to a more complex transfer.

Cost per Transfer	10% Electric Company Pole Change-out	20% Electric Company Pole Change-out	30% Electric Company Pole Change-out	40% Electric Company Pole Change-out
$95	$7,182,000	$14,364,000	$21,546,000	$28,728,000
$280	$21,168,000	$42,336,000	$63,504,000	$84,672,000
$470	$35,532,000	$71,064,000	$106,596,000	$142,128,000

Realistically, in response to the Proposed Rules, an electric utility would incorporate a varied approach to 'hardening' its network, which would involve a combination of the three aforementioned scenarios. Assuming BellSouth will face a combination of these scenarios, the range of the cost impact is between approximately $500,000,000 for a 10% rate of change and $4,000,000,000 for a 40% rate of change.

In addition to the above costs, it is near certain that a push for electric utilities to bury facilities along public roads will also result in an increase in damage to BellSouth's existing buried facilities, as electric utilities will generally need to place their facilities beneath those of telecommunications and cable companies to meet NESC requirements. Through June 2006, BellSouth has already experienced approximately 2,500 incidents of damage to its buried facilities, with a total cost to BellSouth in excess of $3 million. Seventy-five percent of these incidents occurred in street-side environments. While BellSouth diligently tries to recover its damages, BellSouth is not always successful and frequently has to expend resources to pursue collection activities, including litigation against the wrongdoer. Further, BellSouth experiences additional costs in these scenarios because (1) it must pull technicians away from other tasks to address facility damages and; (2) it takes preventative measures by talking to the excavators and making site visits to ensure, to the extent possible, that BellSouth facilities are protected. Additionally, an increase in burying facilities will result in an increase in BellSouth's locate costs as entities seeking to underground will request that BellSouth locate its existing buried facilities. Accordingly, the Proposed Rules will only result in the exponential increase in the costs BellSouth currently experiences with street-side, underground facilities.

In sum, as evidenced by the above, there can be no dispute that the Proposed Rules will impact BellSouth and other attaching entities on many different fronts, with a great potential for significant cost increases. It is impossible to provide an accurate

estimate of the total anticipated costs because we have no idea how each of the 40-plus electric utilities in Florida will implement the Proposed Rules.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH PROPOSED NEW RULE 25-6.0342.

A. Proposed New Rule 25-6.0342 requires electric utilities to establish and maintain standards and procedures for attachments by others to transmission and distribution poles. Critically, this provision mandates that the Third-Party Attachment Standards and Procedures "meet or exceed" the NESC and other applicable standards imposed by state and federal law so that attachments do not, among other things, impair the safety and reliability of the electric system and exceed pole loading capacity; and that third party facilities are "constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." Further, the Proposed Rule prohibits attachments that do not comply with the electric utility's Attachment Standards and Procedures.

As a primary concern and as explained in Pam Tipton's testimony, the Commission has no jurisdiction over pole attachments and, thus, this Proposed Rule is an improper exercise of the Commission's power.

From an operational perspective, the adoption of this Proposed Rule is premature and nullifies the Commission's orders mandating an 8 year pole inspection cycle.

Proposed Rule 25-6.0342 presupposes that third party attachments on poles cause safety or reliability problems. As I previously mentioned, there has been no evidence presented to the Commission, nor any data compiled, indicating that this is the case.

Also to the point that the Proposed Rules are premature, I reiterate the fact that the 2002 NESC is due to be revised in 2007. Proposed Rule 25-6.0342 mandates that the Third-Party Attachment Standards and Procedures "meet or exceed" the 2002 edition of the NESC. As previously discussed, it would be more efficient, at a minimum, to await the issuance of the 2007 NESC guidelines to avoid the need for further revisions to pole construction standards.

Like previous sections, Proposed Rule 25-6.0342 also disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities *carte blanche* over pole attachments. While problems may have occurred with certain providers failing to comply with applicable safety requirements, no data has been compiled to indicate that the problems warrant drastic changes to the current uniform procedures in place to ensure safety and reliability. Additionally, as I mentioned previously, the chief stress on the distribution infrastructure results from the significant load placed by the power industry, not by telephone or cable. Moreover, other factors such as vegetation affect the reliability of the electric infrastructure. Addressing only attachments in the Proposed Rules paints a misleading and lopsided picture.

Lastly, as more fully explained in my testimony regarding the proposed amendments to Rule 25-6.034, BellSouth is also concerned that Proposed Rule 25-6.0342 could be read to justify, or even require, random inspections of third-party attachments by the electric utilities and that the electric utilities would likely try to pass the cost of these inspections on to the attaching entities through a creative, unreasonable interpretation of existing provisions in joint use and pole attachment license agreements, or by using their leverage to force an amendment to the those contracts. More significantly, despite the fact that the attaching entity might not be the cost-causer or the beneficiary of the taller or stronger poles, the electric utilities could use the same tactics to demand that attachments be upgraded, rearranged or removed, or that poles be replaced, potentially at considerable cost (capital and expense) to the attaching entities, like BellSouth. This attempted cost-shifting is not supported by the joint use agreements and, as such, BellSouth is not responsible for such costs.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO RULE 25-6.064.

A. Section 25-6.064 requires an investor-owned electric utility to calculate amounts due as contributions-in-aid-of-construction from customers who request new facilities or upgraded facilities. As an attacher that pays pole rental fees, BellSouth pays a portion of the electric utility's costs when the electric utility installs a taller pole or a stronger pole of the same class because those costs are used when

factoring rental rates. To ensure that pole rental rates are not further skewed, BellSouth should receive a credit or reduction against the historical cost of the electric utility's average pole cost for the contribution-in-aid-of-construction, and for payments made by other attachers.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO 25-6.078.

A. To the extent an electric utility's policy filed pursuant to Proposed Rule 25-6.078 affects the installation of underground facilities in new subdivisions, or the utility's charges for conversion implicates new construction, I reiterate the concerns raised in my testimony regarding the proposed amendments to Rule 25-6.034.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO RULE 25-6.115.

A. BellSouth recognizes that several electric utilities have tariffs addressing the recovery of costs for converting existing overhead facilities. Proposed Rule 25-6.115 incorporates language on Undergrounding Fee Options that includes the recovery of conversion costs from the customer. The Commission needs to consider, as Pam Tipton's testimony will explain in more detail, that BellSouth, unlike electrics, cannot pass conversion costs along to its customers.

Q. EXPLAIN YOUR STATEMENT THAT THE PROPOSED RULES WILL LIKELY IMPACT OR INTERFERE WITH JOINT USE AND POLE ATTACHMENT LICENSE AGREEMENTS.

A. I have touched on this point throughout my testimony, but as a primary example, joint use and other pole attachment license agreements generally address, among other things, which entity is responsible for paying the costs of new or upgraded poles and the transfers to those poles. Typically, under the terms of its joint use agreements with electric utilities, BellSouth would not contribute to these costs because BellSouth would not be the cost-causer, or the beneficiary of the new or upgraded poles. The electric utilities might attempt, however, to use the Proposed Rules as justification to interpret existing joint use provisions in a creative, unintended, and unreasonable manner to attempt to pursue these costs from BellSouth. BellSouth maintains that such a position would be contrary to the plain language and the spirit of the joint use agreements. Also as I previously mentioned, the electrics might try to use their leverage as majority pole owner to renegotiate unreasonable amendments to existing agreements.

This example not only shows how the Proposed Rules might interfere with existing joint use and pole attachment license agreements, but also how they will likely produce the unintended consequence of creating a contentious relationship between the electrics and attaching entities. It seems logical that in attempting to increase service reliability and minimize public safety issues, especially following

hurricanes, the Commission should seek to foster positive working relationships between pole owners and attaching entities.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF PAM TIPTON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

AUGUST 4, 2006

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Pam Tipton. I am employed by BellSouth Telecommunications, Inc., as a Director, Regulatory and External Affairs, responsible for regulatory policy implementation in BellSouth's nine-state region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Arts in Economics from Agnes Scott College in 1986, and a Masters Certification in Project Management from George Washington University in 1996. I have over 18 years experience in telecommunications, with my primary focus in the areas of process development, services implementation, product management, marketing

strategy and regulatory policy implementation. I joined Southern Bell in 1987, as a manager in Interconnection Operations, holding several roles over a 5-year period including process development and execution, quality controls and services implementation. In 1994, I became a Senior Manager with responsibility for End User Access Services and implementation of Virtual and (later) Physical Collocation. In 2000, I became Director, Interconnection Services, responsible for development and implementation of Unbundled Network Element ("UNE") products, including responsibility for access to poles, ducts and conduit, and later development of marketing and business strategies. In June 2003, I became responsible for implementation of state and federal regulatory mandates for Local and Access markets and the management of the switched services product portfolio. I assumed my current responsibilities on August 1, 2005.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?

A. Yes. I have appeared before the Florida Public Service Commission in Docket No. 980800-TP, In re: Petition for Emergency Relief of Supra Telecommunications and Information Systems, Inc., Against BellSouth Telecommunications, Inc.; Docket No. 030851-TP, In the Matter of Implementation of requirements arising from Federal Communications

Commission triennial UNE review: Local Circuit Switching for Mass Market Customers; and Docket No. 041269-TP, In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc. I have filed written testimony in other Dockets before this commission that were settled prior to hearing.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide BellSouth's policy position regarding the Commission's jurisdiction to regulate pole attachments. I will also explain the difference between rate-of-return and price-cap regulated industries, their respective ability (or inability) to recover increased costs and how these distinctions impact the different industries that will be subject to the Proposed Rules (Rules 25-6.0341, 25-6.0342, and 25-6.0343, and proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115).

Q. PLEASE ELABORATE ON BELLSOUTH'S POSITION REGARDING THE COMMISSION'S JURISDICTION TO REGULATE POLE ATTACHMENTS.

A. While I am not a lawyer, it is my understanding that the Commission does not have the authority to adopt any rule to the extent it regulates the terms

and conditions associated with pole attachments. First, Section 224 of the Telecommunications Act, places authority to regulate pole attachments squarely on the Federal Communications Commission ("FCC"):

> (b)(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions.

Subsection (c)(1) limits this authority in any case where such matters are regulated by a State and subsection (c)(2) provides limited circumstances in which this exception applies. My reading of 47 U.S.C. § 224 (c)(2) is that the FCC has jurisdiction over pole attachments unless a state certifies the following to the FCC: (1) that it regulates rates, terms, and conditions for pole attachments; and (2) that in so regulating such rates, term, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

Q. HAS THE COMMISSION ATTEMPTED TO CERTIFY TO THE FCC THAT IT HAD JURISDICTION OVER POLE ATTATCHMENTS AND IF SO, WHAT WAS THE OUTCOME?

A. Yes. While I am not a lawyer and BellSouth's legal counsel will file a brief addressing this issue more thoroughly, the Florida Supreme Court rejected the Commission's prior attempt to certify to the FCC, pursuant to 47 U.S.C. § 224, that it had jurisdiction over pole attatchments in Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980). Specifically, in Hawkins, the Commission, pursuant to 47 U.S.C. § 224, notified the FCC that it had authority to regulate pole attachment agreements. This declaration of authority was challenged on the grounds that the Commission did not have the authority under Florida law to regulate the agreements or the interests of cable subscribers. In quashing the Commission's certification, the Florida Supreme Court relied on the Commission's own prior finding in Southern Bell Tel. & Tel. Co., 65 PUR 3d 117, 119-20 (Fla.Pub.Serv.Comm'n 1966) that it lacked authority over pole attachments:

> In 1913, when the Florida legislature enacted a comprehensive plan for the regulation of telephone and telegraph companies in this state, and conferred upon the commission authority to administer the act and to prescribe rules and regulations appropriate to the exercise of the powers conferred therein, the science of television transmission and the business of operating community antenna television systems were not in existence. The 1913 Florida legislature, therefore, could not have envisioned much less have intended to regulate and control the television transmission facilities and services with which we are concerned....*We must conclude...that the Florida Public Service Commission has no jurisdiction or authority over the operations of community antenna television systems and the rates they charge, or the service they provide to their customers.*

Id. at 649-50 (emphasis added).

Using this analysis, the Court recognized that the legislature had not subsequently conferred any relevant jurisdiction upon the Commission between 1913 and 1980. Accordingly, based upon my reading of Hawkins, the Court found that the Commission lacked jurisdiction over pole attachments.

To my knowledge, there has been no statutory grant of jurisdiction over pole attachments or cable subscribers or providers since 1980 when the Florida Supreme Court decided Hawkins.[1] Therefore, it appears that the Commission does not have the authority to implement the Proposed Rules to the extent those rules result in the regulation of the rates, terms, and conditions associated with pole attachments.

Q. WHAT IS YOUR RESPONSE TO THE ARGUMENT THAT 47 USC § 224 DOES NOT COVER CHARGES BETWEEN ILECS AND ELECTRIC UTILITIES?

[1] Indeed, since the Hawkins decision, the Commission has recognized that it lacks jurisdiction over the regulation of pole attachment agreements. *See In re: Application of Marco Island Utilities, a division of Deltona Utilities, Inc. for a new class of service – effluent for spray irrigation in Collier County*, Docket No. 870743-SU, Order no. 20257 (November 4, 1988) ("Fourteen years later, the Florida Supreme Court dismissed the Commission's resurrected claim of jurisdiction over the regulation of pole attachment agreements between regulated telephone companies and cable television systems. *Teleprompter Corporation v. Hawkins*, 384 So.2d 648 (Fla. 1980)")

A. This argument is a "red herring" designed to circumvent the Supreme Court's decision in Hawkins. The Proposed Rules give the electric utilities the license to regulate all third-party attachments, not just those placed by ILECs. The federal Pole Attachment Act, in 47 U.S.C. § 224(c), clearly outlines what a state commission must do in order to regulate pole attachments placed by a cable television system or provider of telecommunications services on poles owned by utilities, including electric companies. Whether or not the FCC has jurisdiction over the rates ILECs pay for pole attachments does not change the fact that the Commission has not met the certification requirements of the federal statute and, thus, has no jurisdiction over pole attachments.

Q. ARE THERE OTHER REGULATORY DISTINCTIONS THE COMMISSION MUST CONSIDER WHEN IMPOSING NEW RULES TO GOVERN POLE ATTACHMENTS?

A. Yes. In addition to the jurisdiction issue I discussed above, the Commission should consider the rate-of-return vs. price-cap regulation distinction between the electric companies and most ILECs.

Q. PLEASE DESCRIBE THE DISTINCTION BETWEEN RATE-OF-RETURN REGULATED AND PRICE-CAP REGULATED INDUSTRIES AND

EXPLAIN WHY THE COMMISSION SHOULD CONSIDER THE DISTINCTION IN EVALUATING THE PROPOSED RULES.

A. At a high level, under rate-of-return regulation, a company is entitled to recover allowable operating costs and a "fair" rate of return. Conversely, under price-cap regulation, a company's prices are capped at a certain rate and these rates generally cannot be modified to recover operational costs. In Florida, electric utilities are rate-of-return regulated while the majority of the ILECs, like BellSouth, are price-cap regulated. This difference in regulation is not insignificant, especially as it relates to the Proposed Rules.

Specifically, the Proposed Rules do not take into account, that unlike the electric utility monopolies that can pass along to their customers any costs incurred in complying with the Proposed Rules via rate-of-return regulation, BellSouth is price-regulated and will be economically and competitively disadvantaged in adding such costs to the bills of its customers (assuming it even has the ability to raise its rates). Indeed, unlike the electric utilities, BellSouth must compete with regulated and unregulated companies for every customer it obtains in Florida. As Mr. Smith discussed in his testimony, the "passed-through" costs to BellSouth and other companies could be tremendous. The Commission needs to take into account these regulatory and competitive distinctions in

evaluating the impact of the Proposed Rules to ensure that they do not economically or competitively disadvantage a particular type of company.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.