

PUBLIC VERSION

Before the
Federal Communications Commission
Washington, DC 20554

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|-------------------------------|---|-----------------------------|
| _____ |) | |
| BELLSOUTH TELECOMMUNICATIONS, |) | |
| LLC d/b/a AT&T FLORIDA, |) | |
| |) | |
| Complainant, |) | Proceeding No.: 19-187 |
| v. |) | Bureau ID No.: EB-19-MD-006 |
| |) | |
| FLORIDA POWER AND LIGHT |) | |
| COMPANY, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

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JOINT STATEMENT

Pursuant to 47 C.F.R. § 1.733(b)(2), the Commission’s July 8, 2019 Notice of Complaint, and the scheduling requests granted on July 15, 2019, September 3, 2019, and October 7, 2019, Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”) and Defendant Florida Power and Light Company (“FPL”), through undersigned counsel, submit the following Joint Statement regarding (I) stipulated facts, (II) disputed facts, (III) key legal issues, (IV) discovery matters, (V) scheduling, and (VI) settlement prospects.

I. Stipulated Facts¹

1. AT&T is an incumbent local exchange carrier (“ILEC”) that provides telecommunications and other services in areas of Florida.

2. FPL is an investor-owned electric utility that provides electric and other services within the state of Florida. FPL owns poles in Florida. FPL is not owned by a railroad, a person who is cooperatively organized, or a person owned by the Federal Government or a State.

¹ The parties’ stipulation to a fact does not mean the parties agree that the stipulated fact is material to any issue in this proceeding—only that the stated fact is uncontroverted.

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3. AT&T and FPL are parties to a Joint Use Agreement between FPL and Southern Bell Telephone and Telegraph Company that was entered January 1, 1975 and amended June 1, 2007 (the “JUA”). A true and correct copy of the JUA is attached to AT&T’s Amended Pole Attachment Complaint (“Complaint”) as Exhibit 1, *see* ATT00108-139.

4. The JUA was terminated by FPL pursuant to Article XVI as to the further granting of joint use, effective September 26, 2019. A true and correct copy of FPL’s letter providing notice of termination pursuant to Article XVI is attached to AT&T’s Complaint as Exhibit 23, *see* ATT00248-250.

5. According to FPL’s most recent rental invoice, FPL has facilities attached to 213,210 AT&T-owned poles and AT&T has facilities attached to 425,704 FPL-owned poles. Of the 425,704 FPL-owned poles, 366,924 are wood distribution poles, 53,990 are concrete distribution poles (also referred to as special poles), and 4,790 are transmission poles.

6. Other companies are also attached to FPL’s utility poles, including competitive local exchange carriers (“CLECs”), cable companies, wireless providers, and governmental entities. During the 2014 through 2018 rental years, FPL had ■ agreements with competitive local exchange carriers, ■ agreements with cable companies, and ■ agreements with wireless providers. *See* FPL’s Resp. to AT&T’s Interrog. No. 4. The rate calculations attached to AT&T’s Reply as Exhibit 5 reflect the rates that FPL calculated using the Commission’s new telecom rental rate formula for the CLECs attached to its poles for the years ending 2014 through 2019.

7. FPL issues AT&T an annual joint use invoice that reflects the charges for AT&T’s use of FPL’s poles and for FPL’s use of AT&T’s poles. True and correct copies of FPL’s annual joint use invoices for 2014 through 2018 are attached to AT&T’s Complaint as

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Exhibit 2, *see* ATT00140-148. The annual joint use invoices show, among other things, that FPL charged AT&T the following effective per-pole rates for the 2014 through 2018 calendar years:

| Rates for AT&T's Use of FPL's Poles | 2014 | 2015 | 2016 | 2017 | 2018 |
|--|------------|------|------|------|------|
| Wood distribution poles | [REDACTED] | | | | |
| Concrete distribution poles | | | | | |

See FPL's Resp. to AT&T's Interrog. No. 5; Compl. Ex. 2, *see* ATT00141, ATT00143, ATT00144, ATT00146, ATT00147. The invoices also show that, for the 2014 through 2018 calendar years, FPL's per-pole rate for use of AT&T's poles was:

| Rate for FPL's Use of AT&T's Poles | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|------------|------|------|------|------|
| Wood distribution poles | [REDACTED] | | | | |

See FPL's Resp. to AT&T's Interrog. No. 1; Compl. Ex. 2, *see* ATT00141, ATT00143, ATT00144, ATT00146, ATT00147.

8. On July 1, 2019, FPL received payment from AT&T equal to the outstanding principal balance that had been invoiced to date for 2017 and 2018 joint use rent. The following table shows the calculation of the principal amounts FPL charged and the amounts AT&T paid for joint use rent during the years of 2014 through 2018:

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| Rental Year | AT&T's Rent to FPL | | | - | FPL's Rent to AT&T | | = | Net Rent | |
|-------------|--|---|----------------------------|---|---|---|------------|----------|---------------------------------|
| | Per-Pole Base Rates and Additional Charges for AT&T's Use of FPL's Poles | x | FPL Poles | - | Per-Pole Rate for FPL's Use of AT&T's Poles | x | AT&T Poles | = | Net Rent Paid by AT&T (rounded) |
| 2014 | Base Rate + Concrete + Transm. | | 393,817 30,438 4,699 | | ██████ | | 227,293 | | ██████ |
| 2015 | Base Rate + Concrete + Trans. | | 401,099 35,695 4,711 | | ██████ | | 225,977 | | ██████ |
| 2016 | Base Rate + Concrete + Transm. | | 412,357 43,380 4,698 | | ██████ | | 218,052 | | ██████ |
| 2017 | Base Rate + Concrete + Transm. | | 418,558 47,421 4,703 | | ██████ | | 216,850 | | ██████ |
| 2018 | Base Rate + Concrete + Transm. | | 425,704 53,990 4,790 | | ██████ | | 213,210 | | ██████ |

See Compl. Ex. 2 at ATT00141-148. FPL's joint use invoices for 2014, 2015, 2016, and 2018 also included additional "true-up" rental amounts. See ATT00141, ATT00143, ATT00144, ATT00147.

II. Disputed Facts

The parties could not reach agreement on disputed facts to include in this filing. All facts from the parties' pleadings that are not stipulated above are disputed.

III. Key Legal Issues

The parties could not reach agreement on key legal issues to include in this filing. Please refer to the parties' pleadings for legal issues.

IV. Discovery

The parties do not believe that additional discovery is necessary or appropriate.

V. Schedule for Pleadings

To the extent the Commission believes additional briefing on a particular issue or issues would be helpful to its understanding of this case under 47 C.F.R. § 1.732(a), the July 8, 2019 Notice of Complaint as amended on July 15, 2019, September 3, 2019, and October 7, 2019 sets Wednesday, December 18, 2019 as the deadline for all briefing.

VI. Settlement

At this time, the parties do not believe that settlement is possible given the irreconcilable merits positions taken by the parties.

VII. Other Matters

The parties are not aware of any other matters pertinent to this dispute requiring the Commission's attention.

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Dated: November 20, 2019

Respectfully and jointly submitted,

/s/ Christopher S. Huther

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2019, I caused a copy of the foregoing Joint

Statement to be served on the following (service method indicated):

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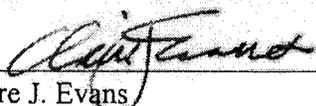
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