

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
45 L St., NE
Washington, DC 20554

March 8, 2021

Copies sent by E-mail

BellSouth Telecommunications, LLC)	
d/b/a AT&T North Carolina and)	
d/b/a AT&T South Carolina,)	
)	
Complainant,)	
)	Proceeding Number 20-293
v.)	Bureau ID Number EB-20-MD-004
)	
Duke Energy Progress, LLC)	
)	
Defendant.)	

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Dear Counsel:

This letter ruling directs the parties to submit briefs in this proceeding. The parties' briefs shall be limited to the issues described below. We hereby waive the portion of 47 CFR § 1.732(b) stating that claims and defenses previously made but not reflected in the briefs will be deemed abandoned.

Simultaneous initial briefs shall be filed on or before **April 8, 2021**. Simultaneous responsive briefs shall be filed on or before **April 19, 2021**. Briefs shall be filed, and served by e-mail, by **5:30**

p.m. on the prescribed day. Initial briefs shall be limited to 25 pages, excluding exhibits, and responsive briefs shall be limited to 15 pages, excluding exhibits.

Simultaneous Initial Briefing Issues:

- (1) To the extent you contend that BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina (AT&T), as an attacher to the Duke Energy Progress, LLC (Duke or DEP) poles at issue in this case, has advantages or disadvantages as compared with CATV and CLEC companies with licenses to attach to those poles, list each specific advantage or disadvantage and record evidence regarding the specific advantage or disadvantage, including citations to provisions in the parties' joint use agreement (JUA) and in Duke's pole attachment agreements with third parties. The parties should agree on a common way of referring to the third-party agreements, such as that used in Appendix A to the Commission's Memorandum Opinion and Order in *Verizon v. Potomac Edison. Verizon Maryland LLC v. The Potomac Edison Company*, Memorandum Opinion and Order, 35 FCC Rcd 13607 (2020) (*Verizon v. Potomac Edison*). All citations to specific provisions in any agreement should include the production numbers of the specific page(s) containing the provision. In addition, cite to any authorities, including Commission or Bureau orders, that support your position regarding such advantages or disadvantages.
- (2) Assuming that the new telecom rate or the pre-existing (old) telecom rate is determined to apply to AT&T's attachments to the Duke poles at issue in this case, the parties shall confer on the proper calculation of the new telecom rate and the pre-existing (old) telecom rate for each of the years at issue and jointly prepare a summary document identifying those input values on which the parties agree. **We encourage the parties to stipulate to the value of as many inputs as possible.** The parties shall submit that summary document with their opening briefs.

With respect to those inputs to the new telecom rate and the pre-existing (old) telecom rate formula that are disputed, explain in detail your contention as to the proper determination of the disputed input, citing all record evidence, including information disclosed in discovery, and all authorities supporting your determination of the value of that input. To the extent the parties continue to dispute certain inputs, your briefs should include a discussion of the topics listed in Appendix A hereto.

Simultaneous Responsive Briefing Issues:

- (1) Specifically rebut any disputed material in your opponent's opening brief, citing all record evidence and authorities supporting your rebuttal.
- (2) Specifically rebut any disputed element in your opponent's rate calculations for each of the years at issue, and explain in detail how your calculation of individual inputs to the rate formulas differs from your opponent's and why, citing all record evidence, including information disclosed in discovery, and authorities supporting your position.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1.1415 of the Commission's Rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1.1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Lisa Saks

Lisa Saks
Assistant Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission

Appendix A

Whether the pole surveys DEP produced in discovery provide statistically valid samples of data regarding pole height, attachment height, and midspan height.

Should the nuclear fuel, materials, and assemblies investment and related accumulated amortization be accounted for in the denominator of the taxes element of the DEP rate calculation, and if so, what is the best way of making that calculation?