



January 31, 2022

BY ELECTRONIC FILING

Mr. Adam J. Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Proposed Rule 25-18.010, F.A.C., *Pole Attachment Complaints*
Docket No. 20210137-PU

Dear Mr. Teitzman:

On behalf of AT&T, please find enclosed for electronic filing in the above-referenced docket, AT&T's written comments and suggested changes relating to Proposed Rule 25-18.010, Pole Attachment Complaints.

Thank you for your kind assistance with this matter. Please feel free to call me at (850) 681-3828 should you have any questions concerning this filing.

Very truly yours,

/s/ Jon C. Moyle

Jon C. Moyle

Encl.: AT&T Suggested Changes to Proposed Rule 25-18-010, Pole Attachment Complaints
and Key

**AT&T SUGGESTED CHANGES TO PROPOSED
RULE 25-18.010 POLE ATTACHMENT COMPLAINTS**

(Note: This document is the proposed revised rule put forward by the settling parties and staff; the highlights are suggested changes)

(1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to Section 366.04(8), F.S., must contain:

(f) ~~If the complaint requires the Commission to establish just and reasonable cost based rates, terms, and conditions for pole attachments, the complaint must contain an explanation of the methodology the complainant is requesting the Commission to apply; If the complaint involves~~ **requests** the establishment of **just and reasonable** rates, charges, terms, or conditions for pole attachments and the complainant proposes the application of rates, **charges**, terms, or conditions ~~that are based upon required by~~ Federal Communications Commission (FCC) rules, **decisions**, orders, or appellate decisions, the complainant must identify the specific applicable FCC rules, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if the complainant ~~proposes~~ **requests** an alternative cost-based rate, the complainant must identify the **alternative rate** methodology and **state in detail the legal and factual basis for its view that** ~~explain how~~ the alternative methodology yields a cost-based rate **that** is just and reasonable and in the public interest.

(4) A response filed under subsection (3) of this rule must include the following: ...

(b) ~~If the complaint requires the Commission to establish just and reasonable cost based rates, terms, and conditions for pole attachments, the response must contain an explanation of the methodology the respondent is requesting the Commission to apply. If the complaint involves~~ **requests** the establishment of **just and reasonable** rates, charges, terms, or conditions for pole attachments and the respondent proposes the application of rates, **charges**, terms or conditions ~~that are based upon required by~~ FCC rules, **decisions**, orders, or appellate decisions, the respondent must identify the specific applicable FCC

rules, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if the respondent ~~proposes~~ requests an alternative cost-based rate, the respondent must identify the alternative rate methodology and state in detail the legal and factual basis for its view that ~~explain how the~~ alternative methodology yields a cost-based rate that is just and reasonable and in the public interest.

KEY TO AT&T SUGGESTED CHANGES TO PROPOSED RULE 25-18.010 POLE ATTACHMENT COMPLAINTS

General Comments: The proposed rule language before Commission as Attachment A to the January 25, 2022, Staff Recommendation in Docket Number 20210137-PU is an agreement of two interested parties. AT&T was not a party the agreed upon settlement language before the Commission today.

This is a rule proceeding and rule hearing requested pursuant to s. 120.54(3)(c) F.S. and a rule not a settlement hearing, like a rate case settlement case: In a public rule hearing, argument and evidence of all interested parties should be considered and the Commission is free to make changes. AT&T is both a pole owner and an attaching entity and its interest in this matter are considerable.

Staff commented in its recommendation that a goal of the proposed revised rule was to provide more specificity to filing requirements: “Providing more specificity as to filing requirements gives more guidance to parties to assure that the Commission gets the information it needs to fulfill its statutory duty to hear and resolve complaints as set forth in 366.04(8), F.S.” Staff Recommendation, page 6.

AT&T has considered this staff guidance and, as detailed below, believes that its suggested changes will improve the rule and provide additional guidance and specificity to those who will make use of this procedural rule.

1. Suggest using the word “requests” rather than “involves” or “proposes”: A complaint filed at the Commission should “request” certain Commission actions addressing rates, charges, terms or conditions rather than the less precise word “involves” or “propose”. A complaint which imprecisely “involves” just and reasonable rate, charges, terms or conditions is less

specific than a complaint which makes certain “requests”. These detailed requests are typically found in a Prayer for Relief section of a pleading. The term “requests” is much more precise and should be substituted in the procedural pleading rule for the term “involves” or “proposes” as detailed above.

2. **Suggest inserting the words “just and reasonable” before “rates, charges, terms or conditions”:** Ultimately, the Commission’s actions are premised upon a “just and reasonable” decision. Section 366.04(8)(a) specifically directs the Commission “to ensure that such rates, charges, terms and conditions are **just and reasonable**” (emphasis added). A party seeking Commission relief should be required in a procedural pleading rule to seek relief that is in accord with the statute by seeking “just and reasonable” relief.
3. **Suggest that the term “charges “should be included for clarity:** The proposed Commission rule states in pertinent part “If the complaint involves the establishment of rates, charges, terms, or conditions for pole attachments and the complaint proposes the application of rates, terms, or conditions required by Federal Communications Commission (FCC) rules, ...”. Charges should be added as suggested for consistency and clarity.
4. **Suggest that the words “required by FCC” should replace the words “that are based upon FCC”:** The Legislature considered the role that FCC legal authorities should play and expressly stated in pertinent part that the commission “shall apply the decisions and orders of the Federal Communications Commission and any appellate court decisions reviewing an order of the Federal Communications Commission ...”¹. The Legislature’s use of the mandatory word “shall”, and its express direction that the Commission shall apply such named FCC legal authority, makes the use of “required by” more appropriate than “that are based upon”. See s. 366.04(8)(e), F.S.

¹ The statute and rule also provide for an alternative approach not at issue with respect to applying FCC authority.

5. Suggest that word “decision”, used in the statute, should be included in the list of FCC authority that the Commission shall use when making certain decisions. As noted above, the Legislature specifically stated that FCC “decisions” should be included within the FCC legal authority that should be used by the Commission. Not including “decisions” in the PSC’s procedural pleading rule could lead to questions and uncertainty as to why the word was omitted.

6. Suggest that the alternative cost-based pole attachment rate should specifically plead the factual and legal basis for the alternative approach and not just generally “explain” the methodology. Pleading with particularity is the better practice for putting the commission and other parties on notice of the action sought and the basis for the request. Consistent with this “pleading with specificity” approach, the proposed rule already requires that “... the complainant must **specifically** identify the applicable FCC rules, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.,” *See*, Proposed Rule 25-18.010(f) line 19, p. 6 of Attachment A to Staff Recommendation. (emphasis added.) A party pleading an alternative approach likewise should be procedurally required to “specifically” identify the facts and law supporting the alternative rate methodology it seeks. Putting in place by rule this “specificity” pleading requirement will improve the rule and bolster its reciprocity for those who seek an FCC-based methodology and as compared to those who seek an alternative methodology.