

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA**

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In Re:)	
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Generic Proceeding to Implement House)	Docket No. 43453
Bill 244)	
)	
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)	

**GEORGIA CABLE ASSOCIATION’S RESPONSE TO GEORGIA ELECTRIC
CORPORATION AND ITS 38 MEMBERS’ OBJECTIONS TO THE APPLICATIONS
OF GEORGIA TELECOMMUNICATIONS ASSOCIATION AND BELL SOUTH
TELECOMMUNICATIONS, LLC D/B/A AT&T GEORGIA FOR LEAVE TO
INTERVENE AND GEMC’S MOTION TO LIMIT TESTIMONY**

The Georgia Cable Association (“GCA”), on its own behalf and on behalf of its participating members¹, hereby files this Response to the Objections Georgia Electric Membership Corporation (“GEMC”) and its members filed in this docket opposing the intervention of BellSouth Telecommunications, LLC d/b/a AT&T Georgia (“AT&T”) and the Georgia Telecommunications Association (“GTA”) and seeking to limit the testimony in this case. GCA supports the Responses filed by GTA and AT&T and respectfully requests that the Georgia Public Service Commission (the “Commission”) deny GEMC’s request to prevent GTA and AT&T from participating in this hearing and to limit GTA’s and AT&T’s testimony.

The Commission should deny GEMC’s Objection and request to limit testimony because: (1) there is no justification to deny AT&T and GTA intervention under O.C.G.A. § 46-2-59 or limit their intervention under Commission Rule 515-2-1-.06(3); (2) GTA and AT&T timely intervened under the Procedural and Scheduling Order; and (3) limiting the application of “any

¹ The participating members are Spectrum Southeast, LLC, Comcast Cable Communications, LLC, Cox Communications Georgia LLC, and MCC Georgia LLC d/b/a Mediacom.

pole attachment agreement” to exclude joint use agreements would contradict the intent of HB 244.

1. There is no justification to deny AT&T and GTA intervention under O.C.G.A. § 46-2-59 or limit their intervention under Commission Rule 515-2-1-.06

GEMC does not argue that AT&T and GTA should be denied a right to intervene under O.C.G.A. § 46-2-59, but instead incorrectly uses its objection to limit the presentation of evidence. Under O.C.G.A. § 46-2-59(e)(2), the Commission shall permit a party to intervene “who demonstrates a legal, property, or other interest in the proceeding.” The Commission *may* consider “whether the person’s interest is adequately represented by other parties and whether the intervention would unduly delay the proceedings.” O.C.G.A. § 46-2-59(e)(2).

GEMC has failed to establish that GTA and AT&T do not have “a legal, property, or other interest in the proceeding.” GEMC also does not argue that their interests are adequately represented by another party or that their participation would unduly delay the proceedings. GEMC argues that if GTA and AT&T present evidence on joint-use agreements that it would “severely prejudice” GEMC and its members. Limiting testimony is simply not within the language of O.C.G.A. § 46-2-59.

GEMC incorrectly argues it is proper to limit GTA’s and AT&T’s testimony under Commission Rule 515-2-1-.06(3). Although that rule allows the Commission to condition any order permitting intervention, the rule specifically allows the Commission to only place restrictions on an intervenor “that are not related to the viewpoint of the intervenor” Ga. Comp. R. & Regs. 515-2-1-.06(3) (emphasis added). GTA’s and AT&T’s testimony that a joint use agreement is a pole attachment agreement is their viewpoint. Therefore, there is no justification to condition GTA’s or AT&T’s intervention by limiting their testimony.

2. AT&T and GTA timely intervened in accordance with the Procedural and Scheduling Order.

GEMC also attempts to argue that AT&T and GTA untimely filed their Applications for Leave to Intervene or that the Applications for Leave to Intervene were “the first time” that this Commission, Commission Staff, and the parties “had any notice that AT&T and GTA were going to seek to be involved in any way in this proceeding.” *See* GEMC’s Objections, p. 11. This is simply not true. GEMC, GCA, AT&T, and GTA all jointly received an email from Staff on September 3, 2020 providing an opportunity to submit data requests to parties in this docket. It is GCA’s understanding that GTA and AT&T submitted data requests to be served on GEMC. Therefore, it should not have been a surprise when GTA and AT&T timely intervened.

Additionally, the Commission’s September 8, 2020 Procedural and Scheduling Order required all applications for leave to intervene to be filed with the Commission by October 8, 2020. In accordance with the Commission’s Order, AT&T and GTA both intervened by October 8, 2020. In fact, GCA notes that GEMC also waited to intervene until three days before the deadline – just two days before AT&T and three days before GTA. If GEMC had an issue with parties intervening just before the deadline to respond to data requests, GEMC, like all parties in this docket, was given the opportunity to comment on the Procedural and Scheduling Order and propose alternative dates. GEMC did not propose alternative dates.

GEMC has attempted to exclude every intervenor in this docket and dictate the narrative that can be submitted in this proceeding. Indeed, GEMC similarly filed an objection to GCA’s Application for Leave to Intervene², arguing that GCA didn’t have an interest in the case, even

² After GCA filed an Amended Application for Leave to Intervene on October 8, 2020, GEMC withdrew its Objection.

though GEMC submitted data requests to GCA. This is just another attempt by GEMC to prevent parties from participating in this proceeding so that GEMC can control the narrative.

3. HB 244 Applies to Any Pole Attachment Agreement and Limiting the Application of “Any” Would Contradict the Purpose of the Statute.

GEMC incorrectly attempts to limit HB 244 to exclude joint-use agreements. HB 244 provides that “[i]n order to *promote the deployment of broadband services in this state* ... the rates, fees, terms, conditions, and specifications in any pole attachment agreement entered into by a communications service provider and an electric membership corporation shall be as determined by the commission” O.C.G.A. § 46-3-200.4(b) (emphasis added). HB 244 defines “attachment” as “the connection or fastening of a wire or cable to a utility pole.” O.C.G.A. § 46-3-200.4(a)(1).

The Georgia Court of Appeals has stated that as a “fundamental principle of statutory construction, we ‘endeavor to give each part of the statute meaning and avoid constructions that make some language mere surplusage or meaningless.’” *Schick v. Bd. of Regents Univ. Sys. of Ga.*, 779 S.E.2d 452, 458 (Ga. App. 2015). Further, it is a long standing principle that when interpreting statutes “courts should always strive to give effect to the purpose and intent of the legislature.” *Parker v. Lee*, 378 S.E.2d 677, 689 (Ga. 1989). Ignoring the legislature’s use of “any” would render the language mere surplusage and interpreting HB 244 to exclude joint-use agreements would contradict the purpose and intent of the legislature in enacting HB 244: to promote the deployment of broadband services in this state. *See* O.C.G.A. § 46-3-200.4(b).

GEMC points out on page 3 of its Objection, a joint use agreements provide “rights between pole owners, including the ability to attach” (emphasis added). If AT&T and GTA have an agreement with EMCs to attach to the EMCs poles, as an attachment is defined in HB 244, then the agreement is a pole attachment agreement. HB 244 is clear that the rates, terms, conditions,

and specification set by the Commission shall apply to “any pole attachment agreement entered into by a communications service provider and an electric membership corporation.” *See* O.C.G.A. § 46-3-200.4(b). Therefore, the Commission should not exclude testimony on joint-use agreements.

CONCLUSION

GCA supports the filings of GTA and AT&T in response to GEMC’s Objections and respectfully requests that the Commission deny GEMC’s request to exclude GTA & AT&T or limit their testimony.

This 26th day of October, 2020.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lindsey S. Williamson", is written over a horizontal line.

Robert S. Highsmith Jr.
State Bar of Georgia No. 352777
Lindsey S. Williamson
State Bar of Georgia No. 783366
HOLLAND & KNIGHT LLP
Regions Plaza, Suite 1800
1180 W. Peachtree Street, N.W.
Atlanta, Georgia 30309
Tel. 404.817.8500
Robert.highsmith@hklaw.com
Lindsey.williamson@hklaw.com

CERTIFICATE OF SERVICE

This is to certify that on this day I served the foregoing document upon the following persons via email as follows:

Reece McAlister
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
reecem@psc.state.ga.us
via email

Mr. Patrick Reinhardt
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
patrickr@psc.state.ga.us
via email

Robert B. Remar
S. Gardner Culpepper
Rogers & Hardin
2700 International Tower
229 Peachtree Street NE
Atlanta, Georgia 30303
rremar@rh-law.com
sculpepper@rh-law.com
via email

Annalisa M. Bloodworth
Oglethorpe Power Corporation
2100 East Exchange Place
Tucker, Georgia 30084
annalisa.bloodworth@opc.com
via email

Mr. Leon Bowles
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
leonb@psc.state.ga.us
via email

Mr. Daniel Walsh
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
dwalsh@law.ga.gov
via email

T. Joshua R. Archer
Brooke W. Gram
Balch & Bingham LLP
30 Ivan Allen Jr. Boulevard, N.W.
Suite 700
Atlanta, Georgia 30308
jarcher@balch.com
bgram@balch.com
via email

J. Russ Campbell
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, Alabama 35203
rcampbell@balch.com
via email

Thomas B. Magee
Keller & Heckman LLP
1001 G. Street, NW
Suite 500 West
Washington, DC 20001
magee@khlaw.com
via email

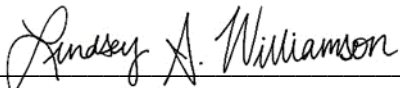
Maria Browne
Jay Ireland
DAVIS WRIGHT TREMAINE LLP
1301 K Street N.W.
Suite 500 East
Washington, DC 20005
mariabrowne@dwt.com
jayireland@dwt.com
via email

Patrick W. Turner
BELLSOUTH TELECOMMUNICATIONS.
LLC d/b/a AT&T GEORGIA
One CNN Center, SW1424B
Atlanta, GA 30303
pt1285@att.com
via email

Michael Power
Executive Director
Georgia Cable Association
1020 Karen Court, SE
Smyrna, GA 30082
mpower@gacable.com
via email

Dave Thomas
Abraham Shanedling
SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006
dthomas@sheppardmullin.com
ashaneding@sheppardmullin.com
via email

This 26th day of October, 2020.



Lindsey S. Williamson
State Bar of Georgia No. 783366