



**Interoffice Memorandum**

May 4, 2018

**TO:** Mayor Teresa Jacobs  
and the Board of County Commissioners

**FROM:** Mark V. Massaro, P.E., Director, Public Works Department

**CONTACT PERSON:** Raymond Williams, P.E., Manager  
Engineering Division  
Public Works Department

**PHONE NUMBER:** (407) 836-7908

**SUBJ: Utility Relocation Agreement - Corrected between Orange County and Bellsouth Telecommunications, LLC for Boggy Creek Road from Orange/Osceola County Line to State Road 417**

Orange County's improvements to Boggy Creek Road consists of widening and construction of a four-lane urban roadway. The Utility Relocation Agreement - Corrected between Orange County and Bellsouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) is required as part of the roadway construction to relocate AT&T utility facilities. Orange County will be responsible for all costs and expenses incurred in relocating AT&T utility facilities because the facilities exist within a dedicated utility easement. The estimated total reimbursable cost is \$111,137.71.

The Public Works Engineering Division, Risk Management, and the County Attorney's Office have reviewed the agreement and find the terms and conditions acceptable.

**Action Requested:** Approval and execution of Utility Relocation Agreement - Corrected by and between Orange County and Bellsouth Telecommunications, LLC for the relocation of utility facilities on Boggy Creek Road from Orange/Osceola County line to State Road 417. District 4.

JJF/RLAW/jlp

BCC Mtg. Date: May 22, 2018

Prepared by and return to:

Joel D. Prinsell, Deputy County Attorney  
Orange County Attorney's Office  
P.O. Box 1393  
Orlando, FL 32802

Project: Boggy Creek Road (from Orange/Osceola County line to SR 417)

**UTILITY RELOCATION  
AGREEMENT - CORRECTED**

This Utility Relocation Agreement ("Agreement"), effective as of the latest date of execution, is made and entered into by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("COUNTY"), and BELLSOUTH TELECOMMUNICATIONS, LLC, a foreign limited liability company, d/b/a AT&T FLORIDA ("AT&T") (AT&T and COUNTY are collectively referred to herein as the "PARTIES").

**WITNESSETH**

WHEREAS, COUNTY is constructing the "Boggy Creek Road Widening Project" ("Project") on Boggy Creek Road from the Orange/Osceola County line to SR 417, Orlando, Florida; and

WHEREAS, the Project will impact certain AT&T utility facilities ("Facilities") located on real property abutting the Boggy Creek Road right-of-way and owned by Worship and Praise Center, Inc. ("Easement") pursuant to that Right of Way Site Easement recorded in the Orange County Official Record Book 4008, Page 2254 and attached hereto as **Exhibit A**; and

WHEREAS, accordingly, the County has requested that AT&T remove the Facilities from the Easement and relocate them to accommodate the Project; and

WHEREAS, to accommodate the COUNTY's request, AT&T agrees to remove and relocate its Facilities in order to eliminate the conflict between the Facilities and the Project; and

WHEREAS, the parties desire to memorialize their mutual understanding of the terms and conditions of the relocation of the Facilities as set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter contained, it is agreed by both parties as follows:

1. Prior to the COUNTY commencing the Project, AT&T shall remove its Facilities from the Easement per the terms in this Agreement ("Relocation"). The estimated timeframe for AT&T's completion of the Relocation is one hundred and twenty (120) days from the effective date of this Agreement. It is understood that such timeframe is an estimate and may be extended by mutual, written agreement of the parties due to circumstances outside of AT&T's control.

2. COUNTY agrees that all actual and reasonable costs and expenses incurred by AT&T for the Relocation shall be paid by COUNTY after receipt of invoices for such expenses, in accordance with the terms outlined below.

3. COUNTY shall compensate AT&T for the appraised value of the Easement based on an appraisal conducted by COUNTY ("Easement Reimbursement"). If AT&T is not in agreement with the County's appraisal, AT&T may cause an additional appraisal to be performed, at its sole cost and expense, using a COUNTY-approved appraiser. In such case, the final appraisal, and the amount for which AT&T may invoice and be paid by the COUNTY, shall be deemed to be the average of the two. The COUNTY shall deliver its initial appraisal to AT&T within thirty (30) days of the date of this Agreement.

4. COUNTY shall compensate AT&T for its costs to secure a new easement to replace the Easement, less the amount AT&T is compensated for the appraised value of the Easement under Section 3.

5. Based on the Project construction plans submitted by COUNTY, AT&T has prepared a good faith estimate for the Relocation work and acquisition of the new easement area ("Estimate"), which explains in detail the methods, procedures, and assumptions upon which it is based. The Estimate is attached hereto as **Exhibit B**, and is incorporated herein by this reference. The Estimate may be subject to change based on final acquisition procedures, final construction drawings, or a change in the schedule or duration of the construction work. COUNTY shall be responsible for payment of actual costs incurred by AT&T, that do not exceed such Estimate by more than twenty five percent (25%). Subject to the limitations of this Section 5, the final charges to be paid by COUNTY shall be based upon actual easement acquisition costs (less the amount AT&T is compensated under Section 3) and actual construction costs of the Relocation work at the time of acquisition and construction.

6. Invoices from AT&T shall be accompanied by supporting documentation, showing actual acquisition costs and actual construction costs incurred by AT&T. AT&T may submit one or more invoices to the COUNTY for payment, following incurring the costs identified on the invoices. COUNTY shall submit payment to AT&T in accordance with this Agreement and the Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes (2015), as may be amended, but in any event within sixty (60) days of receipt by a COUNTY employee authorized to accept such proof of payment. Notwithstanding this Section 6, final payment for the Easement Reimbursement shall not be submitted until AT&T completes the Relocation, executes a document relinquishing the Easement in the form attached hereto as **Exhibit C**, and forwards such document to the COUNTY for acceptance and recording.

7. Prior to commencing construction of the Project, COUNTY shall allow AT&T continuous, unobstructed access to all the Facilities until the Relocation is complete.

8. For the duration of this Agreement, COUNTY and AT&T, and their respective agents and/or contractors and subcontractors shall each provide and maintain insurance or self-insurance coverage of such types and in such amounts as may be deemed

necessary by each party. Such insurance or self-insurance shall include at a minimum workers' compensation and employers' liability, business automobile liability and commercial general liability coverage. COUNTY and AT&T shall be included as additional insured on all liability policies maintained by their respective agents, contractors and subcontractors. Neither party to this Agreement or its officers and employees shall, by this Agreement, be deemed to assume any liability for the acts, omissions and/or negligence of the other party. Each party shall defend, indemnify and hold the other party harmless from all claims, damages, actions, losses, suits, judgments, fines, liabilities, costs and expenses arising out of or resulting from the negligent performance of its respective operations under the Agreement. Notwithstanding the foregoing, such indemnification by COUNTY shall be subject to the limitations provided in section 768.28, Florida Statutes, as may be amended, and no waiver of sovereign immunity shall be implied thereby. The provisions of this Section 8 will survive the termination of this Agreement.

9. Any notice or other communication permitted or required to be given hereunder by one party to the other shall be in writing and shall be delivered or mailed, by registered or certified United States Mail, postage prepaid, return receipt requested, or by nationally recognized, overnight courier (e.g., Federal Express) the party entitled or required to receive the same, as follows:

To AT&T:	Bellsouth Telecommunications, LLC Attention: Area Manager 9101 SW 24 <sup>th</sup> Street Miami, FL 33165
To COUNTY:	Orange County, Florida P.O. Box 1393 Orlando, Florida 32802-1393 Attention: Orange County Administrator
With a copy to:	Orange County Public Works 4200 South John Young Parkway Orlando, Florida 32839 Attention: Manager, Engineering Division

10. This Agreement is governed by the Laws of the State of Florida and appropriate venue is only in the Ninth Judicial Circuit of Orange County, Florida.

11. This Agreement and its attached exhibits constitute the entire Agreement between the parties and supersede any previous understanding between the parties. Any changes to this Agreement affecting the terms must be made in writing by addendum and approved and executed in substantially the same manner as this document. If any provision in this Agreement is invalidated, all remaining provisions shall continue in full force and effect, unless terminated.

12. AT&T hereby acknowledges that time is of the essence to the lawful performance of the duties and obligations contained in this Agreement.

13. Neither party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from any cause beyond the reasonable control of the affected Party, including but not limited to, fire, flood, embargo, war, an act of war (whether war is declared or not), insurrection, riot, civil commotion, strike, lockout or other labor disturbance, act of god or act, omission or delay in acting by any governmental authority or the other Party or an activity or operational or service requirement of a Party as an electric utility; provided, however, that the Party claiming the right to excuse performance by reason of force majeure shall use reasonable commercial efforts and diligence to avoid or remove such cause of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such cause is removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure.

14. The terms, provisions, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of AT&T and COUNTY, and their respective successors and assigns; provided however, that this Agreement shall not be assignable without the prior written consent of the other party hereto.

15. This Agreement shall be recorded by the County.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year below names signatures.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: Teresa Jacobs  
Teresa Jacobs  
Orange County Mayor

Date: May 22, 2018

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: Craig A. Stopyra  
for Deputy Clerk

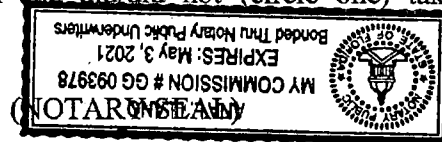
Printed Name: Craig A. Stopyra

BELLSOUTH TELECOMMUNICATIONS, LLC  
d/b/a "AT&T Florida"

By: B. Macias, Jr.  
Print Name: B. MACIAS, JR  
Title: Director

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of APRIL,  
2018 by B. MACIAS, JR as DIRECTOR of BELLSOUTH  
TELECOMMUNICATIONS, LLC, a foreign limited liability company d/b/a "AT&T  
Florida," who is personally known to me and has produced  
\_\_\_\_\_ as identification and did/did not (circle one) take an  
oath.



Notary Public, State of Florida

Name: Anna L. Llano  
Notary Commission No. GG 093978  
My Commission Expires: 5/3/2021  
ANNA L. LLANO

## **EXHIBIT A**

(Easement)

AA3295

Form 8417  
11-24-81  
Im. C, Section 933-347-60133

Southern Bell

## Right Of Way Site Easement

In consideration of the sum of money hereinafter set out and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged from the Southern Bell Telephone and Telegraph Company, the undersigned, owners of the premises described below, do hereby grant to the Southern Bell Telephone and Telegraph Company, its licensees, agents, successors, assigns, and allied and associated companies, an easement to construct, operate, maintain, add or remove such lines or systems of communications or related services as the grantee may require consisting of:

- (1) poles, guys, anchors, aerial cables and wires;
- (2) buried cables and wires, cable terminals, markers, splicing boxes and pedestals;
- (3) conduits, manholes, markers, underground cables and wires;
- (4) subscriber loop carrier lines and/or cabinets;
- (5) and other amplifiers, boxes, appurtenances or devices

3973426 ORANGE CO. FL.  
09:43:40AM 08/25/88

OR4008 PG2254

upon, over and under a parcel of land in Orange County, State of Florida, generally described as follows:

The south 30 feet of the east 30 feet of Lot 3, excluding road right-of-way in the NE 1/4 of Section 33, Twp. 24 south, range 30 east. SEE EXHIBIT A ATTACHED SURVEY.

OWNERS: Lawrence E. and Muriel G. Wegner Tel. 407-851-1401  
14152 Boggy Creek Road  
Orlando, Fla., 32824

said property being further described in Deed Book \_\_\_\_\_, Page(s) \_\_\_\_\_ of the \_\_\_\_\_ County Records Office and to the fullest extent the undersigned has the power to grant, if at all, over, along and under the roads, streets or highways adjoining or through said property. Said easement is described in detail on "Exhibit A," attached to and made a part of this document.

The following rights are also granted: to allow any other person or company to attach wire or lay cable or conduit within the right of way for communications or electrical power transmission or distribution; ingress and egress to said premises at all times; to clear the land and keep it cleared of all trees, undergrowth or other obstructions within the easement area; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the easement area which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; to receive from local power company, power service to easement; to enter upon the property covered by this easement for the purpose of making surveys and tests deemed necessary by the Grantee.

The sum of Two thousand and No/100 Dollars is 2,000.00 is hereby acknowledged by the undersigned.

To have and to hold the above granted easement unto Southern Bell Telephone and Telegraph Company, its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has signed on this 18TH day of JULY, 1988.

Signed, sealed and delivered  
in the presence of

Theresa Ross  
Witness

John Patterson  
Witness

THOMAS H. LOCKER,  
Orange County  
Comptroller

Rec Fee \$ 13.00  
Add Rec \$ 2.00  
Doc Tax \$ 11.00  
Int Tax \$ \_\_\_\_\_  
Total \$ 26.00  
Attach:

By YMB  
Deputy Clerk

S. CLYDE JOHNSON  
SCJ ENTERPRISES  
PH (904) 472-4824  
PO BOX 529  
NEWBERRY, FL. 32669-0529

Lawrence E. Wegner L  
Muriel G. Wegner L.S.  
Name

OWNERS  
Name Of Corporation

By \_\_\_\_\_  
Title

S. Clyde Johnson  
Southern Bell Representative

Corporate Officer

Southern Bell Authority Number

PLEASE RETURN TO:





**Acknowledgments**  
**For Use In All States Except South Carolina**  
**Individual Form**

State Of Florida  
County Of Orange

OR4008 PG2255

Stanley Clyde Johnson, hereby certify that on this day before me, an officer duly authorized in  
the state and county aforesaid to take acknowledgments, personally appeared Lawrence E. and  
Muriel C. Wegner to me  
known to be the person described in and who executed the foregoing instrument and acknowledged before me the due execution and  
delivery thereof for the purpose therein stated.



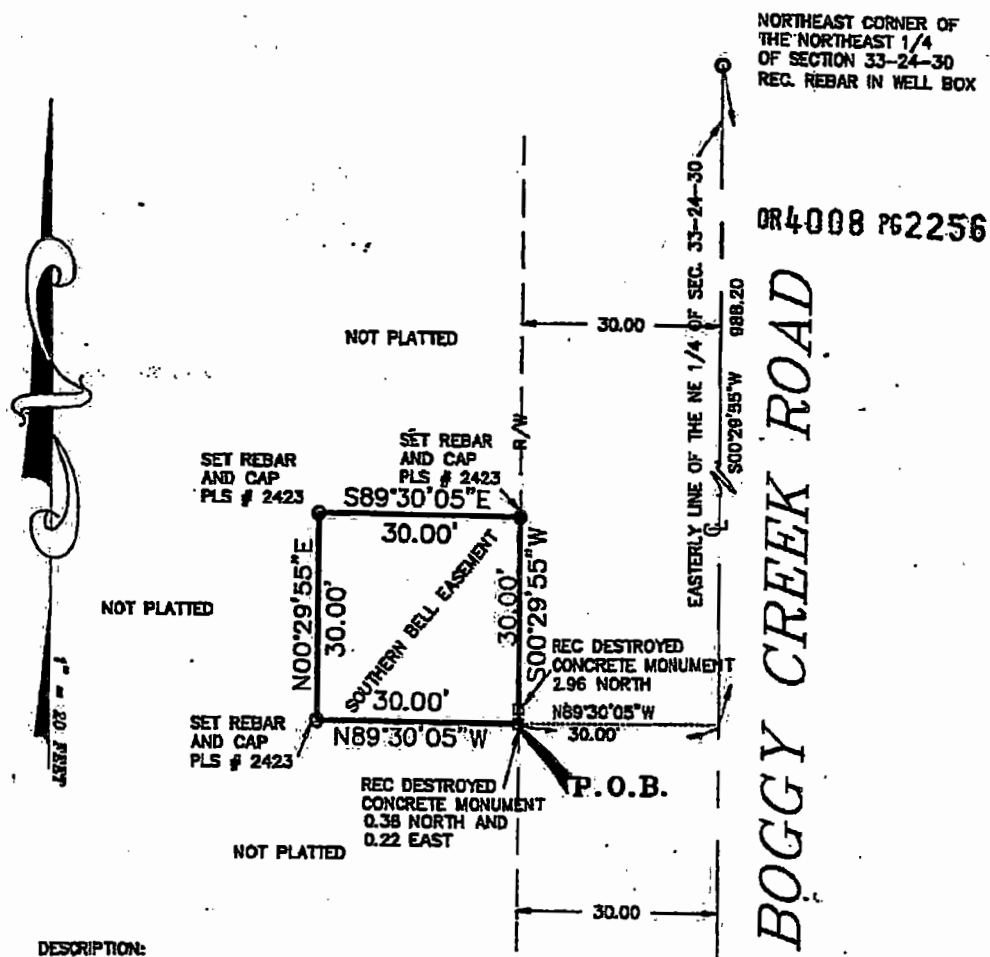
In Witness Whereof, I have hereunto set my hand and official seal, this the 18th day of July, 19 88.

Stanley Clyde Johnson  
(Notary Public for other title)

My Commission Expires 2 December, 1988

RECORDED BY 2003-07-10  
BY 2003-07-10  
BY 2003-07-10  
BY 2003-07-10  
BY 2003-07-10

BOUNDARY SURVEY FOR: SOUTHERN BELL



**DESCRIPTION:**

A 30'x 30' UTILITY EASEMENT BEING A PORTION OF THE NORTHEAST 1/4 OF SECTION 33, TOWNSHIP 24 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 33; THENCE S 00°29'55" W ALONG THE EASTERLY LINE OF THE SAID NORTHEAST 1/4 OF SECTION 33, AND THE CENTERLINE OF BOGGY CREEK ROAD A DISTANCE OF 988.20 FEET; THENCE DEPARTING THE SAID EASTERLY LINE AND THE SAID CENTERLINE N 89°30'05" W A DISTANCE OF 30.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF SAID BOGGY CREEK ROAD AND THE POINT OF BEGINNING; THENCE CONTINUE N 89°30'05" W A DISTANCE OF 30.00 FEET; THENCE N 00°29'55" E A DISTANCE OF 30.00 FEET; THENCE S 89°30'05" E A DISTANCE OF 30.00 FEET TO THE SAID WESTERLY RIGHT OF WAY LINE OF BOGGY CREEK ROAD; THENCE S 00°29'55" W ALONG THE SAID WESTERLY RIGHT-OF WAY LINE A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

**NOTES:**

BEARINGS SHOWN HEREON ARE BASED ON THE EASTERLY LINE OF THE NORTHEAST 1/4  
OF SECTION 33-24-30 BEING S 00°29'55" W, AN ASSUMED DATUM.

THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS SURVEY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

JOB NO. 88121  
SCALE 1" = 20 FEET  
DATE 6/28/88  
DRAWN BY: BM

**CERTIFICATE**  
I HEREBY CERTIFY THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH  
THE "MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF  
FLORIDA" SO-NUMBER 11-0001-0001

GRAND JUROR J. P. S. S. S.  
FLORIDA SURVEYORS CERTIFICATE NO. 3003

**GROVER DINGUS, JR.**  
*Surveying and Mapping*

400 WEST OAK RIDGE ROAD, SUITE 101  
ORLANDO, FLORIDA 32809 305/855-7740

### **References & Remarks**

Thomas H. Lulu  
County Comptroller, Orange Co. N.Y.

Exhibit "A"

## **EXHIBIT B**

(Estimate)

## **EXHIBIT B**

**(AT&T Florida Estimate)**

**The vacation of the AT&T Florida easement at 14152 Boggy Creek Rd for Orange County Boggy Creek Rd Widening CIP #5085 as described in this document will require AT&T Florida to relocate all facilities currently in this easement location. To accomplish this, AT&T Florida will have to relocate the equipment facilities currently on said easement to a new suitable location. This will require negotiating and obtaining a new easement from property owner as close as possible to existing easement due to loop restrictions on working circuits. The proposed new AT&T easement site is behind the existing easement adjacent to the proposed Right of Way of the Orange County Boggy Creek Road Widening Project which will require removal of several trees, also some clearing and grubbing to gain access the new easement.**

**AT&T Florida is proposing to relocate all above ground equipment from existing easement at request of Orange County by cutting in sections into fiber and copper cables at existing location to be able reuse existing equipment by moving it to new easement location once properly prepared (by use of heavy equipment). This will greatly reduce estimate costs not having to replace said equipment and along with cutover costs of existing working circuits.**

**The estimated cost for AT&T Florida to obtain a new easement and to relocate all working services and above ground equipment to new location has been determined to be at \$111,137.71 from latest information available. This is only an estimated cost and may vary depending on working services at the time of relocation of said facilities and other possible construction activities by Orange county Reimbursement will be actual costs.**

**The total reimbursable amount of \$111,137.71 is based on estimates for the easement acquisition costs of \$ 15,424.00 which includes cost of easement, legal fees and AT&T Florida's cost for the acquisition of the new easement. \$61,813.71 which includes materials (such as fiber and copper cables), cutting in sections into existing working cables for preparing facilities to be moved. \$33,900 which includes clearing of trees, preparing new site and moving all above equipment to new site including transferring power service.**

## **EXHIBIT C**

(Relinquishment of Easement Form)

Project: Boggy Creek Road Project

**RELEASE, TERMINATION AND EXTINGUISHMENT OF EASEMENT**

KNOW ALL MEN BY THESE PRESENTS: that BELLSOUTH TELECOMMUNICATIONS, LLC, a foreign limited liability company, d/b/a AT&T FLORIDA ("AT&T"), the owner and holder of a certain easement executed by grantors, LAWRENCE E. and MURIEL G. WAGNER, dated July 18, 1988, and recorded in Official Records Book 4008, Pages 2254-2256 of the Public Records of Orange County, Florida, upon the property situate in said State and County generally described in said easement as follows, to-wit:

**The south 30 feet of the east 30 feet of Lot 3, excluding road right-of-way in the NE ¼ of Section 33, Twp. 24 South, Range 30 East, as more particularly described in Exhibit "A" attached to said easement**

hereby acknowledges that, pursuant to a Utility Relocation Agreement with Orange County, Florida, a charter county and political subdivision of the State of Florida, relating to the widening of Boggy Creek Road from the Osceola County line to State Road 417, the use and conditions for which said easement was granted have been fulfilled and said easement is now and forever released, terminated and extinguished in favor of the current owner of the underlying property, and hereby directs the Comptroller of Orange County to record this Release, Termination and Extinguishment, thus making the same a matter of record.

IN WITNESS WHEREOF, AT&T has caused its presents to be executed as of the day and year written below.

(Official Seal)

BELLSOUTH TELECOMMUNICATIONS, LLC  
d/b/a AT&T FLORIDA ("AT&T")

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, as \_\_\_\_\_ of BELLSOUTH TELECOMMUNICATIONS, LLC, d/b/a AT&T FLORIDA, who is personally known to me or has produced \_\_\_\_\_ as identification and did/did not (circle one) take an oath.

(Notary Seal)

Notary Public, State of \_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_