

Before the  
Federal Communications Commission  
Washington, DC 20554

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

Complainant,

v.

FLORIDA POWER AND LIGHT  
COMPANY,

Defendant.

Proceeding No. 19-187  
Bureau ID No. EB-19-MD-006

**AT&T'S RESPONSE TO FPL'S MOTION TO AMEND**

**BELLSOUTH TELECOMMUNICATIONS,  
LLC d/b/a AT&T FLORIDA**

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Date: March 13, 2020

## AT&T'S RESPONSE TO FPL'S MOTION TO AMEND

AT&T does not oppose FPL's Motion to Amend provided the Commission does not pause its shot clock<sup>1</sup> or otherwise delay a decision in this proceeding. If the Motion is granted, AT&T requests at least 5 business days to file an amended Reply and Reply Legal Analysis.

AT&T otherwise disagrees with much of FPL's Motion to Amend. *First*, FPL states that its Motion seeks only "to clarify its position before the Commission,"<sup>2</sup> when in reality, FPL's Motion was designed to stave off dismissal of claims in the parties' related litigation in the U.S. District Court for the Southern District of Florida (which have been stayed expressly pending resolution of this proceeding). In response to AT&T's Motion for Stay in the District Court, FPL conceded that paragraph 12 of its FCC Answer "could be viewed as inconsistent" with Counts III and IV of its Complaint in District Court and expressed its intention to resolve that inconsistency by "filing forthwith a request with the FCC to amend its answer to clarify FPL's position on this point."<sup>3</sup> Indeed, FPL's argument in paragraph 12 is flatly at odds with the Count III and IV claims it asserted in Florida. But, by no means was FPL's Motion motivated by a desire to remove ambiguity within its FCC pleadings.

*Second*, FPL argues there is no Commission rule governing its request, but ignores the Commission's December 18, 2019 briefing deadline for this case.<sup>4</sup> Before that deadline expired, FPL was twice alerted to the text it now wants to delete: on November 6, 2019 when AT&T

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<sup>1</sup> See 47 C.F.R. § 1.740.

<sup>2</sup> Motion to Amend ¶ 1.

<sup>3</sup> See AT&T's Mar. 4, 2020 Pleadings Update, Ex. 2 at ATT01141 (FPL Response Brief at 8) ("If viewed in isolation, the single quoted statement could be viewed as inconsistent with FPL's pursuit of its termination in Counts III and IV, but it was not meant to be.... FPL will be filing forthwith a request with the FCC to amend its answer to clarify FPL's position on this point...").

<sup>4</sup> See Letter from L. Griffin, FCC, to Counsel (Oct. 7, 2019).

quoted the language in its Reply and Reply Legal Analysis, and again on November 12, 2019 during a court hearing.<sup>5</sup> FPL does not provide any justification, let alone “good cause”, for letting the December 2019 briefing deadline expire or for waiting until March 2020 to seek leave to amend.

*Third*, FPL claims it had no “undue delay” in filing its Motion.<sup>6</sup> This claim is rebutted by the 4 months that passed after FPL reviewed AT&T’s Reply and Reply Legal Analysis before it sought leave to amend. AT&T quoted the language FPL seeks to delete on November 6, 2019, November 12, 2019, and February 13, 2020.<sup>7</sup> FPL did not raise the possibility of amending its Answer until February 24, 2020 and did not file its Motion to Amend until March 6, 2020.<sup>8</sup>

*Fourth*, FPL argues AT&T should “not require any changes” to its pleadings.<sup>9</sup> This is absurd. FPL seeks to revise paragraph 12 of its Answer, which AT&T addressed in its Reply and Reply Legal Analysis.<sup>10</sup> AT&T must now be provided an opportunity to “respond to the factual allegations and legal arguments made by the defendant” in its Amended Answer.<sup>11</sup>

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<sup>5</sup> See, e.g., AT&T’s Reply to FPL’s Answer ¶ 12; Reply Legal Analysis at 5 & n.14, 45 & n.295; see also AT&T’s Mar. 4, 2020 Pleadings Update, Ex. 5 at ATT01183 (AT&T Reply Brief at 8 & n.2) (citing Nov. 12, 2019 Hearing Transcript).

<sup>6</sup> Motion to Amend ¶ 6.

<sup>7</sup> See AT&T’s Reply to FPL’s Answer ¶ 12; Reply Legal Analysis at 5 & n.14, 45 & n.295; see also AT&T’s Feb. 14, 2020 Pleadings Update, Ex. 4 at ATT01118-19 (AT&T Objections at 5-6); AT&T’s Mar. 4, 2020 Pleadings Update, Ex. 5 at ATT01183 (AT&T Reply Brief at 8 & n.2) (citing Nov. 12, 2019 Hearing Transcript).

<sup>8</sup> See AT&T’s Mar. 4, 2020 Pleadings Update, Ex. 2 at ATT01141 (FPL Response Brief at 8).

<sup>9</sup> Motion to Amend ¶ 7.

<sup>10</sup> See, e.g. AT&T’s Reply to FPL’s Answer ¶ 12; Reply Legal Analysis at 5, 12, 45.

<sup>11</sup> See 47 C.F.R. § 1.728(a).

Finally, FPL falsely states that it “sought AT&T’s consent to this motion but AT&T refused to consent.”<sup>12</sup> FPL never requested AT&T’s consent to a motion to amend; it asked whether AT&T would object to the filing of an errata.

Notwithstanding these disagreements with the arguments in FPL’s Motion to Amend, AT&T does not oppose the relief FPL seeks provided the shot clock is not extended, a decision is not delayed, and AT&T is provided sufficient time (at least 5 business days) to amend its reply filings.

Respectfully submitted,

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Dated: March 13, 2020

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<sup>12</sup> Motion to Amend ¶ 10.

## CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2020, I caused a copy of the foregoing AT&T's

Response to FPL's Motion to Amend to be served on the following (service method indicated):

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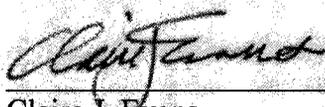
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