

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140055-TP

COMPLAINT OF FLATEL,
INC. AGAINST BELLSOUTH
TELECOMMUNICATIONS, INC.
D/B/A AT&T FLORIDA.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 5

COMMISSIONERS

PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Thursday, June 5, 2014

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

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2 **CHAIRMAN GRAHAM:** Next will be Item Number 5.

3 **MR. MURPHY:** Commissioners, Item 5 is staff's
4 recommendation in the complaint of FLATEL, Inc., against
5 AT&T Florida.

6 Staff recommends that the Commission should
7 dismiss FLATEL's amended petition with prejudice for
8 failure to comply with applicable filing rules for a
9 second time.

10 I received an email from Ms. Adriana Solar,
11 who was going to represent FLATEL. She's unable to
12 attend. Tracy Hatch is here to answer questions, if you
13 have any.

14 **CHAIRMAN GRAHAM:** Okay. Commissioners, any
15 questions of staff or Mr. Hatch?

16 Okay. Can I get a motion?

17 **COMMISSIONER BROWN:** Move staff.

18 **CHAIRMAN GRAHAM:** It's been moved and
19 seconded, staff recommendation on Item Number 5.

20 Commissioner Balbis.

21 **COMMISSIONER BALBIS:** I just want a
22 clarification on, on the motion. Staff's recommendation
23 is that we dismiss the amended petition with prejudice.
24 And I just want to confirm that that's what the motion
25 states, because there is discussion in the analysis on

1 an option of dismissing without prejudice.

2 **COMMISSIONER BROWN:** With prejudice.

3 **COMMISSIONER BALBIS:** Okay. Mr. Chairman, can
4 I ask staff a question on what the consequence of that
5 would be?

6 **CHAIRMAN GRAHAM:** Sure.

7 **COMMISSIONER BALBIS:** That does not prohibit a
8 new complaint regarding promotional credits that could
9 come forward. And the only -- the dismissal with
10 prejudice just means they cannot amend this complaint
11 and submit it again.

12 **MR. MURPHY:** I think the complaint would be
13 dismissed with prejudice with respect to the factual
14 basis for this complaint. They could not bring a new
15 complaint on these same issues.

16 Subsequent alleged violation by AT&T of these,
17 of this nature they could complain. But with respect to
18 the ones that are -- to the extent that they are
19 identified, they would be precluded from subsequent
20 complaints.

21 **COMMISSIONER BALBIS:** Because staff's
22 recommendation of dismissal is because the complaint
23 does not follow the format and the requirements of a
24 complaint; correct?

25 **MR. MURPHY:** Yes, sir.

1 **COMMISSIONER BALBIS:** But it does not dive
2 into the factual issues that are alleged in the
3 complaint?

4 **MR. MURPHY:** You don't reach the merits of, of
5 the factual basis of the complaint by doing this action.

6 **COMMISSIONER BALBIS:** Okay. And that's my
7 only concern in that we haven't really, and staff has
8 not gotten into the factual issues associated as to
9 whether or not there, whether or not there are any valid
10 arguments as to the promotional credits. And if we
11 dismiss with prejudice, then they're precluded from
12 filing any complaint associated with that, which we have
13 not addressed. So I would not support a dismissal with
14 prejudice just based on that.

15 **CHAIRMAN GRAHAM:** Okay. Commissioner Brown.

16 **COMMISSIONER BROWN:** Thank you. And,
17 Commission Balbis, I wrestled with this a little bit too
18 in, in a briefing with staff. We have given -- we have
19 often given utilities and companies an opportunity to
20 come back and file if they don't meet the requirements,
21 the pleading requirements of a complaint. However, the
22 reason why I was supporting staff recommendation on
23 this -- and I still do support it -- is because the rule
24 or statute is not clear. And I asked staff is there --
25 based on the facts here, do you believe that they could

1 plead a complaint based on the facts and the rules as
2 they stand today and the statutes as they exist today,
3 not the ones that have been repealed? And staff's
4 answer was no.

5 So based on, on the current factual situation
6 and the complaint as amended -- we've already given them
7 leave to amend prior -- I can't see, foresee a complaint
8 based on what they've presented to us. So I still
9 support staff's recommendation.

10 **CHAIRMAN GRAHAM:** Okay. We have a motion and
11 a second on the floor of staff recommendation on Item
12 Number 5. Seeing no further discussion, all in favor,
13 say aye.

14 **COMMISSIONER EDGAR:** Aye.

15 **COMMISSIONER BROWN:** Aye.

16 **COMMISSIONER BRISÉ:** Aye.

17 **CHAIRMAN GRAHAM:** Aye.

18 Any opposed?

19 **COMMISSIONER BALBIS:** Nay.

20 **CHAIRMAN GRAHAM:** By your action, you've
21 approved staff recommendation on Item Number 5.

22 Thank you, staff.

23 **MR. MURPHY:** Thank you.

24 (Agenda item concluded.)

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1 STATE OF FLORIDA)
 :
2 COUNTY OF LEON) CERTIFICATE OF REPORTER

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4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes
12 of said proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney or counsel of any of the parties, nor am I a
15 relative or employee of any of the parties' attorney or
16 counsel connected with the action, nor am I financially
17 interested in the action.

18 DATED THIS 10th day of June, 2014.

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