

ORIGINAL



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December 23, 2003

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Docket No. 030851-TP
Implementation of requirements arising from Federal Communications
Commission's triennial UNE Review: Local Circuit Switching for Mass Market
Customers

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of Verizon Florida Inc.'s
Response to AARP's Petition to Intervene in the above matter. Service has been made
as indicated on the Certificate of Service. If there are any questions regarding this filing,
please contact me at 813-483-1256.

Sincerely,

Richard Chapkis
Richard A. Chapkis

RAC:tas
Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Response to AARP's Petition to Intervene in Docket No. 030851-TP were sent via electronic mail and U.S. mail on December 23, 2003 to:

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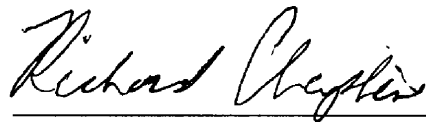
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising) Docket No. 030851-TP
from Federal Communications Commission's)
Triennial UNE review: Local Circuit Switching)
for Mass Market Customers.)
_____)

VERIZON FLORIDA INC.'S RESPONSE TO AARP'S PETITION TO INTERVENE

Verizon Florida Inc. (Verizon) submits this Response to the AARP's Petition to Intervene (Petition).

I. INTRODUCTION

1. AARP lacks standing to intervene. To establish standing, AARP would have to show that: (1) it may suffer a direct injury as the result of Commission action that may be taken this proceeding, and (2) this proceeding is intended to protect against such direct injury. AARP fails to allege – let alone demonstrate – that it satisfies these criteria, and therefore its Petition should be denied.

II. AARP LACKS STANDING TO INTERVENE

A. AARP Does Not Have A "Substantial Interest" In The Outcome Of This Proceeding

2. AARP bears the burden of proving that it has standing to participate in this proceeding. Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979).

3. To demonstrate that it has standing, AARP must prove that its substantial interests will be determined here. See Section 120.569(1), Florida Statutes.

4. The Florida courts have established a two-pronged substantial interest test, commonly referred to as the Agrico test. First, AARP must show that it will suffer a

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direct injury as a result of Commission action that may be taken in this proceeding. Second, AARP must show that the direct injury falls within the zone of interest of the statute being applied. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981).

5. The first prong of the Agrico test, known as the "immediacy" requirement, precludes participation based on speculative or conjectural concerns. International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990); Village Park Mobile Home Assoc., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987). The second prong of the Agrico test, known as the "zone of interest" requirement, limits standing to those entities that the Legislature intended to be protected in the administrative proceeding at issue. Agrico, 406 So. 2d at 478; Ameristeel Corp. v. Clark, 691 So. 2d 473, 478 (Fla. 1997).

6. AARP fails to demonstrate that it meets either prong of the Agrico test.

7. With respect to the "immediacy" requirement, AARP alleges merely that the impairment determinations rendered here "will necessarily affect the substantial interests of all customers of both the ILECs and CLECs in this state, including the approximately 2.6 million Florida members of the AARP." (Emphasis added). This type of indirect economic interest – which every Florida ratepayer has in the outcome of the proceeding – does not satisfy the first prong of the Agrico test.

8. To the contrary, the courts have expressly ruled that a petitioner with a general, indirect economic interest in the outcome of a proceeding – such as that alleged by AARP here – does not have standing to intervene. See Florida Medial

Assoc., Inc. v. Dep't of Professional Regulation, 426 So. 2d 1112, 1118 (Fla. 1st DCA 1983) (under the Agrico test, a claim of substantial interest based solely upon economic interests is not sufficient unless the relevant statute itself contemplates consideration of economic interests); Florida Society of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988) ("[w]hile appellants may well suffer some degree of loss due to economic competition . . . , we fail to see how this potential injury satisfies the 'immediacy' requirement"); Village Park, 506 So. 2d at 434 (allegations regarding the effect of the outcome of an agency proceeding on the sales and profits of the intervener insufficient to confer standing); International Jai-Alai Players, 561 So. 2d at 1225-26 (claim that proceeding would indirectly affect economic interests of Jai-Alai Players "is far too remote and speculative in nature to qualify under the first prong of the Agrico standing test.").

9. With respect to "zone of interest" requirement, the Petition is even more Spartan – it ignores this aspect of the test altogether. In any event, AARP could not satisfy the "zone of interest" requirement – even if it tried – because the instant proceeding is not intended to address AARP's interests. Rather, it is intended to address: (1) whether CLECs are impaired without access to unbundled local circuit switching for mass market customers; and (2) whether ILECs must continue to unbundle that element for the benefit of CLECs.

10. In light of the foregoing, AARP has not met – and cannot meet – either prong of the Agrico test, and therefore AARP lacks standing to intervene.

B. AARP Has Not Alleged Or Established Representative Standing

11. Because AARP is an association, it must establish representative standing in addition to satisfying both elements of the Agrico test.

12. To establish “representative” standing, AARP must demonstrate that:

- a substantial number of its members have substantial interests that are affected by the proceeding;
- the subject matter of the proceeding is within the association's general scope of interest and activity; and
- the relief requested is of a type appropriate for an association to receive on behalf of its members.

See Florida Homebuilders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982); Farmworker’s Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982).

13. AARP fails to satisfy the foregoing criteria. First, AARP cannot demonstrate that a substantial number of its members are substantially affected by the proceeding, because its members are people 50 years and older – its members do not include the ILECs and CLECs that have a direct interest in the outcome of this proceeding. Second, it cannot demonstrate that the subject matter of this proceeding is within the association's general scope of interest, because AARP is concerned with end-user retail rates, not whether CLECs are impaired without access to unbundled mass market switching. Third, it cannot demonstrate that the “relief” it would seek is appropriate for an association to receive on behalf of its members, because the only


relief potentially available here is relief from the existing obligation to unbundled mass market switching.

14. Based on AARP's failure and inability to establish representative standing, AARP should not be permitted to participate in this case.

III. CONCLUSION

15. For the foregoing reasons, the Commission should deny the AARP's Petition.

Respectfully submitted on December 23, 2003.

By: 
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