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Sent: Monday, November 27, 2006 4:29 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing in Docket 060677-TL
Attachments: joint response (final) in opposition to telephone association intervention.doc

ORIGINAL

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B. Docket No. 060677-TL In re: Joint Petition to implement practices and procedures with Department of Children and Families to automatically enroll eligible customers in Lifeline telephone program, by Citizens of Florida and AARP

C. Document being filed on behalf of AARP, Public Counsel and Attorney General Charlie Crist.

D. There are a total of 7 pages.

E. The document attached for electronic filing is Joint Response of AARP, Citizens of Florida and Attorney General Charlie Crist in Opposition to FTIA Intervention.

The parties/individuals indicated on the certificate of service are being served both electronically and by U.S. Mail.

Thank you for your attention and assistance in this matter.

Mike Twomey

CMP _____

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FPSC-COMMISSION CLERK

11/27/2006

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition to implement practices and procedures with Department of Children and Families to automatically enroll eligible customers in Lifeline telephone program, by Citizens of Florida and AARP.

DOCKET NO. 060677-TL

FILED: November 27, 2006

JOINT RESPONSE OF AARP, CITIZENS OF FLORIDA AND ATTORNEY GENERAL CHARLIE CRIST IN OPPOSITION TO FTIA INTERVENTION

AARP, the Citizens of Florida and Attorney General Charlie Crist, by and through their undersigned counsel, oppose the Motion to Intervene and For Abeyance filed on November 17, 2006 by the Florida Telecommunications Industry Association ("FTIA") and in support thereof state as follows:

1. On October 11, 2006, the Citizens of Florida, through Harold McLean, Public Counsel, and AARP jointly petitioned the Florida Public Service Commission ("Commission") to order local exchange telecommunications companies in Florida to implement practices and procedures with the Department of Children and Families to automatically enroll eligible customers in the Lifeline telephone program. Subsequently, on October 26, 2006, by Order No. PSC-06-0897-PCO-TL, Charles J. Crist, Jr., Attorney General, State of Florida, was granted permission to intervene in this proceeding "on behalf of the citizens of the State of Florida, whose substantial interests may be affected by this proceeding."

2. FTIA has sought intervention in this case pursuant to Rule 28-106.205, Florida Administrative Code, which states in full:

28-106.205 Intervention.

Persons other than the original parties to a pending proceeding whose substantial interest may be determined in the proceeding and who desire to become parties may petition the presiding officer for leave to intervene. Except for good cause

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shown, petitions for leave to intervene must be filed at least 20 days before the final hearing. The petition shall conform to subsection 28-106.201(2), F.A.C., and shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(Emphasis supplied.)

3. As just noted, petitions to intervene must conform to the provisions of subsection 28-106.201(2), F.A.C., which requires:

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(Emphasis supplied.)

Petitioner FTIA Fails to Allege How Its Substantial Interests Will Be Affected

4. Aside from failing to comply with the majority of the Rule 106.201(2), F.A.C., provisions regarding the specifics to be stated in a petition, the FTIA has, most importantly, failed to allege how its substantial interests will be affected by the Commission's determination in this docket. Such a pleading failure is necessarily fatal to any petition to intervene since it has also failed to allege the other possible grounds for intervention, namely, "allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule"

5. An allegation of substantial interest sufficient to meet the requirements of the rule and case law should be similar to the following taken from a recent Florida Retail Federation petition to intervene in Docket No. 060642-EI, where that organization alleged:

5. Statement of Affected Interests. In this docket, the Commission will decide: (a) whether to approve PEF's request for an exemption from the Bid Rule, (b) whether to make a rate increase decision in a determination of need proceeding at least three years before any portion of the proposed new capacity is commercially operative, and (c) to concurrently determine whether to allow Progress to recover base rate expenses through the Fuel Cost Recovery Clause at a time when PEF is subject to a base rate freeze. These decisions will impact the cost of electricity to the FRF's members and other retail customers of PEF.

6. The FRF's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, the FRF is the representative of a large number – well over one thousand – of its members who are retail electric customers of PEF, and these members' substantial interests will be directly affected by the Commission's decisions regarding PEF's power supply choices and regarding PEF's retail electric rates. Thus, the interests that the FRF seeks to protect are of sufficient immediacy to warrant intervention, and the nature of its members' interests in having the Commission's protection against rates that are

unjust, unfair, or unreasonable – here, rates that are legally inappropriate and that would likely violate of the Stipulation approved by the Commission in Order No. PSC-05-0945-S-EI - is exactly the type of interest that this proceeding is designed to protect.

FTIA, unlike the Florida Retail Federation example above, fails to make a credible allegation that its substantial interests will be affected by the Commission’s determination in this docket. In addition, FTIA fails to include the phrase “substantial interest” as a basis for it being allowed to participate as a party in this case.

Petitioner FTIA Fails to Allege “Associational Standing” or Its Entitlement to that Status

6. Pursuant to Florida Law, an association, like the FTIA, purporting to represent its members’ substantial interests, must meet certain minimal legal requirements to be granted intervention on behalf of its collective members. The minimal legal requirements and the leading Florida case on the subject are discussed in the Florida Retail Federation’s Petition to Intervene in Docket No. 060642-EI, where it alleged:

7. Associational Standing. Under Florida law, to establish standing as an association representing its members’ substantial interests, an association such as the Florida Retail Federation must demonstrate three things:
- a. that a substantial number of its members, although not necessarily a majority, are substantially affected by the agency’s decisions;
 - b. that the intervention by the association is within the association’s general scope of interest and activity; and
 - c. that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Florida Home Builders Ass’n v. Dep’t of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982). The FRF satisfies all of these “associational standing” requirements. A substantial number – well over one thousand – of the FRF’s more than 10,000 members are located in PEF’s service area and receive their electric service from PEF, for which they are charged PEF’s applicable retail rates. The FRF exists to represent and protect its members’ interests in a number of venues, including the Florida Public Service Commission. In this regard, the FRF was an intervenor in PEF’s 2005 general rate case, and in PEF’s 2004 storm

cost recovery docket. Finally, the relief requested – intervention, proper and timely ratemaking treatment of future costs, and the lowest rates consistent with the Commission’s governing law -- is across-the-board relief that will apply to all of the FRF’s members in the same way, according to the retail rate schedules under which they receive service. Therefore, the requested relief is of the type that is appropriate for an association to obtain on behalf of its members.

In the face of these minimal legal requirements for demonstrating a right to associational standing, FTIA has failed to allege: (1) that a substantial number of its members will be substantially affected by the Commission’s decision in the docket; (2) that intervention by the FTIA is within its general scope of interest and activity; and (3) that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Petitioner FTIA’s Request That This Docket Be Held In Abeyance Is Premature

7. It should require no citation of authority to support the proposition that a non-party to a proceeding -- especially one that has failed to make the most fundamental of assertions that it is entitled to party status – has no standing to file any substantive motion, let alone one seeking to derail for six months a docket in which the Attorney General, the Office of Public Counsel and AARP have alleged that the interests of the consumers of the State of Florida are not only at issue, but long over due in being responsibly addressed. FTIA’s attempt to delay the Joint Petitioners’ and the Attorney General’s request to achieve auto enrollment for those eligible for Lifeline financial assistance should be considered by this Commission only after, and if, the association demonstrates its legal entitlement to party standing.

8. Pursuant to the requirements of Rule 28-106.204(3), F.A.C. the undersigned have conferred with all other parties of record on the filing of the instant motion and can state that BellSouth, and Windstream Florida, Inc., have stated their objection to the instant motion, while TracFone Wireless, Inc. has stated that it is not opposed to the filing of the motion.

WHEREFORE, in view of the above, AARP, the Citizens of Florida and Attorney General Charlie Crist take the position that FTIA's pending petition to intervene cannot legally be granted because the petition fails to allege the minimal legal "substantial interest" allegation, as well as the minimal legal allegations supporting its entitlement to "associational standing" on behalf of its members, and that, therefore, the Movants respectfully request that the Commission deny the intervention. Furthermore, Movants would respectfully submit that the motion for abeyance is premature for consideration until such time as FTIA is granted party status.

Respectfully submitted,

/s/ Harold McLean

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S.

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