

IN THE SUPREME COURT
STATE OF FLORIDA

ATTORNEY GENERAL CHARLES
J. CRIST JR. AND PUBLIC COUNSEL
HAROLD MCLEAN,
on behalf of the citizens of Florida,

Intervenors/Appellants,

v.

CASE NO. SC04-9
PSC DOCKET NOS. 030867-TL
030868-TL
030869-TL
030961-TL

BRAULIO L. BAEZ, Chairman,
and J. TERRY DEASON, LILA A. JABER,
RUDOLPH ARUDY@BRADLEY,
and CHARLES DAVIDSON,
Commissioners, as and constituting
the FLORIDA PUBLIC SERVICE
COMMISSION, an agency of the
STATE OF FLORIDA, et al.,

AARP MOTION TO MAINTAIN CONFIDENTIALITY

AARP, pursuant to Rule 2.051(c)(9), Judicial Administration Rules, and in conjunction with its Original Motion to Relinquish Jurisdiction, but Maintain Stay and its Response in support of Attorney General Charles J. Crist, Jr.'s January 8, 2004 Motion To Relinquish Jurisdiction But Maintain Stay filed January 23, 2004

in this case, respectfully requests that this Court maintain the confidentiality of the attached Exhibit No. 80 from any public disclosure, including from any and all telecommunications parties to this case, and, as grounds therefore, would state:

1. In connection with the above-cited dockets heard at the Florida Public Service Commission (“Commission”), which cases are now before this court on appeal, the Commission was requested, pursuant to applicable statutes and rules, to provide confidential treatment to a number of documents and, in fact, granted such protection.¹ Included in that grant of protection were a number of documents submitted by long distance telephone companies, which documents purported to

¹. 364.183(2), F.S. provides:

(2) Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Upon a showing by a company or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue an appropriate protective order designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the Office of the Public Counsel and any other party subject to the public records law as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding shall be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record shall be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this subsection.

show the manner in which these companies would “flow-back” to their instate toll customers access fee savings given to them by the incumbent local telephone companies pursuant to the Commission order under review. Among other things, the long distance companies each claimed that figures showing the division of their access minute sales between their residential and business class customers were proprietary in the sense that they had competitive value. The individual company documents were given confidential classification and are not at issue here.

2. In preparation of its case, the Office of Public Counsel had its witness Ostrander prepare a composite hearing exhibit reflecting the confidential submissions of several long distance companies. This exhibit, which was identified and entered in the record of this case below as Confidential Exhibit 80, was necessarily confidential because it contained the confidential data of several parties. Additionally, however, the composite document was not made available to any of the telecommunications parties to the case because they were the very parties to whom the data would presumably have the greatest competitive value. Only the Commissioners, members of their staff and the consumer parties, including the Attorney General, Office of Public Counsel and AARP, had access to this confidential exhibit.

3. AARP, beginning at page 15 of its Original Motion to Relinquish Jurisdiction, but Maintain Stay and its Response in support of Attorney General Charles J. Crist, Jr.'s January 8, 2004 Motion To Relinquish Jurisdiction But Maintain Stay, filed January 23, 2004, discusses the impact the relatively small percentage of monies projected to be flowed back to residential customer classes by the long distance companies has on the necessity for the automatic stay to be maintained throughout the pendency of any motions for reconsideration heard at the Commission, as well as during the pendency of the review by this Court. AARP's discussion of Exhibit 80 is necessarily oblique so as to avoid the disclosure of any confidential materials. AARP's argument on this point can only be understood by the Court's reference to Exhibit 80, which is enclosed for that purpose.

4. Only a single copy of the confidential exhibit is enclosed in the attached, sealed envelope so as to aid the Court in its control of the document.

5. Again, the Exhibit has been granted confidential treatment by the Commission and it should not be disclosed to any member of the public or any party to these proceedings (authorized parties should already be in possession of the exhibit and will have no need to obtain copies from the Court).

Wherefore, AARP respectfully requests that the Florida Supreme Court, pursuant to Rule 2.051(c)(9), Judicial Administration Rules, maintain the confidentiality of the enclosed Confidential Exhibit 80.

DATED this 23 day of January, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to the following on this 23d day of January, 2004.

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