

**IN THE SUPREME COURT  
STATE OF FLORIDA**

**CHARLES J. CRIST JR.,  
Attorney General, State of Florida**

**Appellant,**

v.

**LILA A. JABER, CHAIRMAN, and  
J. TERRY DEASON, BRAULIO L.  
BAEZ, RUDOLPH “RUDY” BRADLEY,  
and CHARLES DAVIDSON, Commissioners,  
as and constituting the FLORIDA PUBLIC  
SERVICE COMMISSION, an agency of the  
STATE OF FLORIDA, et al.,**

**SC Case Nos.: SC04-9  
SC04-10**

**Appellees.**

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**JOINT RESPONSE TO THIS COURT’S  
JANUARY 26, 2004, ORDER TO SHOW CAUSE**

Appellees BellSouth Telecommunications, Inc. (“BellSouth”), Verizon Florida, Inc. (“Verizon”), and Sprint-Florida, Inc. (“Sprint”) file this Joint Response to this Court’s January 26, 2004, Order to Show Cause and state:

1. BellSouth, Verizon, and Sprint believe consolidation of these cases for all appellate purposes is appropriate.

2. If this Court consolidates the cases, BellSouth, Verizon, and Sprint believe that the parties should be aligned so that the Attorney General and the Office of Public Counsel (“OPC”) are Appellants.

3. AARP, an Intervenor below, waived its right to appeal by failing to file a Notice of Appeal with this Court within the time prescribed by rule 9.110(b), Florida Rule of Appellate Procedure. Nor did AARP file a notice of joinder within 10 days of the Attorney General's and OPC's Notices of Appeal stating that AARP wished to be considered an appellant. *See* Fla. R. App. P. 9.360(a). Although pursuant to rule 9.020(g)(2), AARP should be considered an appellee in this proceeding because it was a party in the lower tribunal, AARP's interests are not aligned with the PSC or with other appellees who are defending the PSC Order. Therefore, AARP cannot file an Answer Brief attacking the PSC Order. *See Premier Industries v. Mead*, 595 So. 2d 122, 124 (Fla. 1<sup>st</sup> DCA 1992) (striking answer brief of party that argued for reversal of an order); *see also* 1977 Comment to rule 9.020 ("The term "appellee" has been defined to include the parties against whom relief is sought and all others necessary to the cause."). The court in *Premier Industries* discussed the interplay among these rules as follows:

Rule 9.020(f) defines the parties to an appellate proceeding. An appellant is a party who seeks to invoke the appeal jurisdiction of a court. An appellee is defined as every party in the proceeding in the lower tribunal other than an appellant. The committee notes to this rule explain that, "[t]he term 'appellee' has been defined to include the parties against whom relief is sought and others necessary to the cause." Rules 9.110 and 4.160 authorize a party aggrieved by a final order to obtain appellate review thereof by filing a notice of appeal or cross

appeal. Rule 9.360(a) directs that ‘[a] party to the cause in the lower tribunal who desires to join in a proceeding as a petitioner or appellant *shall* file a notice to that effect within 10 days of service of the petition or notice or within the time prescribed by Rule 9.110(b), whichever is later.’ The evident scheme and purpose of these rules, read in pari material, is to align all parties contesting an order on appeal as appellants and to align all parties supporting or not contesting the order as appellees. These rule provisions are mandatory and failure of a party to comply therewith constitutes a waiver of the right to attack the validity of the order being reviewed on appeal.

595 So. 2d at 124 (italicized emphasis in original, underlined emphasis supplied)  
(internal citations omitted).<sup>1</sup>

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<sup>1</sup> In a 2000 case, the First District Court of Appeal held that the filing of a notice of joinder within the timeframe established in rule 9.360 is not jurisdictional. *See, e.g., Super Transport, Inc. v. Florida Department of Insurance*, 773 So. 2d 590 (Fla. 1<sup>st</sup> DCA 2000). However, the court limited its holding to the facts of that case, stating:

The issue presented is whether the filing of a notice of joinder within the time limit set forth in Florida Rule of Appellate Procedure 9.360 is jurisdictional. Under the facts of the case, we determine that it is not, and that dismissal of the appeal of the party filing that notice is not otherwise appropriate.

*Id.* at 591 (emphasis supplied). The court in *Super Transport* did not recede from, or even cite, its previous holding in *Premier Industries v. Mead*. The *Super Transport* case involved a party who filed a notice of joinder after the deadline established in the rule because it had not been served with another party’s original notice of appeal. *Id.* Here, AARP has not filed a notice of joinder at all. Nor has AARP suggested that it was unaware that the Attorney General and OPC filed notices of appeal of the PSC Order. Thus, the *Super Transport* case is distinguishable.

4. AARP is not “necessary” to this appeal. A necessary party is one that must appear in a case before a decision can be rendered. *See Miami Bank & Trust Co. v. Rademacher Co.*, 5 So. 2d 63 (1941); Judge Philip J. Padovano, *Florida Appellate Practice*, § 11.1, p. 171 n.1 (2004 ed.). Because AARP has waived its right to appeal and to seek status as an Appellant, it should be required to seek leave to file a brief as an amicus curiae in support of Appellants if it wishes to participate in this proceeding at all. *See Fla. R. App. P. 9.370.*

5. All parties other than the Attorney General, OPC, and AARP should be designated as appellees.

6. Briefing should proceed in accordance with the Florida Rules of Appellate Procedure, which means that the Attorney General’s and OPC’s initial briefs must be served by March 17, 2004, 70 days after they filed their notices of appeal.<sup>2</sup>

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<sup>2</sup> The Attorney General's and AARP’s pending motions to Relinquish Jurisdiction But Maintain Stay do not toll the briefing schedule in this Court. *See Fla. R. App. P. 9.300(d)(10)*. Nor do their Motions for Reconsideration filed with the PSC on January 8, 2004, toll the time for any action in this Court. The jurisdiction of this Court was invoked on January 7, 2004, when the Attorney General and OPC filed Notices of Appeal, and the PSC lost jurisdiction at that time. *See, e.g., McGurn v. Scott*, 596 So. 2d 1042, 1045 (Fla. 1992).

Respectfully submitted this 5th day of February, 2004.

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**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing was served by U.S. Mail this 5th day of February 2004, on the following:

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