

THE SUPREME COURT OF FLORIDA

CHARLES J. CRIST, JR., ATTORNEY
GENERAL, STATE OF FLORIDA,
Appellant,

v.

Case No.: SC04-9

LILA A. JABER, etc., et al., Appellees.

HOWARD MCLEAN, PUBLIC COUNSEL,
STATE OF FLORIDA, Appellant,

v.

Case No.: SC04-10

LILA A. JABER, etc., et al., Appellees.

Petition of Verizon Florida Inc. to
Reform its Intrastate Network Access and
Basic Local Telecommunications rates in
Accordance with Florida Statutes, Section
364.164

AARP, Appellant,

v.

Case No.: SC04-946

LILA A. JABER, etc., et al., Appellees.

MOTION TO RELINQUISH JURISDICTION

Appellant, AARP, hereby moves this court to relinquish jurisdiction of the above-styled cases to the Public Service Commission temporarily to consider AARP's "Motion for Evidentiary Hearing and Modification of Commission Orders

on Basis of Significantly Changed Circumstances and Public Need" (copy attached), based on the following grounds:

1. The motion filed with the Public Service Commission below is a motion for modification of the order on appeal based on recently changed circumstances and public need. The Public Service Commission has inherent authority to consider such a motion but for the pending appeal. Therefore, AARP requests this court to temporarily relinquish to the Public Service Commission authority to consider the motion and to hold such evidentiary hearing as may be deemed appropriate and proper by the Public Service Commission.

2. The Public Service Commission has inherent authority to reopen a closed case when there is a change in circumstances or a demonstrated public need or interest. See, e.g., Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla.1966) and Mann v. Dep't of Professional Regulation, Bd. of Dentistry, 585 So.2d 1059 (Fla. 1st DCA 1991). In Peoples Gas System, Inc. v. Mason, this court observed that Florida "is among those jurisdictions holding that such agencies do have inherent power to reconsider final orders which are still under their control;" however, the power should be exercised only upon a change of circumstances or upon a demonstrated public need or interest. Id. The principles announced in Peoples Gas were reaffirmed in Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d 679 (Fla.1979). See also Richter v. Florida Power Corp., 366 So.2d 798,

800 (Fla. 2d DCA 1979) (Florida case law recognizes the rule that an administrative agency may alter a final decision under "extraordinary circumstances"). See also Russell v. Dep't of Bus. and Prof'l Reg., 645 So.2d 117, 119 (Fla. 1st DCA 1994).

3. Furthermore, in Peoples Gas System v. Mason, this court recognized the unique function that a regulatory commission serves and the necessity that it be granted a certain degree of latitude in order to effectively carry out that function, stating: "the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time." Id. at 339. See also Reedy Creek Utilities Co. v. Florida Public Service Com'n, 418 So.2d 249, 253 (Fla.1982). The Commission is charged with the statutory duty of regulating and supervising public utilities with respect to their rates. "When the Commission determined that it had erred to the detriment of the using public, it had the inherent power and the statutory duty to amend its order to protect the customer." Id. at 254.

4. The pendency of this appeal divests the Public Service Commission of jurisdiction to entertain the motion in the absence of the court's having relinquished jurisdiction to the Commission for that purpose. However, Rule 9.600(b), Florida Rules of Appellate Procedure, allows the court to temporarily relinquish jurisdiction to deal with specified matters. Typically, this procedure is followed

when a motion under Rule 1.540(b), Florida Rules of Civil procedure is filed after the appeal is taken. E.g., Hardwicke Companies, Inc. v. Freed, 292 So.2d 610, 612 (Fla. 2d DCA 1974).

5. The basis for the motion is that subsequent events – some very recent – have dramatically changed the bases on which the order on appeal was entered, such that the Public Service Commission should revisit its order, consistent with its duty to respond to changed circumstances as explained in People's Gas System, Inc. v. Mason. Several important events have changed the landscape; these include: a recent federal court decision that has undercut the statutory and regulatory justification given for the rate increases; virtual withdrawal from the local service market by key competitors, such as AT&T, the largest potential local service competitor party to these cases, and sharp curtailment of local competition by other competitors, including MCI and Sprint. As stated in the motion, "the stated quid pro quo for the large residential local rate increases – the 'benefits of increased competition' – has now largely evaporated." Since the motion is attached, AARP will not reiterate its content at length.

6. Relinquishment of jurisdiction for a limited period of time will advance judicial economy. The issues on appeal may be resolved or streamlined. A second appeal on the issues raised in the motion would be obviated altogether. Such considerations are important to the workload "of a Court already straining to

properly carry out its extensive constitutional responsibilities and to give high-quality attention to its work." Pomeranz v. State, 703 So.2d 465, 474 (Fla. 1997) (Anstead, J. concurring). Furthermore, absent a relinquishment of jurisdiction, neither the Public Service Commission nor this Court will have the benefit of a complete record, which includes the new facts AARP believes render the order on appeal legally and factually ineffectual.

7. The undersigned attorney has contacted opposing counsel and is authorized to represent that the Attorney General of the State of Florida and the Office of Public Counsel do not object to this motion, that the Florida Public Service Commission takes "no position," but that BellSouth, Verizon, AT&T, MCI, Sprint Corporation, Sprint-Florida, Inc. and Knology are opposed and will file objections.

WHEREFORE, Appellant requests the Court to enter an Order Relinquishing Jurisdiction of these cases to the Florida Public Service Commission and thereafter until 30 days after the Public Service Commission concludes resolution of the matters for which jurisdiction is relinquished if this Court grants the Motion to Relinquish Jurisdiction.

DATED this _____ day of September, 2004.

Respectfully submitted,

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the foregoing AARP Motion to Relinquish
Jurisdiction has been prepared using Times New Roman 14-point font.

Michael B. Twomey

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 ____ day of September, 2004:

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