

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.

**AARP NOTICE OF SUPPLEMENTAL AUTHORITY
TO MOTION TO RELINQUISH JURISDICTION**

Appellant, AARP, pursuant to Rule 9.225, Fla. R. App. P., gives notice of filing two pleadings: (1) “Petition For A Writ Of Mandamus To Enforce The Mandate Of This Court,” *United States Telecom Ass’n v. FCC*, (Case Nos. 00-1012

et al., D.C. Cir.), filed August 23, 2004 (copy attached hereto as Appendix 1); and (2) “Petition For Review,” *United States Telecom Ass’n v. FCC*, (Case No. 04-1320., D.C. Cir.), filed September 23, 2004 (copy attached hereto as Appendix 2) as supplemental authority in support of its Motion To Relinquish Jurisdiction, filed with this Court on September 8, 2004. AARP’s Motion seeks temporary relinquishment of jurisdiction of the above-styled cases to the Public Service Commission for the purpose of considering AARP’s “Motion for Evidentiary Hearing and Modification of Commission Orders on Basis of Significantly Changed Circumstances and Public Need.”

Identification Of Points Argued In Verizon Response
To Which Supplemental Authority Is Pertinent

1. In its Response to AARP’s Motion to Relinquish Jurisdiction, Appellee Verizon Florida Inc. (“Verizon”) states to this Court that AARP’s reliance on *United States Telecom Ass’n v. FCC*, 359 F3d 554 (D.C. Cir. 2004) (“USTA II”) as a “changed circumstance” is misplaced because:

16. In response to the D.C. Circuit’s decision, the FCC issued its *Interim Unbundling Order and NPRM*. [footnote omitted] In that Order, the FCC created a two-phased plan to govern the terms, rates and conditions for mass market switching, dedicated transport and high capacity loops. In the first interim phase, which is to last six months after the publication of the FCC’s order in the Federal Register (unless the new rules go into effect earlier), incumbent local exchange carriers (“ILECs”) are required to continue “providing unbundled access to switching, enterprise market loops, and dedicated transport under *the same rates, terms and conditions* that applied under their interconnection agreements

as of June 15, 2004.” *Interim Unbundling Order and NPRM* at ¶ 1 (emphasis added); *see also id.* at ¶ 29. In the second phase, which is to last for six months after the expiration of the first phase, ILECs are required to continue providing unbundled access to switching, enterprise market loops, and dedicated transport at rates that are only *modestly* higher than existing rates. [footnote omitted] Thus, in the short term, there will be no significant change in circumstances, as AARP erroneously contends.

17. With respect to the long term, the FCC hopes to issue permanent unbundling rules. *Id.* at ¶ 21. However, the FCC has given no definitive indication of what these rules will say. Hence, the long-term impact of *USTA II* on Florida’s competitive landscape is unclear, and it is wrong to conclude, as AARP does, that *USTA II* amounts to a significant change in circumstances.

Verizon Response at 7,8. (Emphasis in original document.)

2. To the extent Verizon argues to this Court that the FCC’s *Interim Unbundling Order and NPRM* has either short or long-term permanence that will protect the ability of competitive telephone companies to compete for local service residential customers through low-cost, FCC-ordered wholesale leasing rates, this Court should be made aware that Verizon, and others, have challenged the FCC’s *Interim Unbundling Order and NPRM* in two recent federal appellate pleadings, the most recent filed September 23, 2004, the same day Verizon filed its Response to AARP’s Motion, and the other a month earlier on August 23, 2004.

3. The Petition for Writ of Mandamus to Enforce the Mandate of this Court (Appendix 1) challenged the FCC’s *Interim Unbundling Order*

and NPRM as a violation of the Court’s *USTA II* opinion and states in its

Introduction:

The FCC’s eight-year course of defiance in implementing the Telecommunications Act of 1996 (“1996 Act”) has reached a new plateau. Having tried and failed to obtain a stay of this Court’s mandate that would have kept its maximum unbundling rules in place after June 15, 2004, the FCC has simply granted itself the same stay. On August 20, 2004, the FCC released interim rules that perpetuate nationwide unbundling of narrowband facilities through at least the end of February 2005 – nearly a year after this Court’s decision and more than eight months after issuance of the mandate – just as if this Court had granted, not denied, the FCC’s stay request. [footnote omitted] Under the FCC’s interim rules, incumbent local exchange carriers (“ILECs”) must provide unbundled network elements (“UNEs”) to serve not only existing competitive local exchange carrier (“CLEC”) customers, but also unlimited numbers of *new* customers nationwide.

* * *

Mandamus is plainly warranted to address the FCC’s latest, and most blatant, defiance of this Court’s orders. As this Court has explained, a federal agency, after being denied a stay of the mandate by the Court, may not “implement[] the stay on [its] own” – even on an interim basis – by “reimplement[ing] precisely the same rule that this court vacated. [citation omitted.]

* * *

Indeed, the FCC’s conduct is particularly egregious in the context of this case. The FCC’s recalcitrance in adhering to prior decisions of this Court and the Supreme Court has resulted in its rules having now been vacated three separate times. . . . It is simply inexcusable for the FCC to flout a binding judicial determination yet again, and to extend those never-lawful requirements for nearly another year.

Petition for Writ of Mandamus 1,2. (Emphasis in original document.)

4. The Petition for Review (Appendix 2), filed September 23, 2004, appears to seek direct review of the *Interim Unbundling Order and NPRM*, as opposed to solely challenging it as in violation of the USTA II opinion. The Petition for Review states, in part:

Petitioners seek review on the ground that the *Interim Bundling Order* exceeds the Commission's jurisdiction or authority, violates the Communications Act of 1934 or the Administrative Procedure Act, fails to comply with the mandate of this Court in *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *petitions for cert. pending*, Nos. 04-12 *et al.* (U.S. filed June 30, 2004), or is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Petitioners request that this Court hold unlawful, vacate, enjoin, and set aside the *Interim Unbundling Order*.

Petition for Review at 2.

DATED this _____ day of October, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished
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