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Date: Fri, 30 Jan 2004 12:34:41 -0800 (PST)
From: "Adam Teitzman" <ateitzmanpscstemp@yahoo.com>
Subject: 030851-TP; Agenda Item #5 Memo

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COMMISSION CLERK

Attached please find a memo prepared by Commission staff addressing Item # 5 at the February 3, 2004, Agenda Conference.

Please note this is a temporary e-mail address. DO NOT REPLY TO THIS ADDRESS. The Commission's e-mail server is down today but staff felt it was important for parties to receive this memo. Accordingly, this e-mail address was created for the sole purpose of forwarding the attached memo to parties. If you have any question regarding this memo please contact Jeremy Susac at (850) 413-6236 or Adam Teitzman at (850) 413-6175

Adam Teitzman

Florida Public Service Commission

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Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 30, 2004
TO: ALL COMMISSIONERS
FROM: OFFICE OF THE GENERAL COUNSEL (SUSAC, KEATING) *SKC*
RE: ITEM NO. 5 - FEBRUARY 3, 2004 AGENDA - DOCKET NO. 030851-TP *SKC*

REQUESTED ACTION: **Consideration of BellSouth's Motion for Extension of Time within the context of Item 5**

After the recommendation for Item 5 had been filed, it was discovered that although all parties, including Commission staff, had been served with a copy of BellSouth's Response to AARP's Motion, the Response was apparently never recorded as filed with the Commission. BellSouth was made aware of this error, and responded by filing, on January 28, a Motion for Extension of Time to File Response in Opposition. Therein, BellSouth asks that the Commission consider its Response when it addresses AARP's Motion for Reconsideration. BellSouth notes that all parties were served; thus, no party was unduly prejudiced.¹

Staff recommends that the Commission take up the Motion for Extension of Time filed by BellSouth within the context of addressing Item 5 on the February 3 Agenda. Staff does not have any notice concerns, because the Notice for the upcoming Agenda Conference already reflects that the Commission will take up AARP's Motion for Reconsideration and related responses. Staff is not requesting deferral of Item 5 to address this newest Motion, because staff believes there is merit in having AARP's Motion addressed prior to the Prehearing Conference, which is set for February 9, 2004.

Staff will be prepared to make an oral recommendation on the Motion for Extension of Time at the Agenda Conference. Preliminarily, staff notes that the case law is clear that it is not appropriate to grant an extension of time for filing a motion for reconsideration. This prohibition does not, however, apply to filing a response to a motion for reconsideration. See City of Hollywood v. Public Employees Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983). The Commission has on several occasions granted extensions of time to respond to motions for reconsideration. See Order No. PSC-99-1453-FOF-TP; Order No. PSC-00-1511-FOF-TP; Order No. 19204; and Order No. PSC-97-0957-PCO-WS. It should also be noted that because Commission rules do not contemplate the filing of any pleading that responds to the substance of a Response to a Motion, the failure to actually file the Response would not have prejudiced any party by impairing their ability to submit a responsive pleading.

BACKGROUND:

On December 15, 2003, AARP (formerly known as American Association of Retired Persons) filed its petition to intervene in Docket No. 030851-TP. Shortly thereafter, Sprint

¹BellSouth also apparently believes that it did, in fact, make the filing with the Commission, asserting that it followed its usual filing procedures and that all of the other documents that it filed that day were properly recorded.

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Communications Limited Partnership and Sprint-Florida, Incorporated (collectively, "Sprint"), BellSouth Telecommunications, Inc. ("BellSouth"), and Verizon Florida, Inc. ("Verizon") each filed a separate response in opposition to AARP's petition on December 23, 2003. On January 2, 2004, Order No. PSC-04-0008-PCO-TP was issued denying AARP's petition to intervene for lack of standing. The Prehearing Officer found AARP does not have standing to intervene in this docket. Specifically, AARP's alleged "injury in fact" is speculative and too remote to establish standing under the Agrico test, and that the interests asserted by AARP are not the type of interest this proceeding is designed to protect.

On January 12, 2004, AARP filed its Motion for Reconsideration of Order No. PSC-04-0008-PCO-TP. On January 13, 2004, AARP filed a corrected copy of its January 12, 2004, motion. On January 16, 2004, BellSouth served its response in opposition to AARP's motion for reconsideration. Thereafter, on January 22, 2004, staff filed its recommendation addressing AARP's Motion for Reconsideration. The recommendation is currently Item 5 on the February 3 Agenda.

If you have any questions, please do not hesitate to contact Jeremy Susac or Beth Keating.

cc: Dr. Mary A. Bane, Executive Director
Rick Melson, General Counsel
All Commissioners' Aides
Docket File
All Parties of Record (via e-mail)