

010000-PU

COLE, RAYWID & BRAVERMAN, L.L.P.

RECEIVED FPSC

ATTORNEYS AT LAW

1919 PENNSYLVANIA AVENUE, N.W. SUITE 200

WASHINGTON, D.C. 20006-3458

TELEPHONE (202) 659-9750

FAX (202) 452-0067
WWW.CRBLAW.COM

JUN 11 PM 12:02

RECORDS AND REPORTING

LOS ANGELES OFFICE

2381 ROSECRANS AVENUE, SUITE 100
EL SEGUNDO, CALIFORNIA 90245-4000
TELEPHONE (310) 621-4000
FAX (310) 643-7907

GEOFFRE C. COOK
DIRECT DIAL
202-828-9833
GCOOK@CRBLAW.COM

June 8, 2001

01 JUN 11 AM 11:42
MAIL ROOM

Via Federal Express

Hon. Thomas K. Kahn, Clerk
United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303-6147

**Re: Alabama Power Company v. FCC
Case Nos. 00-14763-I, 00-15068-D and 01-13058-B**

Dear Mr. Kahn:

Enclosed for filing in the above proceeding please find the original and three (3) copies of (1) *Intervenors Alabama Cable Telecommunications Association, Comcast Cablevision of Dothan, Inc., Florida Cable Telecommunications Association, Inc. and Cox Communications Gulf Coast, L.L.C.'s Opposition to Petitioners' Motion to Consolidate in Nos. 00-14763-I and 00-15068-D*; and (2) *Intervenors Alabama Cable Telecommunications Association, Comcast Cablevision of Dothan, Inc., Florida Cable Telecommunications Association, Inc. and Cox Communications Gulf Coast, L.L.C.'s Conditional Motion for Leave to Intervene in No. 01-13058-B*, along with the requisite Certificates of Interested Persons and Corporate Disclosure Statements.

I have also enclosed a "Stamp and Return" copy of these pleadings. Please mark the designated copies with the Court's "filed" date stamp and return them to me in the enclosed pre-addressed envelope.

Thank you for your assistance.

Respectfully,


Geoffrey C. Cook

- APP _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- EGR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC _____
- SER _____
- OTH _____

Enclosures
cc: Certificate of Service

DOCUMENT NUMBER-DATE
07210 JUN 11 01
FPSC-RECORDS/REPORTING

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALABAMA POWER COMPANY,
And
GULF POWER COMPANY,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION and the
UNITED STATES

Respondents.

Case Nos.00-14763-I and
00-15068-D

**INTERVENORS ALABAMA CABLE TELECOMMUNICATIONS
ASSOCIATION, COMCAST CABLEVISION OF DOTHAN, INC.,
FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC., AND
COX COMMUNICATIONS GULF COAST, L.L.C.'S OPPOSITION TO
PETITIONERS' MOTION TO CONSOLIDATE**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and the Eleventh Circuit Rules, Intervenors Alabama Cable Telecommunications Association, Comcast Cablevision of Dothan, Inc., Florida Cable Telecommunications Association, Inc., and Cox Communications Gulf Coast, L.L.C. (collectively "Intervenors") respectfully submit their opposition to Petitioners' June 4, 2001 Motion to Consolidate No. 01-13058-B with the above-captioned appeals.

Intervenors oppose Petitioners Alabama Power Company's ("APCO") and Gulf Power Company's ("Gulf Power") Motion to Consolidate because the motion improperly

seeks to validate the “incurably premature” appeals in these matters, Nos. 00-14763-I and 00-15068-D. Specifically, the above-captioned appeals are from a non-final September 8, 2000 decision by the Federal Communication Commission’s (“FCC”) Cable Services Bureau (“Bureau”). As Respondent FCC established in its October 18, 2000 Motions to Dismiss those appeals, Petitioners’ September 12, 2000 appeals from the Bureau’s non-final decision are “incurably premature” and must be dismissed. *See* 47 U.S.C. § 155(c)(7); *International Telecard Ass’n v. Federal Communications Commission*, 166 F.3d 387 (D.C. Cir. 1999)(“a petition for review filed after a bureau decision but before resolution by the full Commission is subject to dismissal as incurably premature”); *see also McClendon v. Jackson Television*, 603 F.2d 1174 (5th Cir. 1979); *Kabeller v. Busey*, 999 F.2d 1417 (11th Cir. 1993); *Curtis McNair Arnold v. Commodity Futures Trading Commission*, 987 F.Supp. 1463 (S.D. Fla. 1997).¹ Notwithstanding, on January 3, 2001, this Court decided to postpone ruling on the FCC’s Motions to Dismiss, instead directing that the Motions would be “carried with the case.”

Recently, on May 25, 2001, the FCC released a decision by the full Commission in this same matter affirming the earlier-appealed Bureau Order. *In the Matter of Alabama Cable Telecommunications Assoc. et al. v. Alabama Power Company, Order*, FCC 01-181, PA 00-003 (rel. May 25, 2001)(“*Commission Order*”). Now that the FCC has issued its decision on review of the Bureau Order, the time has come for this Court to dismiss the earlier appeals. *See* 47 U.S.C. § 155(c)(7); *International Telecard*, 166 F.3d at 387; *McClendon*, 603 F.2d at 1176; *State University of New York v. FCC*, 1998 U.S. App. LEXIS 12916 (D.C. Cir. May 29, 1998)(“Commission staff orders are not subject to

¹ *See also* Intervenors’ November 9, 2000 Replies to APCO’s and to Gulf Power’s Responses to Respondent’s Motions to Dismiss, 4-6.

judicial review”); *Cellular Phone Taskforce v. FCC*, 205 F.3d 82 (2^d Cir. 2000)(review limited to final orders of the FCC); *City of Mount Clemens v. FCC*, 1996 U.S. App. LEXIS 3511 (6th Cir. Feb. 6, 1996)(“Section 155(c)(7) does not provide any exception to review by the Commission on the grounds that such review would be futile”).

Petitioners would not be prejudiced by a dismissal now because the same Petitioners in these earlier appeals, APCO and Gulf Power, filed a new Petition for Review of the final *Commission Order* on June 4, 2001, and the Court has docketed their new Petition as No. 01-13058-B. Because the earlier appeals had been briefed and set for argument, Petitioners now seek to consolidate the new appeal of the final *Commission Order* (No. 01-13058-B) with the existing appeals of the interlocutory Bureau Order (Nos. 00-14763-I and 00-15068-D).

While Petitioners may, as they now have, file a Petition for Review of the now final *Commission Order*, this new Petition in 01-13058-B may not be consolidated with the premature, and hence legally invalid, appeals of the Bureau Order pending in this appeal. To permit consolidation would be inconsistent with the statutory prohibition on appeals of non-final orders and the established judicial rule that appellate review of FCC decisions may only be of final decisions.

In addition to the statutory requirement that Congress has imposed against review of non-final FCC orders and the corresponding judicial rule, Petitioners do not cite any authority in their Motion to Consolidate that concerns a situation like that presented to this Court – where petitioners have improperly filed premature appeals and thereafter attempted to consolidate a later, properly brought appeal with the earlier premature appeals. The one procedural rule, Fed. R. Civ. P. 42, upon which Petitioners rely for the

suggestion that their premature appeals may be consolidated with their more recent Petition for Review of the Commission Order, governs trial, not appellate, proceedings and therefore is not applicable.

Petitioners' contention that it would be improperly "duplicative" to dismiss its premature appeals and require "a full round of briefings" is merely an attempt to dismiss and downplay the substantive significance of what Petitioners concede in their June 4, 2001 Letter to the Clerk of the Court is a final Commission Order that is "considerably longer" in its analysis and discussion of the facts than the September 8, 2000 Bureau Order.² While Petitioners seek to get their new appeal ready for argument in September with "expedited" briefs to be filed in a "compressed time frame," Motion to Consolidate at 5, the goal of expediency does not justify the disregard of statute, established judicial precedent, and the policy of recognizing that only final FCC decisions may be appealed.

However, independent of the Court's resolution of Petitioners' Motion to Consolidate, Intervenor nevertheless would agree that the previously filed briefs should be considered by the Court in the new appeal and that supplemental briefs should be filed in accordance with the schedule set forth in the FCC's June 7, 2001 Motion to Establish Supplemental Briefing Schedule. That way the existing argument date is preserved, the issues in the final *Commission Order* are presented, and the unnecessary and premature appeals are properly dismissed.

² Petitioners apparently prefer to argue by letter, in contravention of Fed. R. App. P. 28(j)'s requirement that supplemental authority must be presented "without argument." See Letter from Andrew W. Tunnell to Thomas K. Kahn, dated June 4, 2001.

WHEREFORE, for the foregoing reasons, the Court should deny Petitioners'
Motion to Consolidate.

Respectfully submitted,



Paul Glist
John D. Seiver
Geoffrey C. Cook
Brian M. Josef

COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Tel: (202) 659-9750
Fax: (202) 452-0067

COUNSEL FOR

**ALABAMA CABLE
TELECOMMUNICATIONS
ASSOCIATION**

**COMCAST CABLEVISION OF DOTHAN,
INC.**

**FLORIDA CABLE
TELECOMMUNICATIONS
ASSOCIATION**

**COX COMMUNICATIONS
GULF COAST, L.L.C.**

Dated: June 8, 2001

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fed. R. App. P. 26.1 and this Court's Rules 26.1-1 26.1-3, it is hereby certified that the following persons, corporations, or governmental agencies have been associated with or have an interest in the outcome of this appeal:

Adelphia Communications Corporation (owner of Century Cullman Corporation and Century Enterprise Corporation, parties to Docket No. PA 00-003 before the Federal Communications Commission)

Alabama Cable Telecommunications Association (party to Docket No. PA 00-003 before the Federal Communications Commission)

Alabama Power Company (affiliate of Petitioner and party to Docket No. PA 00-003 before the Federal Communications Commission)

AT&T Cable Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Balch & Bingham, LLP (counsel for Petitioner)

Richard Beelend, Representative for Northland Cable Properties (party to Docket No. PA 00-003 before the Federal Communications Commission)

Beggs & Lane (counsel for Petitioner)

Jane Belford, Representative of Mediacom Southeast LLC (party to Docket Nos. PA 00-003 and 00-004 before the Federal Communications Commission)

Barry Breithaupt, Representative of Torrence Cablevision USA, Inc.

Jennifer M. Buettner (counsel for Petitioner)

Alabama Power Company, et al. v. Federal Communications Commission, et al.,
Docket Nos. 00-14763-I, 00-15068-D

Ramona Byrd, Representative for CVI of Alabama, Inc., d/b/a Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cable One (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cable Star Inc. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cablevision Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cindy Cade, Representative for Comcast Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

John Russell Campbell (counsel for Petitioner)

Charter Communications, LLC (party to Docket No. PA 00-003 before the Federal Communications Commission)

Century Cullman Corporation (party to Docket No. PA 00-003 before the Federal Communications Commission)

Century Enterprise Corporation (party to Docket No. PA 00-003 before the Federal Communications Commission)

Ford W. Clark, Representative for Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cole, Raywid & Braverman (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Comcast Cable (party to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Alabama Power Company, et al. v. Federal Communications Commission, et al.,
Docket Nos. 00-14763-I, 00-15068-D

Ronnie G. Colvin, Representative of Comcast Cablevision of Panama City, Inc. (party to
Docket No. PA 00-004 before the Federal Communications Commission)

ComLink (party to Docket No. PA 00-003 before the Federal Communications
Commission)

Geoffrey C. Cook (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before
the Federal Communications Commission)

Coosa Cable Company (party to Docket No. PA 00-003 before the Federal
Communications Commission)

Kathleen Costello, Acting Division Chief, Financial Analysis & Compliance, Cable
Services Bureau, Federal Communications Commission

Cox Communications Gulf Coast, L.L.C. (party to Docket No. PA 00-004 before the
Federal Communications Commission)

CVI of Alabama, Inc., d/b/a Time Warner Cable (party to Docket No. PA 00-003 before
the Federal Communications Commission)

Demopolis CATV Company (party to Docket No. PA 00-003 before the Federal
Communications Commission)

Peggy A. Dickinson, Representative for Cable Star, Inc. (party to Docket No. PA 00-003
before the Federal Communications Commission)

Empresa Electrica del Norte Grande, S.A. (Edelnor) (affiliate of Petitioner)

Lynne Greene Frakes, Representative for Phenix Cable T.V. (party to Docket No. PA
00-003 before the Federal Communications Commission)

James Oglethorpe, Representative for Graceba Total Communication (party to Docket
No. PA 00-003 before the Federal Communications Commission)

Alabama Power Company, et al. v. Federal Communications Commission, et al.,
Docket Nos. 00-14763-I, 00-15068-D

Federal Communications Commission (Respondent)

William H. Garner, Representative Twin County Cable (party to Docket No. PA 00-003
before the Federal Communications Commission)

Georgia Power Company (affiliate of Petitioner)

Paul Glist (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the
Federal Communications Commission)

Bruce Gluckman, Representative of Mediacom Southeast LLC (party to Docket Nos. PA
00-003 and 00-004 before the Federal Communications Commission)

Lynn Goldman, Representative for Demopolis CATV Company (party to Docket No. PA
00-003 before the Federal Communications Commission)

John D. Gosch, Vice President for Cable One (party to Docket No. PA 00-003 before the
Federal Communications Commission)

L. Keith Gregory, Representative for Cox Communications Gulf Coast, L.L.C. (party to
Docket No. PA 00-004 before the Federal Communications Commission)

M. C. Grigsby, Representative for Century Cullman Corporation (party to Docket No. PA
00-003 before the Federal Communications Commission)

Gulf Power Company (Petitioner)

Hidroelectrica Alicura, S.A. (affiliate of Petitioner)

Mike Hugunin, Representative for Birmingham Division of Time Warner Cable (party to
Docket No. PA 00-003 before the Federal Communications Commission)

Integrated Communication Systems, Inc. (affiliate of Petitioner)

James Cable Partners, LP (party to Docket No. PA 00-003 before the Federal
Communications Commission)

Alabama Power Company, et al. v. Federal Communications Commission, et al.,
Docket Nos. 00-14763-I, 00-15068-D

Ron Johnson, VP of Operations for Charter Communications, LLC (party to Docket No. PA 00-003 before the Federal Communications Commission)

William Johnson, Deputy Bureau Chief, Cable Services Bureau, Federal Communications Commission

Brian Josef (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Keller and Heckman LLP (counsel for Petitioner)

Cheryl King, Staff Attorney, Federal Communications Commission

Joseph Van Lerner, Representative for Mediacom, LLC (party to Docket Nos. PA 00-003 before the Federal Communications Commission)

Mississippi Power Company (affiliate of Petitioner)

MediaCom, LLC (party to Docket No. PA 00-003 before the Federal Communications Commission)

MediaCom Southeast, LLC (party to Docket No. PA 00-004 before the Federal Communications Commission)

Mobile Energy Services Company, L.L.C. (affiliate of Petitioner)

Northland Cable Properties (party to Docket No. PA 00-003 before the Federal Communications Commission)

Scott Peden, General Manager for AT&T Cable Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Ralph A. Peterson (counsel for Petitioner)

Phoenix Cable T.V. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Leonard J. Rozek, Representative for Comcast (party to Docket No. PA 00-003 before the Federal Communications Commission)

Savannah Electric and Power Company (affiliate of Petitioner)

John D. Seiver (counsel for Intervenors ACTA, Comcast, FCTA, and Cox)

Daniel K. Shoemaker, President of DKS Holdings, Inc., (subsidiary to James Cable Partners, LP) (party to Docket No. PA 00-003 before the Federal Communications Commission)

Sky Cablevision, Ltd. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Jeffrey Smith, Representative for Coosa Cable Company and Cablevision Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Jim Smith, Representative for Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Southern Company Capital Trust I (affiliate of Petitioner)

Southern Company Capital Trust If (affiliate of Petitioner)

Southern Electric Generating Company (affiliate of petitioner)

Southern Electric International Trinidad, Inc. (affiliate of Petitioner)

Southern Investments UTC P.L.C. (affiliate of Petitioner)

The Southern Company (parent of Petitioner)

JoAnn Stone, Representative for Adelphia (party to Docket No. PA 00-003 before the Federal Communications Commission)

Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Time Warner Entertainment Advance Newhouse (party to Docket No. PA 00-003 before the Federal Communications Commission)

Andrew W. Tunnell (counsel for Petitioner)

Twin County Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

D. H. Ward, III, Representative for Sky Cablevision, Ltd. (party to Docket No. PA 00-003 before the Federal Communications Commission)

CORPORATE DISCLOSURE STATEMENT

The Alabama Cable Telecommunications Association ("ACTA") is the principal trade association of the cable television industry in Alabama. ACTA has no parent companies, subsidiaries or affiliates whose listing is required by Rule 26.1.

Comcast Cablevision of Dothan, Inc. ("Comcast"), an Alabama corporation that provides cable television services, is 100% owned by Comcast Cablevision Corporation of the South-East, a Florida corporation, which is 100% owned by Comcast Holdings, Inc., a Delaware corporation, which is 100% owned by Comcast Cable Communications, Inc., a Delaware corporation, which is 100% owned by Comcast Corporation, a publicly held Pennsylvania corporation.

Alabama Power Company, et al. v. Federal Communications Commission, et al.,
Docket Nos. 00-14763-I, 00-15068-D

The Florida Cable Telecommunications Association, Inc. ("FCTA"), is a not-for-profit Florida corporation representing the interests of cable telecommunications operators before government and regulatory bodies in the state of Florida. FCTA has no parent companies, subsidiaries or affiliates whose listing is required by Rule 26.1

Cox Communications Gulf Coast, L.L.C. ("Cox"), a Delaware limited liability corporation, provides cable television services in the state of Florida. Cox Communications Gulf Coast, L.L.C., through various subsidiaries and affiliates, is owned and controlled by Cox Communications, Inc., a Delaware corporation. Cox Communications, Inc., in turn, is 63.34% owned by Cox Holdings, Inc., a Delaware corporation, and 4.48% owned by Cox DNS, Inc., a Delaware corporation. Both Cox Holdings, Inc. and Cox DNS, Inc. are ultimately owned 100% by Cox Enterprises, Inc., a privately-held Delaware corporation. The remaining 32.18% of Cox Communications, Inc. is publicly held.

CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 8th day of June 2001, I caused a copy of the foregoing *Intervenors Alabama Cable Telecommunications Association, Comcast Cablevision of Dothan, Inc., Florida Cable Telecommunications Association, Inc. and Cox Communications Gulf Coast, L.L.C.'s Opposition to Petitioners' Motion to Consolidate* to be sent via FedEx(*), or hand delivery(**) to the following:

Cheryl King (**)
Staff Attorney
Federal Communications Commission
445 12th Street, N.W. - Room 4C738
Washington, D.C. 20554

Kenneth Ferree (**)
Chief, Cable Services Bureau
Federal Communications Commission
445 12th Street, SW, 3 C740
Washington, DC 20554

Kathleen Costello (**)
Acting Division Chief
Financial Analysis & Compliance
Cable Services Bureau
Federal Communications Commission
445 12th Street, N.W. -- Room 4C830
Washington, D.C. 20554

William Johnson (**)
Deputy Bureau Chief
Cable Services Bureau
Federal Communications Commission
445 12th Street, N.W. -- Room 4C742
Washington, D.C. 20554

Gregory M. Christopher (**)
Federal Communications Commission
445 12th Street, N.W. -- Room 8-A741
Washington, D.C. 20554

Robert B. Nicholson (**)
Robert J. Wiggers
U.S. Dept. of Justice – Antitrust Division
601 D Street, NW
Room 10535
Washington, DC 20530

Charles A. Zdebski (**)
Troutman Sanders LLP
401 9th Street, NW
Suite 1000
Washington, DC 20004

Shirley S. Fujimoto (**)
Christine M. Gill
Thomas P. Steindler
Keith A. McCrickard
McDermott, Will & Emery
600 13th Street, NW
Washington, DC 20005-3096

Ralph A. Peterson (*)
Russell A. Badders
Beggs & Lane, L.L.P.
Seventh Floor Blount Bldg.
3 West Garden Street (32501)
Pensacola, FL 32576-2950

J. Russell Campbell (*)
Andrew W. Tunnell
Jennifer M. Buettner
Balch & Bingham, L.L.P.
1710 Sixth Avenue North
Birmingham, AL 35203



Debra Sloan

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALABAMA POWER COMPANY,
And
GULF POWER COMPANY,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION and the
UNITED STATES

Respondents.

No. 01-13058-B

**ALABAMA CABLE TELECOMMUNICATIONS ASSOCIATION, COMCAST
CABLEVISION OF DOTHAN, INC.,
FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC., AND
COX COMMUNICATIONS GULF COAST, L.L.C.'S CONDITIONAL MOTION
FOR LEAVE TO INTERVENE**

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. § 2348, Rule 15(d) of the Federal Rules of Appellate Procedure, and Rule 15-3 of the the Eleventh Circuit Rules, the Alabama Cable Telecommunications Association (“ACTA”), Comcast Cablevision of Dothan, Inc. (“Comcast”), the Florida Cable Telecommunications Association, Inc. (“FCTA”), and Cox Communications Gulf Coast, L.L.C. (“Cox”) (collectively “Cable Complainants”) conditionally move for leave to intervene as of right in this appeal, No. 01-13058-B, which is based upon a Petition for Review filed on or about June 4, 2001 by Petitioners Alabama Power Company (“APCO) and Gulf Power Company (“Gulf Power”) of the Federal Communications Commission’s (“FCC”) decision in *In the*

Matter of Alabama Cable Telecommunications Assoc. et al. v. Alabama Power Company, Order, FCC 01-181, PA 00-003 (rel. May 25, 2001)(“*Commission Order*”). On June 4, 2001 Petitioners filed a Motion to Consolidate this new appeal with appeal Nos. 00-14763-I and 00-15068-D. The FCC and the Cable Complainants have filed Oppositions to the Motion to Consolidate. Cable Complainants conditionally move to intervene in the new appeal in the event that the Court denies Petitioners’ Motion to Consolidate.¹

In support of this Motion, Cable Complainants state as follows:

1. APCO filed its Petition for Review in No. 01-13058-B on June 4, 2001. It seeks review of the FCC’s May 25, 2001 *Commission Order*. The *Commission Order* in turn affirmed a September 8, 2000 order issued by the FCC’s Cable Services Bureau of Respondent Federal Communications Commission (“FCC” or “Respondent”) entitled *Alabama Cable Telecommunications Association, et al. v. Alabama Power Co.*, Order, File No. P.A. 00-003, DA 00-2078 (released Sep. 8, 2000) (“*Bureau Order*”). ACTA and Comcast were parties to all the proceedings at the FCC. In those proceedings, the Commission and the Bureau ruled that APCO had failed to make a persuasive showing on the merits that lawful just compensation was greater than the current rate Complainants are paying to APCO under existing utility pole attachment agreements. The *Bureau Order* declared void Petitioner’s pole attachment rental rate of \$38.81 and reinstated the current \$7.47 rate. *See id.* at ¶¶ 7, 9. The *Bureau Order* also placed the parties under a bargaining order requiring good faith

¹ Cable Complainants understand that they would not need to file a motion to intervene if the Court were to grant Petitioners’ Motion to Consolidate.

negotiation of a new rate under the Commission's formula and a new pole attachment agreement. *See id.* The *Commission Order* affirmed the Bureau's rulings.

2. Gulf Power's participation as a "petitioner" in Petition for Review in No. 01-13058-B is inappropriate. Under 28 U.S.C. § 2348, "[t]he agency, and *any party in interest in the proceeding before the agency* whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto" in a proceeding to review an agency order. 28 U.S.C. § 2348 (emphasis added). Because Gulf Power was not a "party in interest" in the proceedings leading to the *Commission Order* or the *Bureau Order*, Gulf Power lacks standing to join APCO as a Petitioner in filing the Petition for Review in No. 01-130058-B. Under 28 U.S.C. § 2348, Gulf Power should have sought permission to intervene in APCO's Petition for Review, rather than purport to file jointly a non-compliant Petition for Review with APCO.
3. In the event that the Court does not reject Gulf Power's participation in the Petition for Review in No. 01013058-B, however, the Court should allow FCTA and Cox to intervene. FCTA and Cox have filed a pole attachment Complaint against Gulf Power that is nearly identical to the circumstances of the underlying ACTA and Comcast Complaint addressed in the *Commission Order* and the *Bureau Order*.² Any action by this Court concerning the

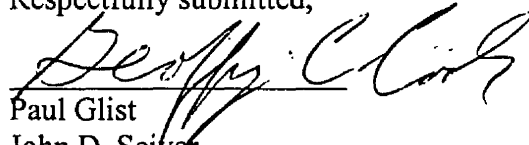
² *See Florida Cable Telecommunications Ass'n., Inc., et al. v. Gulf Power Company*, P.A. No. 00-004 (filed July 10, 2000).

Commission Order or the *Bureau Order* will therefore affect FCTA and Cox's interests.

4. Petitioners APCO and Gulf Power have requested that this Court enjoin, set aside, annul, suspend and declare unconstitutional the *Commission Order*.
Petition for Review at 2. Petitioners have essentially requested that this Court strike down as unconstitutional the statutory rate methodology under 47 U.S.C. § 224 and corresponding FCC rules regulating cable and telecommunications attachments to utility poles. *Id.*
5. ACTA, Comcast, FCTA, and Cox's interests would be adversely affected should Respondents' decision be enjoined, set aside, annulled, suspended or declared unconstitutional. Any action disturbing the *Commission Order* would likely subject Alabama and Florida cable operators attaching to Petitioners' poles to a rental rate increase of more than 500 percent. Pursuant to 28 U.S.C. § 2348, ACTA, Comcast, FCTA, and Cox are entitled to intervene as a matter of right.

WHEREFORE, for the foregoing reasons, ACTA, Comcast, FCTA, and Cox respectfully request that this Court grant its motion to intervene in the captioned proceeding.

Respectfully submitted,



Paul Glist

John D. Seiver

Geoffrey C. Cook

Brian M. Josef

COLE, RAYWID & BRAVERMAN, L.L.P.

1919 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

Tel: (202) 659-9750

COUNSEL FOR

**ALABAMA CABLE
TELECOMMUNICATIONS
ASSOCIATION**

**COMCAST CABLEVISION OF DOTHAN,
INC.**

**FLORIDA CABLE
TELECOMMUNICATIONS
ASSOCIATION**

**COX COMMUNICATIONS
GULF COAST, L.L.C.**

Dated: June 8, 2001

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fed. R. App. P. 26.1 and this Court's Rules 26.1-1 26.1-3, it is hereby certified that the following persons, corporations, or governmental agencies have been associated with or have an interest in the outcome of this appeal:

Adelphia Communications Corporation (owner of Century Cullman Corporation and Century Enterprise Corporation, parties to Docket No. PA 00-003 before the Federal Communications Commission)

Alabama Cable Telecommunications Association (party to Docket No. PA 00-003 before the Federal Communications Commission)

Alabama Power Company (affiliate of Petitioner and party to Docket No. PA 00-003 before the Federal Communications Commission)

AT&T Cable Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Balch & Bingham, LLP (counsel for Petitioner)

Richard Beelend, Representative for Northland Cable Properties (party to Docket No. PA 00-003 before the Federal Communications Commission)

Beggs & Lane (counsel for Petitioner)

Jane Belford, Representative of Mediacom Southeast LLC (party to Docket Nos. PA 00-003 and 00-004 before the Federal Communications Commission)

Barry Breithaupt, Representative of Torrence Cablevision USA, Inc.

Jennifer M. Buettner (counsel for Petitioner)

Ramona Byrd, Representative for CVI of Alabama, Inc., d/b/a Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cable One (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cable Star Inc. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cablevision Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cindy Cade, Representative for Comcast Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

John Russell Campbell (counsel for Petitioner)

Charter Communications, LLC (party to Docket No. PA 00-003 before the Federal Communications Commission)

Century Cullman Corporation (party to Docket No. PA 00-003 before the Federal Communications Commission)

Century Enterprise Corporation (party to Docket No. PA 00-003 before the Federal Communications Commission)

Ford W. Clark, Representative for Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Cole, Raywid & Braverman (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Comcast Cable (party to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Alabama Power Company, et al. v. Federal Communications Commission, et al.
Docket Nos. 00-135058

Ronnie G. Colvin, Representative of Comcast Cablevision of Panama City, Inc. (party to Docket No. PA 00-004 before the Federal Communications Commission)

ComLink (party to Docket No. PA 00-003 before the Federal Communications Commission)

Geoffrey C. Cook (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Coosa Cable Company (party to Docket No. PA 00-003 before the Federal Communications Commission)

Kathleen Costello, Acting Division Chief, Financial Analysis & Compliance, Cable Services Bureau, Federal Communications Commission

Cox Communications Gulf Coast, L.L.C. (party to Docket No. PA 00-004 before the Federal Communications Commission)

CVI of Alabama, Inc., d/b/a Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Demopolis CATV Company (party to Docket No. PA 00-003 before the Federal Communications Commission)

Peggy A. Dickinson, Representative for Cable Star, Inc. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Empresa Electrica del Norte Grande, S.A. (Edelnor) (affiliate of Petitioner)

Lynne Greene Frakes, Representative for Phenix Cable T.V. (party to Docket No. PA 00-003 before the Federal Communications Commission)

James Oglethorpe, Representative for Graceba Total Communication (party to Docket No. PA 00-003 before the Federal Communications Commission)

Alabama Power Company, et al. v. Federal Communications Commission, et al.,
Docket Nos. 00-135058

Federal Communications Commission (Respondent)

William H. Garner, Representative Twin County Cable (party to Docket No. PA 00-003
before the Federal Communications Commission)

Georgia Power Company (affiliate of Petitioner)

Paul Glist (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the
Federal Communications Commission)

Bruce Gluckman, Representative of Mediacom Southeast LLC (party to Docket Nos. PA
00-003 and 00-004 before the Federal Communications Commission)

Lynn Goldman, Representative for Demopolis CATV Company (party to Docket No. PA
00-003 before the Federal Communications Commission)

John D. Gosch, Vice President for Cable One (party to Docket No. PA 00-003 before the
Federal Communications Commission)

L. Keith Gregory, Representative for Cox Communications Gulf Coast, L.L.C. (party to
Docket No. PA 00-004 before the Federal Communications Commission)

M. C. Grigsby, Representative for Century Cullman Corporation (party to Docket No. PA
00-003 before the Federal Communications Commission)

Gulf Power Company (Petitioner)

Hidroelectrica Alicura, S.A. (affiliate of Petitioner)

Mike Hugunin, Representative for Birmingham Division of Time Warner Cable (party to
Docket No. PA 00-003 before the Federal Communications Commission)

Integrated Communication Systems, Inc. (affiliate of Petitioner)

James Cable Partners, LP (party to Docket No. PA 00-003 before the Federal
Communications Commission)

Ron Johnson, VP of Operations for Charter Communications, LLC (party to Docket No. PA 00-003 before the Federal Communications Commission)

William Johnson, Deputy Bureau Chief, Cable Services Bureau, Federal Communications Commission

Brian Josef (counsel for parties to Docket Nos. PA 00-003 and PA 00-004 before the Federal Communications Commission)

Keller and Heckman LLP (counsel for Petitioner)

Cheryl King, Staff Attorney, Federal Communications Commission

Joseph Van Lerner, Representative for Mediacom, LLC (party to Docket Nos. PA 00-003 before the Federal Communications Commission)

Mississippi Power Company (affiliate of Petitioner)

MediaCom, LLC (party to Docket No. PA 00-003 before the Federal Communications Commission)

MediaCom Southeast, LLC (party to Docket No. PA 00-004 before the Federal Communications Commission)

Mobile Energy Services Company, L.L.C. (affiliate of Petitioner)

Northland Cable Properties (party to Docket No. PA 00-003 before the Federal Communications Commission)

Scott Peden, General Manager for AT&T Cable Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Ralph A. Peterson (counsel for Petitioner)

Phoenix Cable T.V. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Leonard J. Rozek, Representative for Comcast (party to Docket No. PA 00-003 before the Federal Communications Commission)

Savannah Electric and Power Company (affiliate of Petitioner)

John D. Seiver (counsel for Intervenors ACTA, Comcast, FCTA, and Cox)

Daniel K. Shoemaker, President of DKS Holdings, Inc., (subsidiary to James Cable Partners, LP) (party to Docket No. PA 00-003 before the Federal Communications Commission)

Sky Cablevision, Ltd. (party to Docket No. PA 00-003 before the Federal Communications Commission)

Jeffrey Smith, Representative for Coosa Cable Company and Cablevision Services (party to Docket No. PA 00-003 before the Federal Communications Commission)

Jim Smith, Representative for Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Southern Company Capital Trust I (affiliate of Petitioner)

Southern Company Capital Trust If (affiliate of Petitioner)

Southern Electric Generating Company (affiliate of petitioner)

Southern Electric International Trinidad, Inc. (affiliate of Petitioner)

Southern Investments UTC P.L.C. (affiliate of Petitioner)

The Southern Company (parent of Petitioner)

JoAnn Stone, Representative for Adelphia (party to Docket No. PA 00-003 before the Federal Communications Commission)

Time Warner Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

Time Warner Entertainment Advance Newhouse (party to Docket No. PA 00-003 before the Federal Communications Commission)

Andrew W. Tunnell (counsel for Petitioner)

Twin County Cable (party to Docket No. PA 00-003 before the Federal Communications Commission)

D. H. Ward, III, Representative for Sky Cablevision, Ltd. (party to Docket No. PA 00-003 before the Federal Communications Commission)

CORPORATE DISCLOSURE STATEMENT

The Alabama Cable Telecommunications Association ("ACTA") is the principal trade association of the cable television industry in Alabama. ACTA has no parent companies, subsidiaries or affiliates whose listing is required by Rule 26.1

Comcast Cablevision of Dothan, Inc. ("Comcast"), an Alabama corporation that provides cable television services, is 100% owned by Comcast Cablevision Corporation of the South-East, a Florida corporation, which is 100% owned by Comcast Holdings, Inc., a Delaware corporation, which is 100% owned by Comcast Cable Communications, Inc., a Delaware corporation, which is 100% owned by Comcast Corporation, a publicly held Pennsylvania corporation.

The Florida Cable Telecommunications Association, Inc. ("FCTA"), is a not-for-profit Florida corporation representing the interests of cable telecommunications operators before government and regulatory bodies in the state of Florida. FCTA has no parent companies, subsidiaries or affiliates whose listing is required by Rule 26.1

Cox Communications Gulf Coast, L.L.C. ("Cox"), a Delaware limited liability corporation, provides cable television services in the state of Florida. Cox Communications Gulf Coast, L.L.C., through various subsidiaries and affiliates, is owned and controlled by Cox Communications, Inc., a Delaware corporation. Cox Communications, Inc., in turn, is 63.34% owned by Cox Holdings, Inc., a Delaware corporation, and 4.48% owned by Cox DNS, Inc., a Delaware corporation. Both Cox Holdings, Inc. and Cox DNS, Inc. are ultimately owned 100% by Cox Enterprises, Inc., a privately-held Delaware corporation. The remaining 32.18% of Cox Communications, Inc. is publicly held.

CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 8th day of June 2001, I caused a copy of the foregoing *Intervenors Alabama Cable Telecommunications Association, Comcast Cablevision of Dothan, Inc., Florida Cable Telecommunications Association, Inc. and Cox Communications Gulf Coast, L.L.C.'s Conditional Motion for Leave to Intervene* to be sent via FedEx(*), or hand delivery(**) to the following:

Cheryl King (**)
Staff Attorney
Federal Communications Commission
445 12th Street, N.W. - Room 4C738
Washington, D.C. 20554

Gregory M. Christopher (**)
Federal Communications Commission
445 12th Street, N.W. -- Room 8-A741
Washington, D.C. 20554

Kenneth Ferree (**)
Chief, Cable Services Bureau
Federal Communications Commission
445 12th Street, SW, 3 C740
Washington, DC 20554

Robert B. Nicholson (**)
Robert J. Wiggers
U.S. Dept. of Justice – Antitrust Division
601 D Street, NW
Room 10535
Washington, DC 20530

Kathleen Costello (**)
Acting Division Chief
Financial Analysis & Compliance
Cable Services Bureau
Federal Communications Commission
445 12th Street, N.W. -- Room 4C830
Washington, D.C. 20554

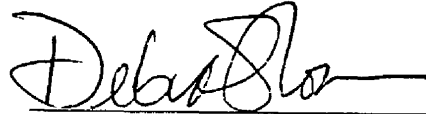
Charles A. Zdebski (**)
Troutman Sanders LLP
401 9th Street, NW
Suite 1000
Washington, DC 20004

William Johnson (**)
Deputy Bureau Chief
Cable Services Bureau
Federal Communications Commission
445 12th Street, N.W. -- Room 4C742
Washington, D.C. 20554

Shirley S. Fujimoto (**)
Christine M. Gill
Thomas P. Steindler
Keith A. McCrickard
McDermott, Will & Emery
600 13th Street, NW
Washington, DC 20005-3096

Ralph A. Peterson (*)
Russell A. Badders
Beggs & Lane, L.L.P.
Seventh Floor Blount Bldg.
3 West Garden Street (32501)
Pensacola, FL 32576-2950

J. Russell Campbell (*)
Andrew W. Tunnell
Jennifer M. Buettner
Balch & Bingham, L.L.P.
1710 Sixth Avenue North
Birmingham, AL 35203



Debra Sloan