

Consolidated Cases: 00-14763-I, 00-15068-D, & 01-13058-B  
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. )

Consolidated Cases:  
00-14763-I, 00-15068-D,  
& 01-13058-B

ALABAMA POWER COMPANY AND GULF POWER COMPANY'S  
MOTION TO FILE SUPPLEMENTAL REPLY BRIEF OUT OF TIME

Pursuant to Rules 27 and 31 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rules 27-1 and 31-2, Alabama Power Company and Gulf Power Company (collectively "Petitioners") hereby file this Motion to File Supplemental Reply Brief Out of Time. On June 15, 2001, this Court issued an Order consolidating this proceeding, Case No. 01-13058-B, with the related consolidated proceedings in Case Nos. 00-14763-I and 00-15068-D, in which briefing was complete. It also allowed the parties to file supplemental briefs on the most recent order of the Federal Communications Commission and set a briefing schedule. As relevant to this Motion, the Order directed the Petitioners to file their supplemental reply brief, "within seven (7) days of service of Respondents' supplemental response brief."

The Certificate of Service accompanying the Respondents' Supplemental Response Brief was dated July 27, 2001. In accordance with Rule 26(c) of the Federal Rules of Appellate Procedure, the

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC \_\_\_\_\_  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

10045 AUG 16 2001

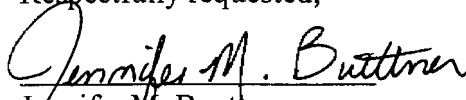
FPSC-COMMISSION CLERK

...

Petitioners' reply was due on August 6, 2001.<sup>1</sup> On August 6, 2001, the Petitioners submitted their Supplemental Reply Brief to the Clerk of this Court. Petitioners believe that their submission of the Supplemental Reply Brief on August 6, 2001 complies with the Federal Rules of Appellate Procedure and this Court's June 15, 2001 Order to file "within seven (7) days of service of Respondents' supplemental response brief."

On August 13, 2001, the Petitioners received the Clerk's August 9, 2001 Order stating that their Supplemental Reply Brief was due on August 3, 2001, and therefore had not been filed with the Court. The August 9, 2001 Order directed the Petitioners to file a motion to file the reply brief out of time. Accordingly, the Petitioners file this Motion and respectfully request that their Supplemental Reply Brief be filed in the above-styled consolidated cases and that the Court consider the brief in its review of the cases.

Respectfully requested,



Jennifer M. Buettner  
One of the Attorneys for Alabama Company  
Company and Gulf Power Company

---

<sup>1</sup>Rule 26(c) of the Federal Rules of Appellate Procedure states: "When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service." The Petitioners did not receive the Respondents' Supplemental Response Brief on the "date of service stated in the proof of service" (July 27, 2001). Therefore, their Supplemental Reply Brief was due within 7 days of service plus 3 days as prescribed by Rule 26(c) (August 6, 2001).

**OF COUNSEL**

J. Russell Campbell

Andrew W. Tunnell

Jennifer M. Buettner

Balch & Bingham LLP

Post Office Box 306

Birmingham, Alabama 35201-0306

Telephone: (205) 251-8100

Fax: (205) 226-8798

Ralph A. Peterson

Beggs & Lane LLP

Post Office Box 12950

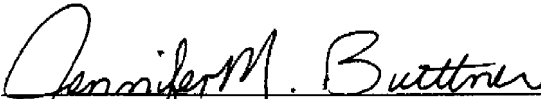
Pensacola, Florida 32576-2950

Telephone: (850) 432-2451

Fax: (850) 469-3330

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion was served this 14<sup>th</sup> day of August 2001, to the persons and in the manner indicated below.

  
Jennifer M. Buettner

Michael A. Gross (by overnight delivery)  
Regulatory Affairs and Regulatory Counsel  
Florida Cable Telecommunications Association, Inc.  
310 North Monroe Street  
Tallahassee, Florida 32301

Paul Glist (by overnight delivery)  
Geoffrey C. Cook  
Brian Josef  
Cole, Raywid & Braverman  
1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006

Deborah Lathen (by overnight delivery)  
Chief, Cable Services Bureau  
Federal Communications Commission  
Room 3C740, 445 12th Street, S.W.  
Washington, D.C. 20554

Kathleen Costello (by overnight delivery)  
Acting Division Chief, Financial Analysis & Compliance Division  
Federal Communications Commission  
Room 4C830  
445 12th Street, S.W.  
Washington, D.C. 20554

Cheryl King (by overnight delivery)  
Staff Attorney  
Federal Communications Commission  
Room 4C738  
445 12th Street, S.W.  
Washington, D.C. 20554

William Johnson (by overnight delivery)  
Deputy Bureau Chief  
Cable Services Bureau

Federal Communications Commission  
Room 4C742  
445 12th Street, S.W.  
Washington, D.C. 20554

Federal Energy Regulatory Commission (by U.S. Mail)  
Docket Room 1A-209  
888 First Street, N.E.  
Washington, D.C. 20426

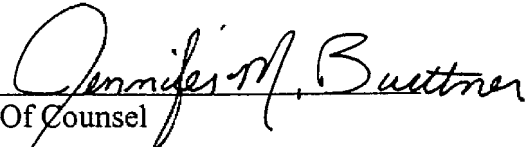
Blanca S. Bayo (by U.S. Mail)  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Gregory M. Christopher (by overnight delivery)  
Federal Communications Commission  
445 12th Street, S.W.  
Room 8-A741  
Washington, D.C. 20554

Robert B. Nicholson (by overnight delivery)  
Robert J. Wiggers  
United States Department of Justice - Antitrust Division  
601 D Street, N.W., Room 10535  
Washington, D.C. 20530

Shirley S. Fujimoto (by overnight delivery)  
Christine M. Gill  
Thomas P. Steindler  
Keith A. McCrickard  
McDermott, Will & Emery  
600 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20005-3096

Alabama Public Service Commission (by U.S. Mail)  
Secretary of the Commission  
Post Office Box 991  
Montgomery, Alabama 36101-0991

  
Of Counsel