

**Ruth Nettles**

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**From:** Slaughter, Brenda [bs3843@att.com]  
**Sent:** Tuesday, February 10, 2009 3:34 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Culpepper, Robert; Woods, Vickie; Holland, Robyn P; Eure, Micale  
**Subject:** Docket 000121A-TP AT&T Motion to Strike  
**Importance:** High  
**Attachments:** 000121A-TP AT&T Motion To Strike.pdf

- A. Brenda Slaughter  
Legal Secretary to Robert A. Culpepper, John T. Tyler and Dorian Denburg  
BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
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- B. Docket No. 000121A-TP: In Re: Investigation into the Establishment of Operations Support Systems Permanent Incumbent Local Exchange Telecommunications Companies.
- C. BellSouth Telecommunications, Inc.  
on behalf of Robert A. Culpepper
- D. 6 pages total in PDF format (including letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Proposed Data Notification November 2008

<<000121A-TP AT&T Motion To Strike.pdf>>

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February 10, 2009

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 000121A-TP**  
**In Re: Investigation into the establishment of operations support systems  
permanent incumbent local exchange Telecommunications companies**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") Motion to Strike, which we ask that you file in the referenced docket.

A copy of the same is being provided to all parties as reflected in the attached certificate of service.

Sincerely,

Robert A. Culpepper

Enclosures  
cc: All parties of record  
Jerry D. Hendrix

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment )  
Of Operations Support Systems Permanent )  
Performance Measures for Incumbent )  
Local Exchange Telecommunications. )  
Companies (BellSouth Track). )

Docket No.: 000121A-TP

Filed: February 10, 2009

**MOTION TO STRIKE**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida” or “AT&T”) hereby moves for a Commission Order striking the “Response in Opposition to AT&T’s Request to Dismiss CLECs’ Objection to AT&T Florida’s Request for Confidential Classification” (“Response”) filed by Cbeyond Communications, LLC, Deltacom, Inc., and NuVox Communications, Inc. (collectively, the “CLECs”). As explained below, the so-called “Response” is an inappropriate reply brief that should not be considered by the Commission because the CLECs failed to obtain permission to file a reply brief.

1. In December 2008, the Commission’s Staff issued a report entitled “A Review AT&T’s OSS April 208 Release Analysis and Resolutions” (“Audit Report”). Because the Audit Report contains proprietary confidential business information, AT&T Florida filed a Request for Confidential Classification (“RCC”) on January 9, 2009. The CLECs’ filed their objection to the RCC on January 22, 2009 (“Objection”). In their Objection, the CLECs specifically requested for the Commission to deny AT&T Florida’s RCC. Objection at page 6 (“AT&T’s request for confidential classification must be denied.”). Stated another way, CLECs filed a motion requesting for the Commission to deny AT&T Florida’s RCC.

2. On January 29, 2009, AT&T Florida filed its response to the CLECs’ objection to AT&T Florida’s RCC (“Response”). In its Response, AT&T Florida explained how its RCC

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comports and complies with applicable law and requested a Commission Order declaring “the portions of the Audit Report that AT&T Florida has identified as proprietary confidential business information to be considered and treated as such pursuant to Section 364.183, Florida Statutes and other applicable law.” AT&T Florida Response, at page 3. In short, AT&T Florida filed a response to the CLECs’ request for the Commission to deny AT&T Florida’s RCC.

3. On February 3, 2009, without obtaining Commission leave or permission to do so, the CLECs responded to AT&T Florida’s Response. Although the CLECs labeled their reply a “Response”, there is no question that the pleading is a reply brief as it specifically addresses arguments set forth in AT&T’s Response.

4. It is well settled that replies are not recognized by the Commission rules or by the Administrative Procedure Act, and therefore cannot be considered by the Commission. As stated by the Commission in an arbitration proceeding involving AT&T and BellSouth:

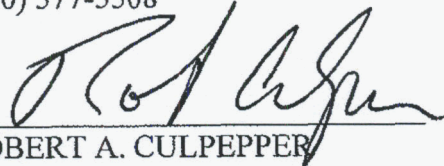
Further, we find that AT&T’s Response to BellSouth’s Response is an inappropriate pleading. As noted by BellSouth, in previous cases where a party has filed a pleading not contemplated by our rules or the uniform rules, we have not considered the pleading. Specifically, in the Supra case, we found that “. . .neither the Uniform Rules nor our rules contemplate a reply to a response to a Motion.” We find that AT&T’s response is such a pleading. Thus, we shall not consider the arguments raised in AT&T’s Response to BellSouth’s Response.

Docket No. 020919-TP, Order No. PSC-03-0525-FOF-TP, issued April 21, 2003, at page 9 (footnote omitted).

5. For the reasons set forth herein, AT&T Florida’s respectfully requests an Order striking the CLECs’ Response to AT&T’s Response as an inappropriate pleading.

Respectfully submitted this 10<sup>th</sup> day of February 2009.

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**CERTIFICATE OF SERVICE**  
**Docket No. 000121A-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and U.S. Mail the 10th day of February, 2009 to the following:

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Robert A. Culpepper

**(+) Signed Protective Agreement**