

Corporate Crossings
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ORIGINAL



December 11, 2001

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COMMISSION
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Bureau of Records and Hearing Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 011492-TX

Dear Sir or Madam:

Enclosed for filing in the above-captioned docket are an original and fifteen (15) conformed copies of the Response of Mpower Communications Corp. to Staff's December 5, 2001 Recommendation. Please bring this to the attention of the Commission.

I appreciate your attention to this matter.

Sincerely,

David Woodsmall
Vice President – Legal & Regulatory
Mpower Communications Corp.
716-218-8796

Attachment

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- CAF _____
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF FLORIDA**

Compliance Investigation for)
Apparent Violation of Section)
364.183(1), F.S., Access to)
Company Records – Mpower)
Communications Corp.)

Docket No. 011492-TX

**Response of Mpower Communications Corp. to
Staff's December 5, 2001 Recommendation**

COMES NOW, Mpower Communications Corp. (Mpower) and for its Response to Staff's December 5, 2001 Recommendation in the above captioned proceeding, respectfully states as follows:

1. On November 6, 2001, Staff requested that the above-captioned docket be established to investigate an apparent Mpower violation of Section 364.183(1) F.S.
2. One day later, upon learning of the recently established docket, Mpower phoned Angela Fondo with the Staff's Competitive Services Division to inquire regarding the apparent violation. During this call, Mpower learned that it had allegedly been sent a data request by Staff and that this data request had gone unanswered by Mpower. At that time, Mpower asked to have the data request faxed and offered to immediately respond to the data request. Mpower was informed that the data was needed for a report that had already been completed. Therefore, the information request was now moot. As a result, Staff refused to resend the data request to Mpower.
3. Mpower takes its responsibility to provide timely information to state regulatory agencies very seriously. In order to ensure the timely submission of such information, Mpower has recently created a regulatory reporting database. Moreover, Mpower has

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hired an individual solely responsible for ensuring that regulatory reports are filed in a timely manner. Evidence of the seriousness with which holds this responsibility is the fact that Mpower has never been fined by a state utility commission for its failure to comply with applicable state regulations.


4. Mpower is unable to provide the Commission any definitive excuse for its failure to answer Staff's data request. Mpower merely notes that during this period in time, it was in the process of closing the Jacksonville and Orlando markets in Florida. Additionally, at the same time, responsibility for regulatory matters in Florida was being transferred from the Atlanta regional office to the company's national headquarters in Rochester, New York. As such, Mpower believes that the request was inadvertently misplaced or lost in the transfer of responsibilities.

5. As Staff points out in its recommendation, the Commission's penalty authority is derived from Section 364.285. This section appears to require a finding that Mpower willfully intended to violate any lawful rule or order of the Commission. Mpower's actions clearly demonstrate that there was no "willful" intent to disregard the Staff's data request. Upon learning of its alleged failure, Mpower immediately contacted Staff in an effort to get Staff the necessary information. Such conduct is not consistent with a willful intent to disregard Commission's rules or orders.

6. Mpower sincerely apologizes for its failure to respond to Staff's data request. Furthermore, Mpower recognizes that its failure caused the Commission's report to be prepared with incomplete information. As mentioned, Mpower has taken steps to ensure that regulatory reports are compiled and submitted in a timely fashion and that future oversights are avoided.

WHEREFORE, Mpower respectfully requests that the Commission accept this apology, reject Staff's request to fine Mpower and maintain Mpower's certificate of public convenience and necessity in good standing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Woodsmall", written in a cursive style.

David Woodsmall
Vice President – Legal & Regulatory
Mpower Communications Corp.
175 Sully's Trail, Suite 300
Pittsford, New York 14534
716-218-8796
716-218-0635 (facsimile)