

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Mpower Communications Corp. and Florida Digital Network, Inc. for expedited temporary and permanent relief against BellSouth Telecommunications, Inc. for alleged anticompetitive conduct regarding Florida Digital Network Inc.'s proposed acquisition of assets and customer base of Mpower Communications Corp.

DOCKET NO. 030301-TP .  
ORDER NO. PSC-04-0666-FOF-TP  
ISSUED: July 9, 2004

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER ACKNOWLEDGING VOLUNTARY WITHDRAWAL OF PETITION

BY THE COMMISSION:

On March 27, 2003, Florida Digital Network, Inc. d/b/a FDN Communications (FDN) and Mpower Communications, Corp. (Mpower) filed a Petition For Expedited Temporary and Permanent Relief Against BellSouth Telecommunications, Inc. for its Anticompetitive Conduct Regarding Florida Digital Network, Inc.'s Proposed Acquisition of the Assets and Customers of Mpower Communications Corp. In Florida (Petition). On April 15, 2003, BellSouth Telecommunications, Inc. filed its Answer to the Petition.

On July 8, 2003, Mpower, FDN and BellSouth filed a Joint Stipulation for temporary relief. On July 10, 2003, Mpower, FDN and BellSouth filed a Joint Motion for Extension of Time to File Testimony in this proceeding. By Order No. PSC-03-0825-PCO-TP, issued July 16, 2003, the Motion for Extension of Time to File Testimony was granted.

On August 8, 2003, Mpower, FDN and BellSouth filed a Joint Motion for Continuance. By Order No. PSC-03-0997-PCO-TP, issued September 4, 2003, the Joint Motion was granted. Thereafter, several motions for continuance were granted allowing parties additional time to resolve the issues in this docket.

On May 4, 2004, Mpower and FDN filed a Joint Notice of Voluntary Withdrawal, without prejudice.

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ORDER NO. PSC-04-0666-FOF-TP  
DOCKET NO. 030301-TP  
PAGE 2

The law is clear that the plaintiff's right to take a voluntary dismissal or withdrawal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

Since there are no remaining issues in dispute between the parties in this docket, we acknowledge FDN and Mpower's Notice of Voluntary Withdrawal of their Petition, and find that the voluntary withdrawal renders any and all outstanding motions moot. Additionally, all confidential materials filed in this Docket shall be returned to the filing party.

Based on the foregoing, it is

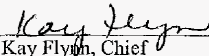
ORDERED by the Florida Public Service Commission that Florida Digital Network, Inc. d/b/a FDN Communications and Mpower Communications, Corp.'s Notice of Voluntary Withdrawal is hereby acknowledged. It is further

ORDERED that any and all outstanding motions in this Docket are rendered moot. Additionally, all confidential materials filed in this Docket shall be returned to the filing party.

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of July, 2004.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:   
Kay Flynn, Chief  
Bureau of Records

( S E A L )

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.