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October 4, 2001

VIA HAND DELIVERY

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Re: Docket No.: 960786-A-TL

Dear Ms. Bayo:

On behalf of the Mpower Communications Corp. (Mpower), enclosed for filing and distribution is the original and 15 copies of Notice of Withdrawal of the Prefiled Testimony of Scott A. Sarem.

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Consideration of BellSouth
Telecommunications, Inc.'s Entry
Into InterLATA Services Pursuant to
Section 271 of the Federal
Telecommunications Act of 1996

Docket No. 960786-A-TL
Filed: October 4, 2001

COMES NOW, Mpower Communications Corp. (Mpower), and files this Notice of Withdrawal of the Pre-filed testimony of Scott A. Sarem.

1. As this Commission knows, Mr. Sarem's rebuttal testimony was generally favorable to and supportive of BellSouth Telecommunications, Inc.'s application for 271 relief. Unfortunately, over the past several weeks, certain actions by BellSouth have caused Mpower to change its view of BellSouth's 271 Application.

2. Specifically, BellSouth has: (1) breached a commitment made to Mpower to complete a paper conversion of numerous pieces of transport in the Atlanta market from Access Tariff to Unbundled Network Element (UNE) pricing; (2) stepped up its winback efforts using questionable tactics; and (3) provided Mpower sub par maintenance and repair service, while simultaneously disparaging service quality levels of CLECs in its advertisements. These items, collectively and separately, indicate to Mpower that competition in Florida could be severely impacted should this Commission grant BellSouth 271 relief at this time.

A. Access to UNE Conversions

3. Over two years ago, Mpower requested Tariff to UNE conversions from BellSouth with regard to circuit elements in Georgia. Since then, Mpower has been working with BellSouth to convert approximately 50 transport (DS-3) circuits in the Atlanta area to UNE pricing from Access Tariff pricing. These circuits transport local interconnection traffic from

Mpower's collocation cages in BellSouth's central offices to Mpower's switch. The cost savings to Mpower of such a conversion are substantial -- approximately \$100,000 per month. Because these circuits are already in place, the only action required of BellSouth to convert them from Access to UNE is a paper records change.¹ Initially, BellSouth promised to provide the paper records change. However, BellSouth subsequently breached this promise, and now is requiring Mpower to submit disconnect orders for these circuits and re-order them as UNEs, most recently at a cost of \$9,129 per DS-3 circuit. This conversion does not reflect the non-recurring charges that BellSouth would impose for the UNE orders.

4. The total cost to Mpower of this ridiculous exercise would be in excess of \$450,000. Mpower believes this action demonstrates BellSouth's intent to unnecessarily raise the costs of doing business in Georgia, so as to drive newly emerging competitors out of business.

5. Mpower raises this Georgia-specific incident to highlight the type of conduct ALECs in Florida can anticipate if this Commission grants BellSouth 271 relief.

B. Winbacks and Maintenance and Repair

6. While Mpower welcomes competition from all competitors, recent win back efforts by BellSouth are problematic for several reasons.

7. First, Mpower is uncertain regarding how BellSouth's retail unit obtains the names of customers for its direct mail and telemarketing efforts. On numerous occasions, customers that had recently switched to Mpower have been contacted by BellSouth and offered

¹ Mpower recently completed a similar conversion transaction with SBC Communications, Inc. in the Ameritech region. This conversion transaction was a simple paper records change, and involved only nominal nonrecurring charges. All Mpower requests of BellSouth is to convert a simple subset of an enhanced extended loop ("EEL"). BellSouth currently converts EELs via a simple paper records change at a nominal charge, pursuant to the FCC's June 2000 order regarding EELs (See In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, CC Docket No. 96-98, (Rel. June 2, 2000), ¶ 30), yet claims this duty does not also include an obligation to convert single

discounts to return to BellSouth. Other Mpower customers that have been with Mpower for several years, and have not experienced any service problems, have been contacted by BellSouth and have switched because of the discounts being offered.

8. Perhaps these contacts are coincidental. However, the Commission should fully explore the methods and means by which BellSouth selects customers to target its direct mail and telemarketing efforts. The Commission should ensure that information is not being improperly exchanged between BellSouth's wholesale operations and its retail operations.

9. Second, Mpower believes it is misleading and unfair for BellSouth to advertise that its service is more reliable than its competitors in the win-back process. Out of necessity, CLECs like Mpower depend on BellSouth to deliver reliable telephone service and to remedy service-impacting issues. Obviously, when BellSouth competes against Mpower on quality of service grounds, while simultaneously providing sub-par maintenance and repair, Mpower is placed at a distinct disadvantage.

10. Third, BellSouth recently notified CLECs in Florida that it would not release applicable local service freezes unless the customer contacts BellSouth and specifically authorizes the release. BellSouth has used that contact as an opportunity to retain the customer by offering enticements to stay with BellSouth. While the use of a local freeze may be permissible if executed within the mandates of section 222 of the Telecommunications Act of 1996 (the "Act"), BellSouth's use of this win-back tactic is suspect. In many cases where BellSouth has required Mpower's customers to call BellSouth to release the local freeze, the customer claims to have no knowledge of requesting or authorizing the local freeze. The Commission should determine whether BellSouth's actions comply with the Act.

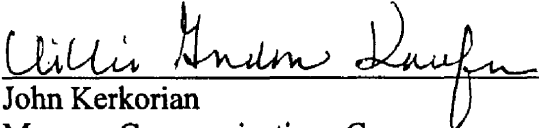
circuits to UNE pricing. It may be difficult to find a more flagrant example of BellSouth's attitude toward allowing local competition into its region.

11. Finally, Mpower is concerned about the reduced rates offered by BellSouth to entice Mpower customers back to BellSouth. Mpower believes that BellSouth provides significant discounts from the tariffed BellSouth rates in order to attract customers that have left BellSouth, presumably in large part because of their dissatisfaction with BellSouth pricing. The use of this discounted pricing raises issues of discriminatory treatment of similarly situated customers as well as questions of predatory pricing. Again, Mpower urges the Commission to explore the flexibility of BellSouth pricing used in conjunction with its win-back programs.

12. Mpower believes these issues are extremely important and appreciates the Commission's willingness to investigate them fully.

C. Conclusion

WHEREFORE, Mpower withdraws the prefiled testimony of Scott A. Sarem



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice to Withdraw the Pre-filed Testimony of Scott A. Sarem has been furnished by (*) hand delivery or by U. S. Mail on this 4th day of October, 2001, to the following:

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