

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

June 28, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 990649A

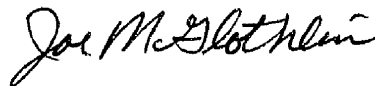
Dear Ms. Bayo:

On behalf of MPower Communications Corp., enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ MPower Communications Corp.'s Petition to Intervene.

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

Yours truly,



Joseph A. McGlothlin

JAM/mls
Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing
of unbundled network elements
(BellSouth track)

Docket No. 990649A-TP
Filed: June 28, 2002

PETITION TO INTERVENE OF MPOWER COMMUNICATIONS CORP.

Mpower Communications Corp. ("Mpower"), pursuant to rule 25-22.039, Florida Administrative Code, files this Petition to Intervene. As grounds therefor, Mpower states:

1. The name and address of Petitioner is:

Mpower Communications, Corp.
175 Sully's Trail, Suite 300
Pittsford, New York 14534

2. The name, address and telephone number of persons who should receive

copies of all orders, notices and correspondence in this docket are:

Joe McGlothlin
Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen, PA
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 (telephone)
(850) 222-5606 (fax)
jmcglothlin@mac-law.com
vkaufman@mac-law.com

Rick Heatter
Vice President, Legal/Regulatory
Mpower Communications, Corp.
175 Sully's Trail, Suite 300
Pittsford, New York 14534

3. Mpower is a competitive telecommunications provider in Florida. Mpower holds certificates authorizing it to provide competitive local exchange service and long

distance service. As a Florida ALEC, MPower has a substantial interest in the pricing of unbundled network elements that it purchases from BellSouth. MPower seeks intervention to protect its interests in what effectively constitutes a new and distinct phase of the proceeding.

4. On June 19, 2002, the Commission ordered that the instant proceeding be held in abeyance for 60 days from June 13, 2002, and directed the parties to meet for negotiations. MPower files this petition to intervene in response to this new development in the case. In the past, the Commission has granted intervention to non-parties after conclusion of the final hearing when unforeseen developments affect the substantial interests of the non-parties. *See Southern States Utilities, Inc. v. Florida Public Service Commission*, 704 So. 2d 555, 559 (Fla. 1st DCA 1997). The recent Commission directive constitutes grounds to allow MPower to intervene at this stage. Accordingly, the Commission should grant intervention to MPower notwithstanding the requirement of Rule 25-22.039 that petitions to intervene be filed at least five days before the final hearing in the case.

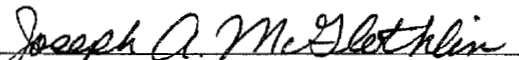
5. In Docket No. 910756-EI, Hillsborough County filed a petition to intervene on the day that the hearing in that case was set to begin. *See Order No. 25805*. Although the Commission denied Hillsborough County's request to participate at the hearing itself, it was allowed to file a brief in that case. *Id.* Similarly, MPower should be granted intervention to participate in the negotiation phase established by the Commission's order.

6. Disputed issues of fact include, but are not limited to, the proper pricing of unbundled network elements.

7. Ultimate facts alleged: BellSouth has overstated its UNE rates. To comply

with governing standards the rates should be reduced significantly.

WHEREFORE, MPower requests the Commission to issue an order granting its
Petition to Intervene.


Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525
Telecopy: (850) 222-5606

Rick Heatter
Vice President, Legal/Regulatory
MPower Communications, Corp.
175 Sully's Trail, Suite 300
Pittsford, New York 14534
Telephone: (716) 218-6556
Telecopy: (585) 218-0635

Attorneys for MPower Communications Corp.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition to Intervene has been furnished by (*) Hand Delivery, U.S. Mail and E-mail this 28th day of June, 2002, to the following:

(*) Wayne D. Knight
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850
wknight@pas.state.fl.us

(*) Beth Keating
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850
bkeating@pas.state.fl.us

(*) Nancy B. White
James Meza, III
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Karen Jusevitch
AT&T Communications
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301
kjusevit@att.com

Virginia Tate
AT&T Communications
1200 Peachtree Street, N.E., Room 8068
Atlanta, GA 30309
vtate@att.com

Richard D. Melson
Gabriel E. Nieto
Hopping Green Sams & Smith, PA
Post Office 6526
123 S. Calhoun Street
Tallahassee, FL 32314
rickm@hgss.com

Dulaney L. O'Roark
MCI Telecommunications Corporation
6 Concourse Parkway, Suite 600
Atlanta, GA 30328
De.OROark@mci.com

Floyd Self
Tracy Hatch
Messer Caparello & Self
215 S. Monroe Street, Suite 701
Tallahassee, FL 32302-1876
fsself@lawfla.com
thatch@lawfla.com

Terry Monroe
Vice President, State Affairs
Competitive Telecomm. Assoc.
1900 M. Street, N.W., Suite 800
Washington, D.C. 20036
tmonroe@comptel.org

Kimberly Caswell
GTE Florida Incorporated
One Tampa City Center
201 N. Franklin Street
Tampa, FL 33602
kimberly.caswell@verizon.com

Karen M. Camechis
Pennington Moore Wilkinson & Dunar, PA
215 S. Monroe Street, 2nd Floor
Tallahassee, FL 32301
Karen@penningtonlawfirm.com

Ann Shelfer
Supra Telcom
1311 Executive Center Drive
Koger Center, Ellis Bldg, Suite 200
Tallahassee, FL 32301.5027
ashelfer@stis.com

Donna Canzano McNulty
MCI WorldCom, Inc.
325 John Knox Road
The Atrium Bldg., Suite 105
Tallahassee, FL 32303
donna.mcnulty@wcom.com

Kennard B. Woods
WorldCom, Inc.
Six Concourse Parkway, Suite 3200
Atlanta, GA 30328

Michael A. Gross
VP Reg. Affairs & Reg. Counsel
Florida Cable Telecomm. Assoc.
246 E. 6th Avenue
Tallahassee, FL 32303
mgross@fcta.com

Charles J. Rehwinkel
1313 Blair Stone Road
Tallahassee, FL 32301
charles.j.rehwinkel@mail.sprint.com

John P. Fons
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, FL 32301
jfons@ausley.com

William Weber
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, Georgia 30309
wweber@covad.com

Charles J. Beck
Office of the Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
beck.charles@leg.state.fl.us

Matthew Feil
Florida Digital Network, Inc.
390 N. Orange Avenue, Suite 2000
Orlando, FL 32801
mfeil@floridadigital.net

John McLaughlin
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, GA 30043
jmclau@kmctelecom.com

Bettye Willis
ALLTEL Communications Services, Inc.
One Allied Drive
Little Rock, AR 72203-2177
Bettye.j.willis@alltel.com

J. Jeffrey Wahlen
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, FL 32301
jwahlen@ausley.com

Charles J. Pellegrini
Patrick Wiggins
Katz Kutter Haigler Alderman Bryant & Yon, PA
106 E. College Avenue, Suite 1200
Tallahassee, FL 32301
cjpellegrini@katzlaw.com
plkwigging@katzlaw.com

George S. Ford
Z-Tel Communications, Inc.
601 South Harbour Island Blvd
Tampa, FL 33602
gford@z-tel.com

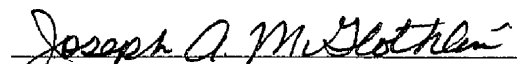
Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036
jcanis@kellydrye.com
mhazzard@kellydrye.com

Rodney L. Joyce
Shook Hardy & Bacon, LLP
600 14th Street, N.W., Suite 800
Washington, DC 20005-2004
rjoyce@shb.com

Michael Sloan
Swidler Berlin Shereff Friedman
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
MCSloan@swidlaw.com

John Spilman
Directory Regulatory Affairs and
Industry Relations
Broadslate Networks, Inc.
675 Peter Jefferson Parkway, Suite 310
Charlottesville, VA 22911
john.spilman@broadslate.net

Susan Masterton
1313 Blairstone Road
Tallahassee, FL 32301-3021


Joseph A. McGlothlin