

Nancy B. White  
General Counsel - FL

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5558

May 7, 2003

Mrs. Blanca S. Bayó  
Director, Division of the Commission  
Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 030301-TP**

**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.**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to AT&T of the Southern States, LLC, TCG South Florida, Inc. ("AT&T") and Comcast Phone of Florida, LLC's ("Comcast") Petitions to Intervene, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,



Nancy B. White

(KA)

Enclosures

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey

DOCUMENT NUMBER-DATE

04156 MAY-7 8

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE  
DOCKET NO. 030301-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 7th day of May, 2003 to the following:

Wayne Knight  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[wknight@psc.state.fl.us](mailto:wknight@psc.state.fl.us)

Virginia Tate, Esq.  
Senior Attorney  
AT&T  
1200 Peachtree Street, NE  
Suite 8100  
Atlanta, GA 30309  
(404) 810-4922  
[vctate@att.com](mailto:vctate@att.com)


Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
[mfeil@floridadigital.net](mailto:mfeil@floridadigital.net)

Lisa A. Riley  
Docket Manager  
1200 Peachtree Street, NE  
Suite 8100  
Atlanta, GA 30309  
(404) 810-7812  
[lriley@att.com](mailto:lriley@att.com)

Russell I. Zuckerman, Esq.  
Sr. Vice President and General Counsel  
Mpower Communications Corp.  
175 Sully's Trail  
Suite 300  
Pittsford, NY 14534  
Tel. No. (582) 218-6567  
[rzuckerman@mpowercom.com](mailto:rzuckerman@mpowercom.com)

Richard E. Heatter, Esq.  
VP Legal and Regulatory Affairs  
Mpower Communications Corp.  
175 Sully's Trail  
Suite 300  
Pittsford, NY 14534  
Tel. No. (582) 218-6556  
[rheatter@mpowercom.com](mailto:rheatter@mpowercom.com)

Loretta A. Cecil, Esq.  
Womble Carlyle Sandridge  
& Rice, PLLC  
1201 West Peachtree Street  
Atlanta, GA 30309  
Tel. No. (404) 888-7437  
[lcecil@wcsr.com](mailto:lcecil@wcsr.com)  
Atty. for Comcast

  
\_\_\_\_\_  
Nancy B. White (KA)

**FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Florida Digital ) Docket No. 030301-TP  
Network, Inc. and Mpower Communica- )  
tions Corp. for Expedited Temporary and )  
Permanent Relief against BellSouth )  
Telecommunications, Inc., For its Anti- )  
competitive Conduct Regarding Florida )  
Digital Network, Inc.'s Proposed )  
Acquisition of the Assets and Customer )  
Base of Mpower Communications Corp. )  
In Florida )  
\_\_\_\_\_ ) Filed: May 7, 2003

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION  
TO AT&T'S AND COMCAST'S PETITIONS TO INTERVENE**

NOW COMES, BellSouth Telecommunications, Inc. ("BellSouth"), who submits this Opposition to AT&T Communications of the Southern States, LLC and TCG South Florida, Inc. ("AT&T") and Comcast Phone of Florida, LLC ("Comcast") Petitions to Intervene in the above captioned docket. The Florida Public Service Commission ("FPSC") should deny AT&T's and Comcast's Petitions to Intervene for the following reasons:

1. On March 27, 2003, Florida Digital Network, Inc. ("FDN") and MPower Communications Corp. ("MPower") filed a petition against BellSouth complaining about issues that have arisen as a result of FDN's acquisition of MPower's assets and customer base in Florida.

2. Rule 28-106.205, Florida Administrative Code provides that a person whose substantial interest may be determined in the proceeding may petition for leave to intervene. The rule requires that the petition "shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to

agency rule, or that the substantial interests of the interview are subject to determination or will be affected through the proceeding.”

3. “Standing under Chapter 120, Florida Statutes . . . is established by statute.” Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, 595 So. 2d 186, 189 (Fla. 1<sup>st</sup> DCA 1992). Section 120.565, Florida Statutes, provides that any substantially affected person may seek a declaratory statement. Likewise, any substantially affected party can intervene in a declaratory statement proceeding. See Chiles v. Dept. State, Div. Elections, 711 So. 2d 151, 155 (Fla. 1<sup>st</sup> DCA 1998).

4. A party seeking to establish a substantial interest must demonstrate that (1) he will suffer an injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing or intervene in proceedings already pending; and (2) that his substantial injury is of the type or nature which the proceeding is designed to protect. Friends of the Everglades, Inc., 595 So. 2d at 189; Florida Optometric Assoc. v. Dept. of Professional Regulation, 567 So. 2d 928, 932 (Fla. 1<sup>st</sup> DCA 1990).

5. As to the first prong of the test, the “immediacy requirement,” a party must establish that he or she will sustain an injury in fact. The focus in this requirement is to the degree of the injury. See Agrico Chem. Co. v. Dept. of Environ., Reg., 406 So. 2d 478, 482 (Fla. 1<sup>st</sup> DCA 1981). Concerns that are speculative or conjectural will not satisfy this requirement. See Agrico Chem.

Co., 406 So. 2d at 482. However, Florida courts have determined that economic injury is sufficient to establish standing.<sup>1</sup>

6. The second prong of the standing test, the “zone of interest” requirement, deals with the nature of the injury. Agrico, 406 So. 2d at 482. This requirement limits standing to those persons that the Legislature intended to be protected by the administrative proceeding. The statutes in question define the scope or nature of the proceeding and thus govern the analysis. Friends of the Everglades, Inc., 595 So. 2d at 189.

7. Neither AT&T nor Comcast has made any attempt to demonstrate how their substantial interests will be affected by this proceeding, other than a blanket statement that they utilize the operations support systems of incumbent local exchange carriers. The complaint filed by FDN addresses a very specific situation involving the acquisition by FDN of select assets belonging to Mpower and what the appropriate process and charges should be for BellSouth transferring such assets under the applicable interconnection agreement. Neither AT&T nor Comcast are involved in the acquisition between FDN and Mpower and neither AT&T nor Comcast are parties to the interconnection agreements between BellSouth and FDN or Mpower. More than a statement that an intervening party happens to use the same operational systems that may, or may not, be used in the transfer is required in order to show that their substantial interests will be affected by this proceeding.

---

<sup>1</sup> The court in Agrico explained that “in licensing or permitting proceedings a claim of standing by third parties solely upon economic interest is not sufficient unless the permitting or licensing statute itself contemplates consideration of such interest.” Florida Med. Center v. Dept. Health & Rehab. Serv., 484 So. 2d 1292, 1924-95 (Fla. 1<sup>st</sup> DCA 1996).

8. WHEREFORE, BellSouth requests that the Commission reject the intervention of AT&T and Comcast.

Respectfully submitted this 7<sup>th</sup> day of May, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*

NANCY B. WHITE

JAMES MEZA III

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5558

(w)

*R. Douglas Lackey*

R. DOUGLAS LACKEY

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0747

(w)

#489868