FDN COMMUNICATIONS

ORIGINAL

July 17, 2003

Ms. Blanca Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

via Overnight Mail

COMMISSION CLERK
JUL 18 AM 10:42

Re: Docket No. 030301 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,

Please find enclosed for filing in the above dockets an original and seven (7) copies of the Pre-filed Direct Testimony and Exhibits of Matthew Blocha, Scott Sarem, and John Drager submitted by Florida Digital Network, Inc. d/b/a FDN Communications ("FDN"), and Mpower Communications Corp. ("Mpower").

Also enclosed for filing in this docket is an original and seven (7) copies of FDN's Notice of Serving Interrogatories on BellSouth Telecommunications, Inc.

If you have any questions regarding the enclosed, please call me at 407-835-0460.

Sincerely,

Matthew Feil

Matthew Feil
Florida Digital Network
General Counsel

DNs 06424-03 - BLOCHA
06425-03 - SAREM
06426-03 - DRAGER
06427-03 - NOTICE OF SERVING

3+1 original

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below, other than those marked with an (*) who have been sent a copy via overnight mail, this 18 day of July, 2003.

BellSouth Telecommunications, Inc.
Nancy B. White/James Meza III
C/O Ms. Nancy H. Sims
150 S. Monroe Street
Suite 400
Tallahassee, FL 32301-1556
nancy.sims@bellsouth.com

Comcast Phone of Florida, LLC
1500 Market Street
34th Floor, East Tower
Philadelphia, PA 19102-2148

Womble Carlyle Law Firm (GA)
Loretta A. Cecil, Esq.
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309
lcecil@wcsr.com

AT&T
Tracy Hatch
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
thatch@att.com

Ms. Felicia Banks
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
fbanks@psc.state.fl.us

AT&T/TCG
Lisa A. Riley/Virginia C. Tate
1200 Peachtree Street, N.E.
Suite 8100
Atlanta, GA 30309

Mpower Communications Corp
Richard Heatter/Russell I Zuckerman
175 Sully's Trail
Suite 300
Pittsford, NY 14534-4558
rheatter@mpowercom.com
rzuckerman@mpowercom.com

Matthew Feil
Florida Digital Network
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
(407) 835-0460
mfeil@floridadigital.net

BEFORE THE FLORIDA 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 Date: May 21, 2003

PREFILED DIRECT TESTIMONY OF

MATTHEW J. BLOCHA

SUBMITTED BY:

FDN COMMUNICATIONS AND MPOWER COMMUNICATIONS

Filed July 18, 2003

DOCUMENT NUMBER-DATE
06424 JUL 18 8
FPSC-COMMISSION CLERK

Q. Please state your name and address.

A. My name is Matthew J. Blocha. My business address is 390 North Orange Avenue, Suite 2000, Orlando, Florida, 32801.

Q. Who do you work for?

A. I am Chief Technology Officer ("CTO") for Florida Digital Network, Inc. d/b/a FDN Communications ("FDN").

Q. What are your responsibilities as Vice President FDN?

A. As CTO of FDN, I am ultimately responsible for all aspects of FDN's operational support systems ("OSS"), billing systems, corporate IT and new product development.

I was responsible for the design and development of FDN's electronic ordering and customer information system. Though improved over time, that system has been in place from FDN's inception to the present.

Q. Please describe your education and your work experience in the telecommunications sector.

A. I received a B.S. Degree in Business Administration with a Marketing Major from Oklahoma State University in 1991. My career in telecom began with Williams Telecommunications Group ("WilTel") as a Systems Analyst responsible for implementing a sales automation system that interfaced laptop computers to the company's mainframe systems. Following the project implementation, I continued employment with WilTel in a Florida-based data services position until moving into a Marketing position in 1995.

Thereafter, I served as Director of Product Development with both Brooks Fiber Communications, Inc. and Metro Access Networks ("MAN"). While at MAN, I developed a successful ATM-based "Friendly Interface Service" (FIS) for delivering high-speed connections to corporate local area networks ("LANs") statewide. Brooks Fiber was acquired by WorldCom and I assumed the position of manager of strategic data planning. Then, in 1998, I was a co-founder of FDN.

Q. Have you previously testified in a regulatory proceeding before a state utility commission, the FCC or a hearing officer?

A. No.

Q. What is the purpose of your direct testimony in this proceeding?

A. I will address FDN's disagreements and concerns with BellSouth's demands and proposals relative to carrying out the transfer of the assets and customer base of Mpower to FDN.

Q. Please briefly describe FDN's operations.

A. FDN is a facilities-based Florida CLEC. FDN is also an IXC, a data services provider (both dial-up and dedicated), and offers ISP and other Internet services. FDN was founded in 1998 with the mission of offering packaged services (local, long distance and Internet) to small- and medium-sized businesses. FDN launched operations in Orlando in April 1999 and expanded to Fort Lauderdale in May 1999 and to Jacksonville in June 1999.

A second round of expansion in West Palm Beach, Miami and the Tampa Bay area was completed in the first quarter of 2000.

FDN owns and operates Class 5 Nortel DMS-500 central office switches in Orlando, Tampa, Jacksonville, and Ft. Lauderdale. FDN's switches are connected by fiber optic cable owned or leased by FDN to nearby incumbent local exchange carrier (or "ILEC") tandem switches. FDN leases collocation cages or has virtual collocation space in over 130 ILEC wire centers in Florida. Remote switching equipment is installed at these collocation sites and from these sites FDN accesses ILEC UNE loops. Connectivity from the collocation sites to the central ILEC tandem switch is via T-1 circuits leased from the ILEC. FDN has invested over $100 Million in switch and collocation facilities throughout Florida, and to serve customers FDN relies upon its rights under the federal Telecommunications Act of 1996 (the "Act") to obtain "last mile" access to Florida consumers through the purchase of unbundled network elements (UNEs) from ILECs such as BellSouth. The vast majority of FDN's LSRs to BellSouth are for 2 wire voice grade UNE loops. FDN believes that FDN is one of the largest if not the largest procurer of UNE voice-grade loops in BellSouth territory in Florida.

FDN uses BellSouth's TAG gateway for electronic ordering. Using the system and software FDN developed for its own use, FDN accesses BellSouth customer service records ("CSRs") electronically, and FDN transmits virtually all of its local service requests ("LSRs") to Bell electronically.

Q. Please describe your involvement in the FDN – Mpower transaction.

A. I assisted and participated in the negotiations, provided input in management positions, reviewed customer data, performed analysis, and supervised acquisition related issues with the ILECs. I also headed the systems integration efforts, including the billing and inventory conversions.

Q. Please briefly describe the history of and reasons for the FDN-Mpower transaction from FDN's point of view.

A. FDN has invested substantial sums to build the infrastructure necessary to provide telecommunications services to small and medium sized business customers in its Florida markets. Providing service via the facilities-based approach as FDN has chosen, and which BellSouth, the FCC and this Commission have advocated as desirable and in the public interest, is a very capital intensive endeavor. To achieve sustainability and "scale," carriers like FDN must attain in a relatively short time frame significant growth in customers and customer revenues. The cost of customer acquisition, particularly for facilities-based carriers, can be high. Aside from the cost of compensating and enabling a sales force, FDN must pay significant nonrecurring charges to ILECs such as BellSouth to convert customers to FDN's services. FDN is also forced to carry the unrecovered costs associated with the BellSouth winback programs that FDN has criticized in another Commission docket.

So, depending on the particulars of a transaction, it may simply be more economical to attain customer growth and scale through acquisitions or mergers rather than through direct sales efforts. FDN and its investors are acutely aware of the considerations I stated and are mindful of other trends that point toward a climate of ALEC consolidation, e.g. cautious approach of the capital markets, the already crowded ALEC space in certain markets, a changing regulatory environment, the glut of ALEC bankruptcies, the general business cycle, etc. I note that just before this testimony was filed, BTI and ITC^DeltaCom announced merger plans. Many venture capitalists maintain the FDN-Mpower and BTI-ITC transactions should be the first of many and that capital availability will gravitate toward M&A activity.

FDN was born in Florida, and I emphasize that FDN is committed to staying in and succeeding in Florida. Other ALECs that have entered the Florida market may, for any of a number of reasons, view continued operations in Florida as not in their best long-term business interests. As Mr. Sarem states in his testimony, Mpower, also a facilities-based ALEC, made a business decision to focus its efforts and resources on operations in some states while selling its operations in others, Florida included. FDN became aware of Mpower's decision to sell certain of its holdings, and the parties eventually negotiated an asset purchase agreement for the Florida and Georgia holdings.

The Mpower customer base was similar to FDN's base, was compatible with FDN's operations, and was viewed as a solid addition to

FDN. Moreover, FDN believed it could achieve cost and service efficiencies through consolidating and improving functions and altering deployment strategies for certain assets. FDN viewed the acquisition as a critical step in FDN's efforts to reach scale, sustainability and profitability in the state.

Q. Please briefly describe FDN's interaction with BellSouth regarding the FDN-Mpower transaction.

A. FDN spoke with its BellSouth account representative and a member of BellSouth's Professional Services group about the Mpower transaction in late December 2002 when it became clear the asset purchase agreement would be signed. In early January 2003, there were additional conference calls involving BellSouth, FDN and Mpower and, thereafter, additional contacts and requests for follow-up information took place.

From these various contacts, FDN was concerned that some of the information we received verbally from BellSouth was inconsistent, and FDN was concerned that the transfer process BellSouth described was onerous and problematic. For instance, we were not given clear information as to whether the secondary service order charge BellSouth sought to assess for changing carrier codes on UNEs would apply per circuit or per order. We were told that no orders would be processed for each collocation for up to 30 days while BellSouth processed the change in carrier information; in other words, there would be rolling "black outs" or freezes for all ordering. We were also told that when BellSouth managed the carrier code change process for another ALEC with eight collocations and ten to twelve thousand lines, the entire process took six months. (The FDN-Mpower transaction involves roughly 75 collocations and over 60,000 lines in Florida and Georgia.)

On January 24, 2003, FDN sent BellSouth a letter requesting that BellSouth verify certain matters in writing and respond to FDN's concerns. A copy of this letter is attached as Exhibit No. ___ (MAB-1). Since the subject matter of the letter had been already been discussed among the parties verbally, FDN requested a response in ten days. BellSouth did not respond to FDN's letter until March 27, 2003, nearly two months after FDN's letter was sent. A copy of the response is attached as Exhibit No. ___ (MAB-2). The Mpower-FDN petition was filed shortly after BellSouth's response.

Q. What transfer issues do FDN and Mpower have with BellSouth that are yet to be resolved?

A. The outstanding issues fall into the following basic categories: (1) whether carrier codes on the Mpower assets needs to be changed at all (2) the cost for changing codes on UNEs and any associated services (like directory listings), (3) the process for changing carrier codes, (4) the interconnection trunk transfer process.

FDN also has a general concern with the way BellSouth approached the transfer. For instance, aside from the inconsistent or unclear information received along the way, BellSouth took sixty days after FDN requested written information to provide a response. This seemed an inordinate amount of time for a straight-forward inquiry. Additionally, BellSouth asserted that whether FDN assumed Mpower's interconnection agreement or not, FDN had to pay for and undertake the process to change carrier codes and BellSouth would not permit FDN to use Mpower's codes going-forward. So, no matter which way Mpower and FDN looked for a solution, BellSouth constructed obstacles. Further, BellSouth stated, if FDN did assume Mpower's interconnection agreement, BellSouth would unilaterally deem FDN's recently arbitrated agreement a nullity. FDN and the Commission had spent more than a year resolving the FDN-BellSouth arbitration case (Docket No. 010098), and the Commission made a ruling adverse to BellSouth's interests. To FDN, it appeared that BellSouth was very interested in eliminating that Commission's decision any way it could. BellSouth also informed FDN that if FDN did not agree to BellSouth's demands for changing carrier codes but issued orders for new lines, adds or moves for Mpower assets, BellSouth would not process those orders, though it would process orders for disconnects. Finally, BellSouth informed FDN that BellSouth would make no exceptions to the ordering black-out rule once the process of changing codes was started in an LSO. In summary, at every turn, BellSouth was trying to box-in FDN, gain a competitive advantage for itself and force Mpower and FDN to pay an exorbitant price for the transfer. All Mpower and FDN were looking for, and are still looking for, is a simple resolution on reasonable terms.

Q. Mpower-FDN filed a pleading that initiated this case and requested relief from the Commission. What is FDN's position regarding the relief it should receive from the Commission in this case?

A. Mpower and FDN would probably not have disputed changing carrier codes if BellSouth had not demanded such an exorbitant fee for doing so and if the process for doing so were not so fraught with problems. The fee and the process quoted by BellSouth are driven by BellSouth's claim that it can only make the change through manual processes. FDN believes it should be able to continue to use the Mpower carrier codes until and unless the fees and the process are reasonable and workable. If the Commission deems it necessary to have the codes changed, there should be a seamless and inexpensive means for doing so, as I will discuss later in my testimony.

FDN maintains that BellSouth's conduct in this matter is anticompetitive and cannot be permitted to stand. At last count, there are over 400 certificated ALECs in Florida. The majority of these can never reach sustainability; however, they can contribute to others achieving sustainability via M&A transactions. The Commission must create an environment conducive to M&A in order to achieve enduring competition in the state, for the benefit of Florida's consumers. But BellSouth's demands relative to transfers can obliterate the economics of an asset acquisition. BellSouth's fee demands can be seen as a significant increase in UNE costs or a substantial market exit fee. In any case, it is certainly a deterrent to industry consolidation and a barrier to entry that the Commission should not abide.

Q. Please discuss the outstanding transfer issues you summarized earlier.

A. The first issue is whether the carrier codes on UNEs and related services (directory listings is the related service BellSouth has mentioned) must be changed. As I stated earlier, FDN's position is that as long as BellSouth demands an exorbitant transfer fee and subjects FDN to an ineffective process for changing the codes, FDN should be able to operate using Mpower's codes. Put another way, while the anticompetitive barriers persist, FDN (and any other affected ALEC) should be able to side-step those barriers, provided there are no significant hazards resulting from the solution chosen.

Q. Please describe how FDN has been ordering and paying for BellSouth services to the Mpower assets since shortly after FDN and Mpower signed the Asset Purchase Agreement in January.

A. Basically, FDN has been operating as an agent of Mpower. We modified our OSS to allow us to order and interface with BellSouth's systems as if we were Mpower. We have built our systems to allow FDN to both send and receive orders as FDN or Mpower, depending on what facilities the order relates to. Further, for several months, BellSouth has sent the Mpower bills to FDN, and FDN has paid the bills directly to BellSouth.

Q. Have there been any technical or practical problems with FDN's use of Mpower's carrier codes?

A. No, and I would not expect there to be any in the future. FDN maintains that there is no reason why FDN should be foreclosed from operating as it has for the last several months. FDN has assurance from Mpower that

Mpower will not use and will not permit others to use the Mpower codes in the BellSouth nine-state region. Additionally, Mpower and FDN are not aware of any binding legal requirement mandating a change in the codes. BellSouth appears to be contriving arguments on the necessity for changing the ACNAs in order to force Mpower and FDN into paying BellSouth over $2.4 million in transfer fees.

Q. What is the next outstanding issue regarding the transfer that you wish to discuss?

A. Next is BellSouth's quoted fees for changing carrier codes. The fees BellSouth has demanded may total over $2.4 million on UNEs and directory listings alone, or more than $35 per UNE loop. BellSouth has maintained that to change carrier identifiers on UNEs, a manual service order charge will apply for each account and a secondary service charge ("SSC") from BellSouth's retail General Subscriber Tariff ("GSST") will be assessed. At one time, BellSouth indicated the SSC was assessed per circuit, but the GSST indicates it is a per request charge. The manual service order charge in Florida is $11.90 per LSR and in Georgia is $18.94 for the first USOC and $8.42 for each additional USOC on an LSR. The SCC is contained in Section A4 of BellSouth's GSST in the respective states. The Florida GSST lists a charge of $10 for residential and $19 for business; and the Georgia GSST lists a charge of $9.95 for residential and $15 for business. The vast majority of the UNE loops involved in this case are serving business customers. BellSouth has asserted that the ACNA also appears in directory listing records, and that appearance of the ACNA would likewise have to be changed via order submissions. This additional change would come at the price of another ordering charge and another SCC assessed per order.

It is not entirely clear to FDN how or why charges from the GSST are mandated or justified under the circumstances. Moreover, BellSouth seems to think that it is entitled to collect the SCC two times: on an order to change codes for a UNE and on an order to change codes for the directory listing. In Florida, this amounts to $38 per account in SCCs alone. FDN thinks that is patently unreasonable for what should be a simple records change.

Just as troubling is the purported lack of a mechanized process for ordering the change in carriers. The Commission cannot realistically expect an efficient industry consolidation on the horizon when BellSouth is laboring with a manual process and assessing manual ordering charges for every deal that may involve a change in carrier codes. Besides, FDN would think BellSouth would want a mechanized process in place as soon as possible to make more efficient use of its resources.

Individually and in the aggregate, the charges BellSouth proposes to apply are unreasonable. Something is clearly wrong when it's cheaper for an ALEC to pay BellSouth to do physical work for disconnecting a loop and terminating service to a customer than to pay BellSouth to simply change the codes for the carrier to whom BellSouth directs its bills. For disconnects under current Florida Commission rates, there is an electronic order charge of $.20 and a non-recurring charge ("NRC") of $25.62 for the first and $6.57 for additional loops. So, an electronic order to disconnect one line costs about $26, and BellSouth wants to charge over $35 a loop to change carrier codes. Furthermore, consider that an ALEC today that orders via an electronic interface new loops for a three line customer in Zone 1, for example, for SL-1 service level, the ALEC is charged roughly $97 in nonrecurring charges ($1.52 in electronic ordering charges and a total of $95.23 in NRCs). That's about $32 a loop for installing the new loops. BellSouth wants to charge more than that, over $35 a loop, just for changing the carrier codes on loops that Mpower already paid to have installed. Stated differently, BellSouth basically wants to significantly increase, even double, the per loop cost for ALECs involved in asset acquisition.

Q. What is the next outstanding issue you wish to discuss?

A. Next is BellSouth's process for changing carrier codes. As I stated earlier, BellSouth proposes rolling black-outs for UNE ordering as BellSouth manually process the changes in carrier codes on a collocation by collocation basis. FDN understands that this means no orders will be processed for adds, changes or moves for a given collocation for "up to" 30 days, no exceptions. As a practical matter then, if you were a customer and needed to add a line or lines to meet the changing needs of your business during BellSouth's manual conversion process, you just have to wait. Obviously, BellSouth's process would not be transparent to the customers and would be highly disadvantageous to the acquiring carrier. The customer will not care that the delay in his/her service is attributable to BellSouth; the customer just wants service. So, not only does FDN lose revenue associated with the services it cannot provide during the black-out period, it could lose the customer altogether because the customer can go back to BellSouth and have its needs met in days if not hours. Making matters still worse, the customer could return to BellSouth under a Key Customer deal with connection charges waived, while FDN is expected to pay over $35 a loop and, if the customer leaves, BellSouth will bill a loop disconnect charge.

I think the Commission also has to look at BellSouth's rolling blackouts from a broader perspective. As I mentioned above, BellSouth told FDN that in a case where BellSouth project managed the transfer of 10,000 to 12,000 loops at eight collocations, the manual process took six months. The transaction in this case could involve over 65,000 loops in 75 collocations. One therefore has to wonder how long BellSouth's inefficient process will take in this case. If, despite BellSouth's anticompetitive practices regarding transfers, other acquisitions are attempted, the aggregate impact of BellSouth's ordering blackouts on competition may prove staggering to ALEC market share over time.

Q. What is the next outstanding issue you wish to discuss?

A. The transfer process for interconnection trunks. FDN was told that there was a per billing access number ("BAN") and per trunk fee for transferring interconnection trunks. Specifically, FDN was verbally quoted a $60 per BAN charge and a $7 per trunk charge. Then, to our surprise, in its March 27 letter, BellSouth stated that there was no established fee, there was not even an established process, for recognizing a change in carriers on interconnections trunks. BellSouth stated that FDN would have to submit a new business request ("NBR") instead. Though FDN and BellSouth are still exchanging information relative to interconnection trunks, at this time there is no resolution. If carrier designations must be changed relative to interconnection trunks, FDN would agree to nothing higher than the fees BellSouth quoted before.

Q. Does FDN maintain that BellSouth's conduct regarding the transfer is anticompetitive?

A. Yes, on a number of levels, as I have mentioned earlier. Market conditions point toward industry consolidation. The FDN-Mpower and BTI-ITC deals are examples of what should come, and what the Commission should encourage. However, at this juncture, BellSouth is standing firmly in the way. Of the over 400 certified ALECs in Florida, none have significant overall market share. Competitors will have limited ability to strengthen their businesses through consolidation because BellSouth demands fees that equate to a second install charge and imposes a process that puts competitors at a severe disadvantage. Thus, BellSouth deters consolidation and promotes a market where ALECs remain fractured, relatively small in size -- with 0.5%, 1% and 1.5% or less market share a piece -- and perpetually struggling to reach scale. When business factors make it desirable for a competitor to leave a market, the competitor will not be able to obtain a fair price for its assets because the market price will need adjustment to reflect BellSouth's fees and the risks associated with BellSouth's processes. ALECs may then face the choice of staying in the market and perpetuating losses and/or simply surrendering its customer base to whoever wants it. Moreover, competitors will be less likely to accept the business risks of ever entering the market because BellSouth's transfer charges constitute a de facto market exit fee. In other words, the significant market exit fee is a barrier to market entry.

I think the Commission should also consider that much of the recent gains in ALEC market share in the state are attributable to UNE-P. UNE-P providers do not have the same cost and geography issues as facilities-based providers, like FDN and Mpower, but facilities-based providers offer long-term advantages for the market that UNE-P providers do not. The Commission should not permit BellSouth to make matters worse for facilities-based providers struggling to compete with BellSouth and with UNE-P providers by deterring consolidation within the facilities-based group.

FDN maintains that BellSouth's demands pose a significant obstacle to industry consolidation and barrier to entry. FDN should be able to operate the Mpower assets as it has previously until those barriers come down.

FDN intends to concentrate on its Florida base and to explore becoming a bigger regional provider. FDN believes that one of the keys to its progress so far has been its strategy of keeping a regional focus. Consistent with that regional strategy, FDN hopes to be involved with other "partial" consolidations with national ALECs having holdings in Florida and/or the Southeast. However, the adverse cost and operational barriers BellSouth is trying to impose here present a huge obstacle. Further, looking at the lack of a mechanized process and 67,000 UNEs to transfer in Florida is one thing, but when one considers the impact of these issues on a broader basis, with an eye toward M&A activity for ALECs with multi-state holdings, the problem in Florida spills over into the national marketplace.

Q. Did Mpower and FDN also have cause to interact with Verizon regarding the Mpower-FDN transaction?

Yes. Mpower's Florida holdings included a switch, fiber, roughly 27 collocations and about 7,000 UNE loops in the Tampa area served by Verizon. FDN has been working cooperatively with Verizon. Verizon and FDN exchanged factual data regarding Mpower services with Verizon (circuits IDs, BANs, etc.). Verizon requested: (1) an assignment of the Verizon-Mpower interconnection agreement to FDN, with FDN to choose to operate under either its or Mpower's interconnection agreement with Verizon going-forward and (2) changes to identifying carrier codes for the services affected. Verizon stated it would charge $16 per order (equating to roughly $4.57 per line) on UNE loops for the records change. Although this charge appeared higher than what FDN thought such a charge should be, given the circumstances, such as the number of UNEs involved, Verizon's commitment to cooperate during the transfer process, etc., FDN accepted.

Q. Are there any outstanding issues between FDN and Verizon regarding the Mpower transaction?

A. The process of changing codes has not yet taken place with Verizon, but it is about to. The two sides are working to insure as smooth a transition as possible. Issues may arise, but we are hopeful of working through them.

Q. How does FDN view Issues 1 and 2 in this case, which ask what do laws, rules, standards, regulations and interconnection agreements provide regarding the Mpower-FDN transaction?

A. I'm not a lawyer but FDN's position in the case is as I have stated above. The real issue is whether the Commission wants to stop BellSouth's anticompetitive conduct and encourage industry consolidation and market entry. FDN has not found in the Federal Act or Chapter 364 of Florida Statutes specific provisions directly addressing conditions for the interaction of ILECs and CLECs in a CLEC-to-CLEC sales environment. If there were such provisions, the parties might not be addressing this issue. Certainly, the Act and Chapter 364 contain guiding principles the Commission can look to, and chief among those principles is that competition should be promoted. The Commission must have authority to correct anticompetitive conduct by carriers; otherwise, the Commission's role as regulator would be a marginal one at best.

One FCC rule that is directly on point when it comes to carrier sales is Rule 47 C.F.R. § 64.1120(e), which is part of the slamming rules. Mpower and FDN complied with that rule, but the rule does not address carrier code issues. The rule does illustrate, however, that the FCC recognized the reality of ALEC M&A activity and wanted a streamlined process to facilitate carrier changes. FCC rules address requirements for such things as parity and TELRIC pricing to insure that ALECs receive fair and equal treatment and have a reasonable opportunity to compete. FDN does not think that those principles in the FCC rules are consistent with the high-priced and operationally disadvantageous processes we are discussing in this case.

As I stated earlier, FDN has found no clear-cut legal requirement that FDN must change the carrier codes for the acquisition assets. The FDN and Mpower interconnection agreements permit assignment but do not directly address changes to carrier codes in a transfer. The FDN interconnection agreement with BellSouth in Florida does provide in ¶1.3 of Attachment 2, the following:

> BellSouth shall, upon request of FDN, and to the extent technically feasible, provide FDN access to its Network Elements for the provision of FDN's telecommunications services. If no rate is identified in this Agreement, the rate for specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

If this provision is applicable to the present situation, there is no rate for the specific service or function at issue, so it appears the parties are free to negotiate one. Negotiate a price is what the parties have attempted to do, and we have thus far been unsuccessful.

Q. What is FDN's position regarding Issues 5 A and B, which ask can and should the Commission require BellSouth to modify its proposed transfer process?

A. FDN maintains the Commission must have authority to order BellSouth to take any action reasonably necessary to cure unfair or anticompetitive conduct by BellSouth. FDN's position is as I have stated above. The Commission must order BellSouth to permit FDN to continue operating Mpower assets using Mpower's codes until and unless BellSouth has a reasonable process for changing carrier codes at a reasonable price.

Q. What is FDN's position on Issue 5C, which asks if the Commission requires BellSouth to modify all or part of the transfer process, what are the appropriate rates, terms and conditions for the transfer process?

A. Issues 4 and 5C are related issues in FDN's view because BellSouth's current terms and conditions are definitely not acceptable if carrier codes must be changed. Accordingly, if the Commission finds that carrier codes for the subject assets must be changed, FDN recommends witness Drager's project update approach. FDN believes this approach should be workable and would be the quickest and least expensive way for dealing with code changes associated with the FDN-Mpower transaction. If, Mr. Drager's approach is rejected, Bell should be required to modify its systems so carrier code changes are processed electronically as a records only change. Order submissions required, if any, should be electronic, and the Commission's already approved mechanized ordering charges would be applicable. The interval for processing such orders should be consistent with standard intervals for similar changes made on per loop basis. Mpower and FDN should have to pay no more than $8 per account in non-ordering charges for changing carrier codes. There should no rolling order black outs or, at least, the transition for changing codes must be transparent to the end use customers. FDN should be allowed to operate with the Mpower codes until either Mr. Drager's solution is executed or the foregoing conditions are met. There should also be a simple records change process for interconnection trunks at rates no greater than as I noted earlier in my testimony.

Q. Does that conclude your direct testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by MPower Communications	)	
Corp. and Florida Digital Network, Inc. for	)	Docket No. 030301-TP
Expedited Temporary and Permanent Relief	)	
Against BellSouth Telecommunications, Inc.	)	
For Alleged Anticompetitive Conduct	)	
Regarding Florida Digital Network Inc.'s	)	
Proposed Acquisition of Assets and	)	Date: May 21, 2003
Customer Base of MPower Communications	)	
Corp.	)	
	)	

PREFILED DIRECT EXHIBIT MJB-1

FILED WITH TESTIMONY OF MATTHEW J. BLOCHA

SUBMITTED BY:

FDN COMMUNICATIONS AND MPOWER COMMUNICATIONS

Filed July 18, 2003

Florida
Digital
Network

January 24, 2003

BellSouth Telecommunications
Andrew Caldarello
600 North 19th Street
9th Floor
Birmingham, AL 35203

Re: Sale of Assets by Mpower Communications to Florida Digital Network

Dear Mr. Caldarello:

I write on behalf of Florida Digital Network, Inc. and its affiliates ("FDN") to request that you provide me specific written information to assist FDN in completing and transfer of certain assets from Mpower Communications and its affiliates ("Mpower") to FDN. As we have informed you, FDN is acquiring essentially all of Mpower's telecommunications assets in the states of Florida and Georgia.

FDN greatly appreciates the information that your company's representatives have provided verbally, through conference calls, and by email over the last several weeks. However, FDN must be certain of its and your company's course of conduct as part of this transfer and we believe that some detailed information is still lacking.

Accordingly, I ask that you please provide written response to the following requests for information: (1) state the specific costs, terms and conditions your company would propose for an assignment of MPower's interconnection, UNE, resale and collocation agreement(s) to FDN, (2) identify the mechanisms your company would expect to employ for having one FDN, rather than multiple (FDN and an Mpower legacy) agreements, going-forward, (3) itemize procedures, processes and prices for transferring ownership from Mpower to FDN on all Mpower collocations, loops, special access circuits, and interconnection trunks, etc. within your company's jurisdiction in Florida and Georgia, (4) explain (a) why your company maintains it cannot process the change of ownership as a simple records change (through mechanized and systemic applications that will switch the carrier name, billing and other identifying information in your company's systems and records), rather than, for instance, requiring FDN to submit a manual LSR to change carrier information on every UNE loop being transferred, and (b) if your company can develop a service/product that will achieve the desired transfer of ownership in a more streamlined fashion, more like a simple records change, and whether your company can and will expedite that development, (5) since your company representatives have acknowledged that changing carrier name, billing and identifying

N G D I S T A N
'range Ave Suite 2000 Orl:
45 0300 Fax 407.835.0309

information from Mpower to FDN on all Mpower collocations, loops, special access circuits, and interconnection trunks, etc. under your company's existing processes and procedures would take a significant period of time to achieve, please confirm (a) that your company commits to coordinate activities with FDN so as to achieve any conversion in an orderly fashion, while making efficient use of your company's and FDN's resources and minimizing any inconvenience to the end users and (b) that your company agrees not to disrupt FDN's operating the former Mpower assets and services until the transfer process is resolved.

I ask that you provide me a written response to this letter in no less than 10 days. If you have any questions, please contact me at 407-835-0460.

Sincerely,

COPY

Matthew Feil

BEFORE THE FLORIDA 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 Date: May 21, 2003

PREFILED DIRECT EXHIBIT MJB-2

FILED WITH TESTIMONY OF MATTHEW J. BLOCHA

SUBMITTED BY:

FDN COMMUNICATIONS AND MPOWER COMMUNICATIONS

Filed July 18, 2003

BELLSOUTH

BellSouth Telecommunications, Inc.
600 North 19th Street
8th Floor
Birmingham, AL 35203

March 27, 2003

Mr. Matthew Feil
Florida Digital Network
390 North Orange Ave
Suite 2000
Orlando, FL 32801

RE: Sale of Assets by Mpower Communications to Florida Digital Network

Dear Mr. Feil:

This is in response to your letter to Andrew Caldarello dated January 24, 2003, requesting specific costs, processes and procedures for the asset transfer of Mpower Communications (Mpower) to Florida Digital Network (FDN). This will also address Mpower's letter of March 6, 2003, requesting BellSouth's consent to assignment by Mpower to FDN of their Florida and Georgia Interconnection Agreements. I apologize for the delay in responding to your original letter, however, I believe that this letter provides more clarity to what we have been discussing verbally for the past two months. Following are BellSouth's responses to your questions.

<u>FDN Question #1:</u> State the specific costs, terms and conditions your company would propose for an assignment of Mpower's Interconnection, UNE, Resale, and Collocation agreement(s) to FDN.

<u>BellSouth Response</u>: FDN will need to provide notice to the BellSouth Account Team regarding the acquisition of Mpower, including the means to be utilized by FDN to continue operating the assets. Specifically, FDN will need to advise BellSouth whether 1) it desires to pursue an assignment of the Mpower Interconnection Agreement (which would include all of the services thereunder) (hereinafter referred to as "Option 1"), or 2) it desires to pursue a transfer of only the services to FDN (without an assignment of the Mpower Interconnection Agreement) (hereinafter referred to as "Option 2)". The following is a brief explanation of the two options:

<u>Option 1</u>

Pursuant to the letter from Mpower dated March 6, 2003, it appears that FDN and Mpower contemplate pursuing Option 1 - an assignment of the Mpower Interconnection Agreement to FDN for both Florida and Georgia. Although this was previously mentioned to FDN by BellSouth's attorney, Rhona Reynolds, during our discussions on this transfer, I would like to remind you that only one Interconnection Agreement can be effective in any state between the same two parties. As such, if FDN wishes to pursue Option 1, the assigned Interconnection Agreement would supersede and replace the current FDN/ BellSouth Interconnection Agreements in Florida and Georgia, rendering them null and void. The name and associated Access Customer Name Abbreviation (ACNA), Operating Company

Number (OCN), and Carrier Identification Code (CIC) may need to be changed to reflect FDN as the contracting party under that assigned agreement. In conjunction with this assignment, all FDN services currently governed by the FDN Interconnection Agreement would have to be transferred under the assigned Mpower Interconnection Agreement; and would, thereafter, be controlled by the rates, terms and conditions of that agreement. Based on our previous discussions with FDN, this was not what BellSouth understood that FDN was interested in pursuing, since FDN has an existing agreement in both Florida and Georgia. Consequently, BellSouth asks that FDN confirm its intent, based on the above understanding, to the BellSouth Account Team.

Option 2

Under Option 2, the services under the Mpower Interconnection Agreement would be transferred to FDN. The transferred services would be governed by FDN's existing Interconnection Agreements in Florida and Georgia. Existing FDN services would continue to be governed by the existing FDN Interconnection Agreement in Florida. The applicable codes related to those transferred services would need to be changed to reflect FDN as the operating carrier. With respect to the Interconnection Agreement in Georgia, FDN will have to provide to the Account Team an ACNA, OCN, and CIC code to establish billing under this new contract 30 days prior to placing orders thereunder. Again, based on the prior discussion between our companies on this issue, BellSouth understood that FDN desired to pursue Option 2; however, pursuant to the letter from Mpower dated March 6, 2003, it appears that FDN and Mpower contemplate implementing Option 1, an assignment of the Mpower Interconnection Agreement to FDN for both Florida and Georgia. Before BellSouth can proceed any further, FDN and Mpower need to confirm which option they wish to pursue.

As part of the transfer of assets, if Mpower has access to BellSouth's poles, ducts, conduit or rights of way under either an Interconnection Agreement or License Agreement and FDN wishes to assume those, then Mpower will need to either assign that agreement to FDN or transfer the rights to FDN and FDN will need to execute its own License Agreement.

With respect to tariffed services, a transfer of services agreement would be required pursuant to the tariff.

Upon FDN's confirmation of how it wishes to proceed, the Account Team will take FDN's request, review it with the appropriate organizations and coordinate BellSouth's actions. Under Option 1 (i.e., an assignment of the Mpower Interconnection Agreement), generally an Assignment and Assumption of the Interconnection Agreement document is negotiated between the parties - in this case, between Mpower, FDN and BellSouth. Under Option 2, (i.e. a transfer of the services (without an assignment of the Interconnection Agreement)), an agreement documenting the transfer will be executed by the parties.

For either scenario, the costs associated with the transfer of services are addressed below in item #3.

__FDN Question #2:__ On a going forward basis, identify the mechanisms your company would expect to employ for having one FDN rather than multiple (FDN and an Mpower legacy) agreements.

BellSouth Response: Please see BellSouth's response to Question #1. FDN may elect to have the FDN Interconnection Agreement control all services (both Mpower's and FDN's) or may elect to have the Mpower Interconnection Agreement control all services, if assigned to FDN. FDN will need to advise the BellSouth Contract Negotiator, John Hamman, how it wishes to proceed. Based on that decision, FDN will have to provide sufficient information for BellSouth to: 1) prepare the appropriate agreements; 2) determine if any additions are needed to the surviving agreement in order to add the applicable services; and, 3) perform the transfer of services to the FDN Interconnection Agreement or, alternatively, assign the Mpower Interconnection Agreement to FDN and then add the existing FDN services to that assigned agreement. Once the necessary documentation is executed and the services are transferred, the appropriate Interconnection Agreement will be cancelled.

FDN Question #3: Itemize the procedures, processes, and prices for transferring ownership from Mpower to FDN. This should include all Mpower collocations, loops, special access circuits, and interconnection trunks, etc., within your company's jurisdiction in Florida and Georgia.

BellSouth Response: Please see BellSouth's responses to Questions #1 and #2. BellSouth understands this request to be limited to Option 2 – i.e., the services are transferred to FDN, to be controlled by the FDN Interconnection Agreement in each state and the Mpower Interconnection Agreement is not assigned. The request will be processed separately for each state.

PROCESS

The Transfer of Ownership request requires that FDN submit certain information for the transfer of collocation arrangements and associated services. BellSouth has prepared the attached template (Attachment A) to be utilized to submit circuit and termination information for all DS0, DS1, and DS3 terminations provisioned for Mpower's (Virtual/Physical) Collocation arrangements. BellSouth previously provided you a copy of the Transfer of Ownership agreement, which would need to be completed and executed by both Parties. Changes may be required depending on how FDN decides to structure this transfer and whether there are virtual collocation arrangements in addition to physical collocation arrangements. Attachment B is the Virtual Collocation Equipment Inventory/Acceptance List. FDN must submit all information on all circuit terminations in order to prevent any disconnection of services. In addition, FDN must provide the Billing Account Number (BAN) for each circuit and include the following information: a) for DS0 services, your company will need to provide the Circuit Identification (ID) cable name(s) and cable pair range(s) for the arrangement; b) for DS1 and DS3 services, your company will need to provide the Circuit ID and TIE Connecting Facility Assignment (CFA) information. Please include the total number of services for each type of circuit. If FDN does not have a particular level of service(s), please indicate this as well. BellSouth will issue service orders to convert the services from the information provided and all applicable rearrangement charges will be assessed for each of the circuits converted.

For purposes of Switched and Special Access Services, once FDN provides BellSouth with specific circuit information, such as Billing Account Numbers (BAN), circuits and trunks, BellSouth will provide a cost estimate to FDN based upon the number of BANs, circuits, and trunks involved. Once FDN concurs with the cost estimate, the BellSouth Account

Team will send Transfer of Service (TOS) forms RF3957 & RF 3958 to FDN and Mpower for signature. After the BellSouth Account Team receives completed and signed TOS forms, FDN must then notify the BellSouth Account Team if a Design Layout Record (DLR) will be needed for circuit inventory. The BellSouth Interconnection Carrier Service Center will process the request as submitted.

For local trunking and facilities that do not terminate to a collocation arrangement, FDN will need to provide BellSouth with the same information that would be required for access services.

Resold services will be transferred using the standard conversion process. LSRs are to be submitted by FDN to the BellSouth Local Carrier Service Center (LCSC). Services will be converted using standard service intervals.

Please also see BellSouth's response regarding Charges, following, and the response to Question #4.

CHARGES

Rearrangement/Transfer charges for Switched and Special Access Services will be assessed as follows:

- Switched Access Services Tariff FCC No. 1, Section 6.8.9 – Per Billing Account Number is a nonrecurring charge of $60.00 and Per Trunk Side Service nonrecurring charge of $7.00 for each transmission path.
- Special Access Services Tariff FCC No. 1, Section 7.5.12 – Per Billing Account Number is a nonrecurring charge of $50.00 and a Per Circuit nonrecurring charge of $6.00 for each circuit

Rearrangement/Transfer Charges for Collocation will be assessed as follows:

- A Physical Collocation-Administrative Only Application Fee of $742.00 per Collocation Site in Florida and $740.83 per Collocation site in Georgia will apply according to the individual Interconnection Agreement.
- Once BellSouth receives the necessary information, FDN's request for Transfer of Ownership document is signed and accepted, and any necessary amendments to the Interconnection Agreement are executed, BellSouth can begin the process of transferring the services in accordance with that agreement.

Rearrangement/Transfer Charges for Unbundled Network Elements (UNEs) will be assessed as follows:

- Operational Support System (OSS) Service Order Manual (SOMAN) charge will apply. These charges can be found in Attachment 2 of your Interconnection Agreement.

- A Secondary Service Ordering Charge per circuit will also apply. These rates can be found in the state-specific General Subscriber Services Tariff (GSST), Section A4.3.
- Attachment B will be used for the transfer of UNEs. This is for the convenience of FDN. BellSouth will apply circuit and order specific rates as if FDN were issuing individual Local Service Requests (LSRs) to BellSouth for the transfer from Mpower to FDN.

Rearrangement/Transfer charges for Resale/Resold Products & Services will be assessed as follows:

- An Operational Support System (OSS) Service Order Manual (SOMAN) or Service Order Mechanized (SOMEC) charge will apply. These charges can be found in Attachment 2 of your Interconnection Agreement.
- A Secondary Service Ordering Charge per circuit will also apply. These rates can be found in the state-specific General Subscriber Services Tariff (GSST), Section A4.3.

Rearrangement/Transfer charges for Local Interconnection Trunking will be assessed as follows:

For Local Interconnection Trunking, FDN will need to issue a New Business Request (NBR) to BellSouth for the determination of the cost for the work activity associated with the change in local interconnection trunking and facilities.

- An accurate count of all impacted trunk groups by Two-Six Codes (TSC) and associated facilities will be required to submit this request.
- In addition, FDN may need to amend its current Interconnection Agreement to include the rate elements from the NBR.

<u>FDN Question #4</u>: Explain (a) why your company maintains it cannot process the change of ownership as a simple records change (through mechanized and systemic applications that will switch the carrier name, billing and other identifying information in your company's systems and records), rather than, for instance, requiring FDN to submit a manual LSR to change carrier information on every UNE loop being transferred, and (b) if your company can develop a service/product that will achieve the desired transfer of ownership in a more streamlined fashion, more like a simple records change, and whether your company can and will expedite that development.

<u>BellSouth Response:</u>

(a) A transfer of services requires individual BellSouth service orders to be issued to change all acquiring CLEC billing information [e.g., Operating Company Number (OCN), Access Customer Name Abbreviation (ACNA), Access Customer/Carrier Terminal Location (ACTL) and Carrier Identification Code (CIC)]. Information changed will depend on the type of service. Resale services will be transferred using the Conversion-As-Is process if only billing information is being changed. This process can be found in the BellSouth Business Rules for Local Ordering (BBR-LO). Resale and Unbundled Network Elements-Platform (UNE-P) conversion orders can be issued electronically or manually. Manual orders will be submitted via individual Local Service Orders (LSR) to the BellSouth Local Carrier Service Center (LCSC) and will incur SOMAN charges. Electronic orders can be issued via Telecommunications Access Gateway (TAG), Electronic Data Interchange (EDI) or Local Exchange Navigation System (LENS), and will incur Operations Support System (OSS) SOMEC charges. An electronic spreadsheet will also be accepted. The electronic spreadsheet will be converted to individual service orders manually by the LCSC representatives and, therefore, subject to manual OSS SOMAN charges. Please see rate information in Response #3.

Interconnection Trunking, UNE, and Collocation services require individual service orders to change CLEC identification in BellSouth downstream systems. CLEC identifying information is incorporated in cable/pair assignments and individual circuit records and, therefore, must be changed at the individual circuit/Billing Telephone Number (BTN) level as opposed to the Billing Account Number (BAN) level. Please see attachment B for a spreadsheet for the non-resale/UNE-P submission template.

(b) BellSouth initiated a NBR on January 8, 2003, at the request of FDN and Mpower, requesting BellSouth to develop an Automatic Process for Asset Transfer (GA.03-0212-00 and FL 03-0207-00). Phillip Cook's February 13, 2003 response to your NBR stated:

> "If Florida Digital Network (Florida Digital) is interested in BellSouth providing management assistance in converting the Mpower services to Florida Digital, BellSouth would be happy to provide such a professional service. The service could involve a spreadsheet conversion of the accounts that BellSouth would manage. The fees would be based upon functions performed by BellSouth at a market rate.
>
> If on the other hand, Florida Digital wishes BellSouth to develop a permanent electronic means to do a bulk conversion of a selling CLEC's accounts and services to an acquiring CLEC, BellSouth will require Florida Digital to submit a request to the Change Control Process (CCP). "

To date BellSouth has not received a response regarding the direction FDN wishes to pursue. Until BellSouth receives this documentation, no timeframe for project completion can be determined.

FDN Question #5: Since your company representatives have acknowledged that changing carrier name, billing and identifying information from Mpower to FDN on all Mpower collocations, loops, special access circuits, and interconnection trunks, etc. under your company's existing processes and procedures would take a significant period of time to achieve, please confirm (a) that your company commits to coordinate activities with FDN so as to achieve any conversion in an orderly fashion, while making efficient use of your company's and FDN's resources and minimizing any inconvenience to the end users and

(b) that your company agrees not to disrupt FDN's operating the former Mpower assets and services until the transfer process is resolved.

BellSouth Response:

(a) BellSouth will internally project manage the transfer process. If FDN wishes to have coordinated ordering activities, it may contact Professional Services as stated in NBR GA03-012-00 and FL03-0207-00

(b) BellSouth does not understand exactly what FDN means by BellSouth not disrupting "FDN's operating the former Mpower assets and services until the transfer process is resolved". Please clarify what this is in reference to. BellSouth does not object to FDN acting as Mpower's agent for purposes of Mpower placing orders under Mpower's agreement. However, as recently explained to you, BellSouth does not agree to FDN sharing the Mpower ACNA.

I trust that this will respond fully to your inquiry; however, in light of BellSouth's not knowing exactly how FDN wishes to proceed, it is difficult to address every scenario. I would like to propose a conference call once FDN has had an opportunity to review this information and has decided how it wishes to proceed. At that time, we will be better able to address more specifically any questions that you have. I will call you within the next week to arrange a mutually convenient time. In the meantime, if you have additional questions, please feel free to contact me at 205 321-4970.

Sincerely,

For William French

William D. French
Sales Support Director

cc: Andrew Caldarello, Account Manager - BellSouth
Tanya O'Neal, Local Contract Manager – BellSouth
Steve Trucks, Local Contract Manager – BellSouth
John Hamman, Contract Negotiator - BellSouth

Attachments