

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 TESTIMONY OF

SCOTT SAREM

SUBMITTED BY:

FDN COMMUNICATIONS AND MPOWER COMMUNICATIONS

Filed July 18, 2003

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FPSC-COMMISSION CLERK

1 **Q. Please state your name and address.**

2 A. My name is Scott Sarem. My business address is Mpower
3 Communications Corp., 9 Executive Circle, #275, Irvine, CA 92614.

4 **Q. Please briefly outline your educational background and related**
5 **experience.**

6 A. I am currently National Vice President of Strategic Relations for
7 Mpower Communications Corp. (“Mpower”). In that capacity, I am
8 responsible for managing the relationship between Mpower and the
9 Incumbent Local Exchange Carriers (“ILECs”) across the country, the main
10 suppliers of unbundled network elements to Mpower. My primary
11 responsibility is to work with the ILECs to ensure that they are complying
12 with the mandates of the Telecommunications Act of 1996 and the
13 performance measurements adopted by the state Public Utilities
14 Commissions. I have also been involved in lobbying the FCC on
15 telecommunications issues.

16 Prior to joining Mpower, I was Vice President of Regulatory Affairs
17 for Justice Technology (now US Telepacific Communications) where I was
18 responsible for starting their competitive local exchange carrier (“CLEC”).
19 As part of starting the Justice CLEC, I obtained CLEC certification in
20 California, drafted its business plan, helped to raise an initial investment, and
21 negotiated for the purchase of Justice’s local switch.

22 I hold a Juris Doctorate from the UCLA School of Law and a BA
23 degree in Political Science from the University of California at Riverside.

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

2 A. I was responsible for coordinating the operational aspects of the FDN
3 – Mpower transaction including working with BellSouth to ensure smooth
4 transfer of the UNEs and assets from Mpower to FDN.

5 **Q. Please briefly describe the history of and reasons for the FDN-
6 Mpower transaction from Mpower’s point of view.**

7 A. The FDN – Mpower transaction was one of several similar
8 transactions wherein Mpower sold assets to consolidate its operations and
9 concentrate its efforts to compete more effectively in other markets.

10 **Q. Please briefly describe Mpower’s interaction with BellSouth
11 regarding the FDN-Mpower transaction.**

12 A. On or about January 2, 2003, I advised the Mpower Account Team at
13 BellSouth of the FDN-Mpower transaction. As the main Mpower interface
14 with BellSouth, I initiated discussions regarding how to most efficiently
15 effect the FDN-Mpower transaction from an operational standpoint.
16 In the weeks prior to my involvement with the FDN – Mpower transaction, I
17 helped coordinate a similar asset transfer with Southwest Bell Telephone,
18 now SBC, in connection with a similar asset sale in Texas between Mpower
19 and Xspedius Telecommunications. As a result of that experience, I had at
20 various times discussed with William French and James Schenk of BellSouth
21 how SBC handled an identical transfer of UNE loops, transport and
22 collocations and explained that SBC was transferring the loops via electronic

1 service orders through its LEX interface at a \$2.58 rate. I suggested that
2 BellSouth should be capable of the same.

3 In early February 2003, I helped coordinate a letter authorizing FDN
4 to interface directly with BellSouth using Mpower's carrier codes, rights and
5 interests. As I had no feedback from the BellSouth Account Team regarding
6 the transfer, on February 14, 2003, I asked Mr. French whether any issues
7 were slowing the Mpower transfer to FDN. If there were problems, I
8 suggested that FDN be permitted to use Mpower's carrier codes going-
9 forward. On February 24, 2003, Mr. French advised that BellSouth would
10 not be willing to allow FDN to use Mpower's ACNA. By late February,
11 Mpower became increasingly concerned with BellSouth's lack of response to
12 my inquiries and suggestions and FDN's request for information. Although I
13 had made BellSouth well aware of the details of the transaction and provided
14 additional information regarding the manner in which SBC handled the
15 identical process, BellSouth seemed at a standstill as to how to address the
16 situation.

17 On February 27, 2003, I discussed with Mr. Schenk my concerns and
18 requested a written cost proposal. Mr. Schenk advised me that a transfer
19 price of \$9 per loop was something he thought could be a reasonable rate for
20 a transfer of the assets. Mr. Schenk indicated that there was historical
21 precedent for this rate. From this interaction, I understood at least that
22 BellSouth recognized available systems and processes were less than ideal
23 for handling, but there was flexibility in addressing, the situation. However,

1 thereafter, via emails on March 5, 13, 17 and 18, 2003, I attempted to confirm
2 in writing the \$9 rate discussed with Mr. Schenk, but did not receive
3 confirmation. The next document I saw from BellSouth on the transfer
4 subject was the March 27, 2003, letter attached to Mr. Blocha's testimony,
5 wherein BellSouth demanded the fees now in dispute.

6 **Q. Does Mpower agree with the outstanding transfer issues FDN has**
7 **identified?**

8 A. Yes. BellSouth appears to be trying to take advantage of this
9 transaction between CLECs so as to gain a competitive advantage. BellSouth
10 is seeking to extract excessive charges simply to process a change of
11 responsible carrier.

12 **Q. The Mpower-FDN pleading that initiated this case requested various**
13 **types of permanent relief. Is Mpower's position regarding the relief**
14 **requested the same as FDN's?**

15 A. Yes.

16 **Q. Could or would Mpower sell or assign its rights to the Mpower**
17 **carrier codes to another LEC in the BellSouth region as part of another**
18 **sale?**

19 A. No.

20 **Q. You mentioned earlier that Mpower sold its telecommunications**
21 **interests in other states in transactions similar to the FDN transaction in**
22 **Florida and Georgia. Who was involved in those transactions and how**
23 **were the ILEC issues addressed?**

1 A. Mpower sold its Texas assets to Xspedius in January 2003. Also,
2 Mpower sold its assets in Michigan and Ohio to LDMI Telecommunications
3 Inc. ("LDMI") in the first quarter of 2003. In the LDMI and Xspedius
4 transactions, SBC (through SWBT in Texas and Ameritech in Michigan and
5 Ohio) provided an efficient process to transfer cost-effectively the assets
6 from Mpower to the buyers. As I indicated above, SBC processed the asset
7 transfer between the CLECs for the cost of an electronic ordering fee. This
8 would be the equivalent of an Electronic Service Order (SOME) charge in
9 the BellSouth territory.

10 **Q. Does that conclude your direct testimony?**

11 A. Yes.

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