



August 1, 2003

VIA FEDERAL EXPRESS

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

Re: Petition by MPower Communications, Corp. and Florida Digital Network 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

Dear Mrs. Bayo:

Please find enclosed for filing in your office the original and fifteen (15) copies of Direct Intervener Testimony of Chris Kennedy in the above reference docket on behalf of Comcast Phone of Florida, LLC.

Please stamp two (2) copies of the Testimony in the usual manner and return to us via the enclosed envelope.

If you have any questions, please do not hesitate to contact me at 404-888-7437.

Sincerely yours,

Loretta A. Cecil

Enc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing Direct Testimony of Comcast Phone of Florida, LLC was served upon the parties of record by first-class, postage paid U. S. Mail.

This the 1st day of August, 2003.

Wayne Knight, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

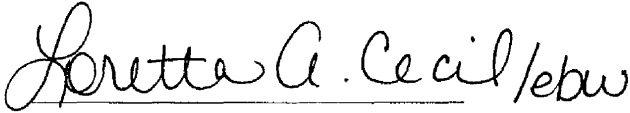
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Loretta A. Cecil, Esq.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In Re: Petition by Mpower) DOCKET NO. 030301-TP
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.)

INTERVENER DIRECT TESTIMONY OF
CHRIS KENNEDY
ON BEHALF OF
COMCAST PHONE OF FLORIDA, LLC.
AUGUST 1, 2003

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Chris Kennedy and my title is Director, New
3 Technology Introduction, Comcast. My business address is 5800
4 South Quebec Street, Greenwood Village, Colorado 80111.

5

6 **Q. FOR WHOM ARE YOU FILING TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. I am testifying on behalf of Comcast Phone of Florida, LLC
9 (“Comcast Phone”), which is an indirect wholly owned subsidiary of
10 Comcast Corporation (“Comcast”). By Order PSC 03-0767-PCO-TP
11 issued by the Florida Public Service Commission (“Commission”)
12 on June 26, 2003, Comcast Phone has been allowed to intervene in
13 this proceeding.

14

15 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY**
16 **PROCEEDINGS?**

17 A. Yes. I have testified in person before two state public utility
18 commissions, and I have submitted written testimony to several
19 other state public utility commissions.

20

21 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR**
22 **EDUCATION AND EXPERIENCE.**

23 A. I earned a Bachelor of Science degree in physics from Creighton
24 University in Omaha, Nebraska, and a Ph.D. in physics from the
25 University of Notre Dame. Prior to the merger of AT&T Broadband

1 and Comcast, I held various operations planning positions with
2 AT&T Corp. ("AT&T") during an approximately seven and one-half
3 year period. I participated, as a representative of AT&T, in the
4 Illinois Commerce Commission's number portability
5 implementation project, which was among the first such projects in
6 the industry. Previously, I was a member of the NANC number
7 resource optimization committee. Currently, I hold the position of
8 Director of New Technology Deployment with Comcast.

9
10 **Q. PLEASE DESCRIBE COMCAST PHONE'S TELEPHONY**
11 **OPERATIONS IN FLORIDA.**

12 A. Comcast Phone is certified to provide local, toll, and long distance
13 services in Florida and serves residential and business customers
14 in the state. Comcast Phone is one of a few competitive local
15 exchange carriers ("CLECs") remaining in Florida which provide a
16 true competitive challenge to BellSouth on a facilities basis. In
17 that respect, having gained control of AT&T Broadband's assets
18 nationwide, Comcast Phone now is evaluating the telephony
19 environment in Florida and other states in order to determine what
20 roadblocks exist which prevent Comcast Phone from competing in
21 a given market. Obviously, one roadblock would be the imposition
22 by an incumbent local exchange carrier ("ILEC") of unreasonable
23 terms and conditions on Comcast Phone's operations as a result of
24 the November 2002 merger with between AT&T Broadband and
25 Comcast.

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Q. WHY DID COMCAST PHONE MOVE TO INTERVENE IN THIS PROCEEDING?

A. BellSouth has argued in this proceeding that various industry standards and its general tariffs apply to the issues in dispute. If successful in its arguments, Comcast Phone expects BellSouth will argue that the Commission’s Order in this proceeding will establish a precedent having negative implications for Comcast Phone and other CLECs regarding existing and future disputes as to changing of carrier codes and related issues in the context of mergers and acquisitions within the telecommunications industry in Florida.

The disputes in this proceeding should be resolved based on the specific facts, issues, and governing interconnection agreements relating to FDN’s acquisition of Mpower’s assets in Florida. Because the Commission’s resolution of these facts and issues will be specific to FDN, Mpower, and BellSouth based on the governing interconnection agreements, any Order in this proceeding should not be binding on Comcast Phone or other CLECs which currently, or in the future, have their own specific facts and issues with BellSouth regarding changing carrier codes and related issues under their own governing interconnection agreements with BellSouth.

1 In fact, Comcast Phone has its own specific facts and issues with
2 BellSouth under the governing interconnection agreement between
3 Comcast Phone and BellSouth relating to the merger of AT&T
4 Broadband and Comcast and the associated separation of AT&T
5 Broadband from AT&T Corp. Although Comcast Phone and
6 BellSouth currently are attempting to resolve these issues without
7 Commission intervention, there remains the possibility that
8 Comcast may need the Commission's assistance at a later date if
9 such negotiations are unsuccessful.

10
11 Because this proceeding is not a generic proceeding, such
12 assistance should be based on the specific facts and issues in
13 dispute under the governing interconnection agreement between
14 Comcast Phone and BellSouth at the time such dispute, if ever, is
15 submitted to the Commission for resolution, and not based on the
16 specific facts, issues and governing interconnection agreements
17 being considered in this proceeding.

18
19 Accordingly, Comcast Phone moved to intervene in this proceeding
20 in order to (1) ensure that the Commission does not enter an Order
21 in this proceeding which inappropriately applies to Comcast Phone
22 the specific facts, issues, and governing interconnection
23 agreements applicable to FDN, Mpower, and BellSouth; and (2)
24 provide support for FDN's and Mpower's claims that BellSouth is
25 acting in an anticompetitive manner relative to cooperating with

1 CLECs in the context of facilitating mergers and acquisitions by
2 carriers.

3
4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony is to address Issue 6 in this
6 proceeding which Comcast Phone advocated be included over the
7 objections of BellSouth.

8
9 **ISSUE 6: WILL THE OUTCOME OF THIS PROCEEDING APPLY**
10 **TO ONLY THE FDN/MPOWER TRANSACTION OR WILL IT HAVE**
11 **A BROAD APPLICATION AND APPLY TO ALL ISSUES**
12 **CONCERNING THE USE OF MULTIPLE CODES?**

13
14 **Q. IN YOUR POSITION AT COMCAST, HAVE YOU HAD AN**
15 **OPPORTUNITY TO INTERACT WITH VARIOUS ILECS**
16 **REGARDING ISSUES SURROUNDING COMCAST'S ACQUISITION**
17 **OF AT&T BROADBAND'S CABLE ASSETS IN VARIOUS STATES?**

18 A. Yes. I have been a part of such implementation discussions with
19 every major ILEC in the country and in many different states,
20 including BellSouth relative to the former AT&T Broadband (now
21 Comcast) telephony operations in Florida and Georgia.

22
23 **Q. HAVE THOSE IMPLEMENTATION DISCUSSIONS BEEN THE**
24 **SAME ACROSS ILECS?**

1 A. No. Many of the ILECs have been helpful and timely in resolving
2 implementation discussions, whereas Comcast Phone's
3 discussions with BellSouth have been less successful. In
4 particular, often it has been difficult to get timely and
5 unambiguous responses from BellSouth regarding important
6 technical, system and related process questions. In fact, Comcast
7 Phone has had to escalate issues at BellSouth even to receive
8 commitments that issues would be addressed. Moreover, issues
9 seem to take months just to get "framed" in order for further
10 discussions to take place, let alone get resolved. As but one
11 example, as recently July 29, 2003, I participated in a conference
12 call with various BellSouth representatives where BellSouth
13 subject matter experts were to provide responsive information and
14 clarify various BellSouth positions. Unfortunately, the conference
15 call was unproductive, as BellSouth subject matter experts did not
16 participate. This was not the first time that BellSouth has failed to
17 have the right personnel on calls or in meetings with Comcast
18 Phone to discuss issues.

19

20 Other Comcast attempts to elicit information from BellSouth
21 regarding alleged "complexities" discussed by Ms. Tipton in her
22

1 direct testimony¹ have also been unsuccessful. On the rare
2 occasions when BellSouth subject matter experts have been
3 involved in the discussions, the “complexities” have turned out not
4 to exist. Again, as but one example, after taking the position that
5 various BellSouth systems are impacted by “records changes”
6 caused by a merger or acquisition, BellSouth has been unable to
7 identify correctly for Comcast Phone all of the systems so impacted
8 and the processes for updating such systems.

9
10 **Q. BASED ON YOUR PERSONAL EXPERIENCES WITH**
11 **BELLSOUTH, WHAT IS YOUR OPINION OF THE DIRECT**
12 **TESTIMONY FILED BY BELLSOUTH IN THIS PROCEEDING?**

13 A. Although the facts, issues, and governing interconnection
14 agreement are specific to FDN, Mpower, and BellSouth, the
15 positions taken by BellSouth in this proceeding are similar to the
16 positions taken by BellSouth relative Comcast’s assumption of
17 control of AT&T Broadband’s cable assets resulting from the
18 companies’ November 2002 merger.

19
20 First, BellSouth asserts that when a carrier acquires all or part of
21 the assets of another carrier, such acquisition requires a “record

¹ As Ms. Tipton testified: “Q. Has FDN agreed to the charges quoted by BellSouth for the transfer of UNE loops? A. No. FDN claims the charges are ‘patently anticompetitive, unfair, unjust, and unreasonable, in violation of state statute and the Act.’ Additionally, FDN contends that the transfer of these loops from Mpower is ‘simply to change the carrier identification codes in BellSouth’s billing and other systems.’ This is not true. FDN fails to realize that this is a complex coordination of numerous functions within BellSouth to properly facilitate this transfer within BellSouth’s operation support systems and databases in addition to the billing system.” Direct Testimony of Pamela A. Tipton filed July 18, 2003 at Page 13, lines 1-8.

1 change” on a per-customer basis for every customer served by the
2 former carrier and now served by the acquiring carrier.
3 BellSouth’s theory is that all customers of the former carrier are
4 “changing service” to the acquiring carrier, thus allowing BellSouth
5 to charge its “secondary service charge” from its general tariffs for
6 every customer record that is changed. This clearly is an abuse of
7 BellSouth’s general tariffs and processes which were not intended
8 to cover transactions associated with mergers and acquisitions.

9
10 Second, BellSouth asserts that it is not obligated to upgrade its
11 systems to facilitate a carrier’s acquisition of all or part of another
12 carrier’s assets on reasonable terms and conditions and a cost
13 effective basis. Rather, BellSouth cites industry guidelines which
14 were developed before the onslaught of failed and bankrupt CLECs
15 necessitated significant consolidation within the industry, with
16 more consolidation expected in the near term. Although BellSouth
17 may have refused to deal with “bulk” transfers, the industry in
18 general (including other ILECs) has recognized “bulk” transfers of
19 carrier information as a necessary part of their operations.
20 BellSouth should not be rewarded for failing to recognize the
21 collective wisdom of the industry and not planning for such “bulk”
22 transfers.

23
24 Third, BellSouth refuses to allow merging or acquiring companies
25 reasonable use of new codes in order to place new orders for

1 services for their customers when the CLEC chooses to use the
2 network facilities of another carrier, other than BellSouth.

3
4 **Q. REGARDING BELLSOUTH'S "SECONDARY SERVICE CHARGE"**
5 **FROM ITS GENERAL TARIFFS, HAS COMCAST PHONE HAD**
6 **EXPERIENCE WITH BELLSOUTH REGARDING THESE**
7 **TARIFFS?**

8 A. Yes. Under Comcast Phone of Georgia's (formerly, AT&T
9 Broadband Phone of Georgia's) interconnection agreement with
10 BellSouth, BellSouth asserted that it could impose a "secondary
11 service charge" (from its general tariffs which are at issue in this
12 proceeding) whenever AT&T Broadband Phone of Georgia placed an
13 order for directory listings in Georgia. BellSouth persisted in its
14 assertion even though the terms of the interconnection agreement
15 between BellSouth and AT&T Broadband Phone of Georgia clearly
16 provided that there was to be no separate charge by BellSouth for
17 processing directory listings for AT&T Broadband Phone of
18 Georgia. BellSouth filed a complaint with the Georgia Public
19 Service Commission to collect such tariff charges from AT&T
20 Broadband Phone of Georgia for all directory listings which
21 BellSouth had processed for AT&T Broadband Phone of Georgia.

22
23 **Q. HAS THIS COMPLAINT BEEN DECIDED BY THE GEORGIA**
24 **COMMISSION?**

1 A. Yes. On April 15, 2003, in Docket No. 13041-U, the Georgia Public
2 Service Commission rejected BellSouth's complaint in its entirety.

3

4 **Q. DOES IT APPEAR THAT BELL SOUTH WILL MAKE THE SAME**
5 **ASSERTION AGAINST COMCAST REGARDING DIRECTORY**
6 **LISTINGS IN FLORIDA?**

7 A. Yes. BellSouth has argued that it is entitled in Florida to charge
8 Comcast Phone a "secondary service charge" for directory listings,
9 even though the governing interconnection agreement between
10 BellSouth and TCG South Florida (which Comcast has opted into)
11 contains the same language as the Georgia interconnection
12 agreement regarding no charges by BellSouth for directory listings.

13

14 **Q. WHAT RELEVANCE DOES COMCAST PHONE'S CURRENT**
15 **DISPUTE WITH BELL SOUTH REGARDING DIRECTORY**
16 **LISTINGS HAVE IN THIS PROCEEDING?**

17 A. It is a good example of how BellSouth uses its general tariff
18 charges to assess improper charges on CLECs, which BellSouth
19 appears to be doing in this proceeding relative to implementing
20 FDN's acquisition of Mpower's assets in Florida.

21

22 **Q. WHAT SHOULD THE COMMISSION DO IN THIS PROCEEDING?**

23 A. The Commission should limit its Order to the specific facts, issues,
24 and the governing interconnection agreements among FDN,
25 Mpower, and BellSouth. If the Commission declines to do so, and

1 instead issues an Order which will affect Comcast Phone, it should
2 (1) require BellSouth to develop systems and processes which are
3 meet the needs of the BellSouth and the industry regarding
4 mergers and acquisitions; (2) not allow BellSouth to apply its
5 general tariffs to directory listings (relative to either "bulk"
6 transfers of existing customers or new customers); and (3) allow
7 merging or acquiring carriers reasonable use of existing codes in
8 order to place new orders for services for their customers as they
9 establish procedures for handling such new orders.

10

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.