

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
ORDER NO. PSC-03-0997-PCO-TP
ISSUED: September 4, 2003

ORDER GRANTING JOINT MOTION FOR CONTINUANCE,
APPROVING JOINT STIPULATION AND SECOND ORDER MODIFYING PROCEDURE

On March 27, 2003, Florida Digital Network, Inc. (FDN) and Mpower Communications, Corp. (Mpower) filed a Petition For Expedited Temporary and Permanent Relief Against BellSouth Telecommunications, Inc. for its Anticompetitive Conduct Regarding Florida Digital Network, Inc.'s Proposed Acquisition of the Assets and Customers of Mpower Communications Corp. In Florida (Petition). On April 15, 2003, BellSouth Telecommunications, Inc. filed its Answer to the Petition.

On July 8, 2003, Mpower, FDN and BellSouth filed a Joint Stipulation for temporary relief (Attachment A). On July 10, 2003, Mpower, FDN and BellSouth filed a Joint Motion for Extension of Time to File Testimony in this proceeding. By Order No. PSC-03-0825-PCO-TP, issued July 16, 2003, the Motion for Extension of Time to File Testimony was granted.

On August 8, 2003, Mpower, FDN and BellSouth (Joint Movants) filed a Joint Motion for Continuance (Joint Motion).

In their Joint Motion, the parties state that they have reached a stipulation regarding the issue of temporary relief Mpower and FDN requested in their Petition. They explain that they have been actively negotiating a permanent resolution of all issues and that some progress has been made. By virtue of the stipulation on interim conditions, the parties assert that the need for expedited scheduling has diminished substantially. Therefore, the

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Joint Movants request that all due dates as of the filing date of Joint Motion, including due dates for rebuttal testimony, objections to discovery, discovery responses, prehearing statements be suspended. Further, Joint Movants request that the prehearing and hearing in this matter be continued for a period of up to 90 days. They assert that a continuance in this case will permit them to focus on negotiating a resolution to the dispute and agree to provide Commission staff with periodic updates on the progress of negotiations during the continuance period. In addition, the Joint Movants indicate that the parties and Commission staff have no objection to this Motion.

Having considered the Joint Movants' Motion, it appears reasonable to grant a continuance as it will give the parties additional time to focus on negotiating the issues in this case. Because the parties indicate a possible settlement exists, the hearing shall be continued and the schedule shall be as set forth below:

- | | |
|------------------------------------|-------------------|
| 1) Rebuttal testimony and exhibits | December 8, 2003 |
| 2) Prehearing Statements | December 15, 2003 |
| 3) Prehearing Conference | January 5, 2004 |
| 3) Hearing | January 22, 2004 |
| 4) Briefs | March 1, 2004 |

Further, the parties shall advise staff when a settlement is reached. If a settlement has not been reached by November 24, 2003, the parties shall provide staff with a written update of the status of settlement negotiations on that same date, and the hearing schedule will resume as set forth above. All outstanding discovery shall be due by December 8, 2003. Further, the Joint Motion to Accept Stipulation is approved.

Based upon the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Joint Motion for Continuance filed by Florida Digital Network, Inc., Mpower Communications, Corp. and BellSouth

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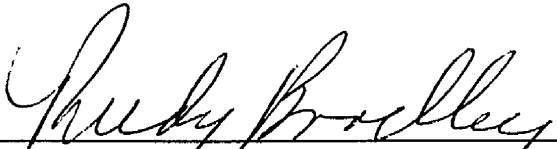
Telecommunications, Inc. is hereby granted as specified in the body of this Order. It is further

ORDERED that the hearing in this case has been continued and if parties do not reach a settlement by November 24, 2003, the hearing schedule shall resume as set forth herein. It is further

ORDERED that the Joint Motion to Accept Stipulation filed by Florida Digital Network, Inc., Mpower Communications, Corp. and BellSouth Telecommunications, Inc. in Attachment A is hereby granted and incorporated by reference into this Order. It is further

ORDERED that the hearing procedure set forth in Order Nos. PSC-03-0825-PCO-TP and PSC-03-0765-PCO-TP is hereby affirmed in all other respects.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 4th Day of September, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Mpower Communications)
Corp. and Florida Digital Network, Inc. for)
Expedited temporary and permanent relief) Docket No. 030301
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.)
_____)

JOINT MOTION TO ACCEPT STIPULATION

Pursuant to Rule 28-106.204, Florida Administrative Code, Mpower Communications Corp. ("Mpower"), Florida Digital Network, Inc., d/b/a FDN Communications ("FDN") and BellSouth Telecommunications, Inc., ("BellSouth"), by and through their undersigned counsel, hereby jointly move the Commission to issue an order approving a stipulation of said parties. In support hereof, Mpower, FDN and BellSouth (collectively "Joint Movants") state as follows:

1. By Petition filed with this Commission by Mpower and FDN on March 27, 2003, Mpower and FDN requested specified temporary and permanent relief against BellSouth relative to certain matters concerning FDN's purchase of Mpower's customer base and assets. BellSouth filed its Answer to the Mpower-FDN Petition on April 15, 2003.

2. During an Issue Identification Conference held on May 29, 2003, counsel for BellSouth mentioned the possibility of arriving at a stipulation regarding the temporary relief addressed in the Petition. Counsel for Mpower, FDN and BellSouth subsequently engaged in settlement discussions, and the parties arrived at a stipulation regarding the

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issue of the temporary relief Mpower and FDN requested in the Petition. No other stipulations have been reached at this time.

3. The stipulation the parties have reached is as follows:

Until the Commission issues an effective order in this matter, BellSouth agrees that BellSouth will not take, on account of FDN's use of Mpower's carrier codes, rights or interests, action which will materially and adversely effect FDN's ability to serve customers, provided FDN and Mpower have executed appropriate documentation authorizing said FDN use, FDN places the orders or requests pursuant to the interconnection agreement between BST and Mpower, Mpower remains a certificated entity in the state, and FDN does not submit orders or requests using FDN's ACNA for services associated with the Mpower assets and customer base that are the subject of this proceeding.

4. Mpower, FDN and BellSouth request that the Commission issue an order approving this stipulation. With this stipulation, the temporary relief Mpower and FDN requested in the Petition will not require a Commission ruling and may be deemed moot.

5. The Commission has the legal authority pursuant to Chapter 364, Florida Statutes, to approve and order said stipulation.

Respectfully submitted, this 1 day of July 2003.



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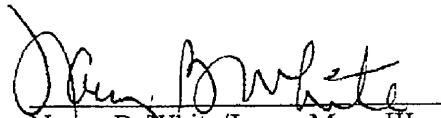
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CERTIFICATE OF SERVICE

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 7 day of July, 2003.

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