

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-03-1390-PCO-TP
ISSUED: December 10, 2003

ORDER GRANTING JOINT MOTION FOR FURTHER CONTINUANCE

On March 27, 2003, Florida Digital Network, Inc. d/b/a FDN Communications (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. 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 filed a Joint Motion for Continuance. By Order No. PSC-03-0997-PCO-TP, issued September 4, 2003, the Joint Motion was granted.

On November 20, 2003, Mpower, FDN and BellSouth (collectively "Joint Movants") filed a Joint Motion for Further Continuance. In their motion, Joint Movants state that although no further stipulations have been reached at this time, FDN, Mpower and

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BellSouth remain in active negotiation of a permanent resolutions of all issues and progress has been made. Movants indicate that the most recent settlement discussions were held via conference call on November 11, 2003. The Movants also state that they have been exchanging term sheets and the issues that remain in negotiations have been narrowed. Movants believe that they should continue to devote resources to negotiating this matter. Accordingly, Joint Movants request that the Prehearing Officer issue an order suspending all scheduled activity and due dates as of the filing date of this Joint Motion, including due dates for rebuttal testimony, objections to discovery, discovery responses, prehearing statements.

Further, Joint Movants request that the prehearing and hearing in this matter be continued for a period of up to 30 days. The Joint Movants indicate that they have contacted Commission Staff and Intervenor Comcast and AT&T regarding this motion and report that none object to this motion.

Having considered the Joint Movants' Motion, it appears reasonable to grant an additional 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 | March 17, 2004 |
| 2) Prehearing Statements | April 7, 2004 |
| 3) Prehearing Conference | April 21, 2004 |
| 3) Hearing | May 11, 2004 |
| 4) Briefs | June 15, 2004 |

Further, the parties shall advise staff when a settlement is reached. If a settlement has not been reached by January 6, 2003, the parties shall provide staff with a written update of the status of settlement negotiations on that same date, and the hearing

ORDER NO. PSC-03-1390-PCO-TP
DOCKET NO. 030301-TP
PAGE 3

schedule will resume as set forth above. All outstanding discovery shall be due by January 13, 2004. In the event, this matter goes to a hearing, all discovery shall be completed by April 27, 2004


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 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 January 6, 2003, the hearing schedule shall resume as set forth herein. It is further

ORDERED that the hearing procedure set forth in Order Nos. PSC-03-0825-PCO-TP, PSC-03-0765-PCO-TP and PSC-03-0997-PCO-TP are hereby affirmed in all other respects.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 10th day of December, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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ORDER NO. PSC-03-1390-PCO-TP
DOCKET NO. 030301-TP
PAGE 4

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.