

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-04-0062-PCO-TP
ISSUED: January 22, 2004

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. By Order No. PSC-03-1390-PCO-TP, issued December 10, 2003, the continuance was granted.

On January 6, 2004, Joint Movants filed another Joint Motion for Further Continuance.

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In their motion, Joint Movants state that although no further stipulations have been reached at this time, FDN, Mpower and BellSouth remain in active negotiation of a permanent resolution of all issues and progress has been made. Movants state that they have been exchanging term sheets and the issues in negotiation have 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, in their motion, Joint Movants request that the prehearing and hearing in this matter be continued for a period of up to 60 days. I note that the Motion indicates that parties are requesting "thirty (60) days" continuance. However, staff counsel has consulted with the parties and confirmed that parties are requesting a 60-day continuance.

Having considered the Joint Movants' Motion, the parties' Joint Motion for Further Continuance is hereby granted. However, given the fact that this is the Movants' third motion for continuance and a settlement appears imminent, all of the dates for rebuttal testimony, prehearing statements, prehearing conference and the hearing are hereby canceled. Further, if settlement is not reached by March 9, 2004, parties shall file a written update of the status of settlement negotiations in the docket with the Commission's Clerk's office and a revised Order Establishing Procedure will be issued. Thereafter, if necessary, I will issue an order regarding the hearing schedule and procedural dates.

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

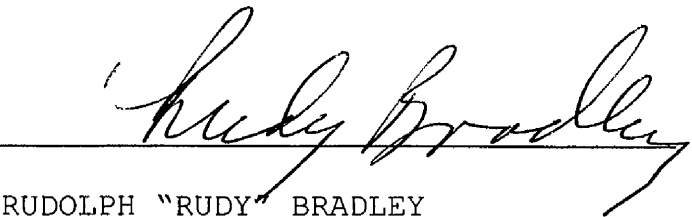
ORDERED that the hearing in this case has been continued and if parties do not reach a settlement by March 9, 2004, the parties

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shall file a written update of the status of settlement negotiations in the docket with the Commission's clerk's office. 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 22nd day of January, 2004.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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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.