



PUBLIC NOTICE

Federal Communications Commission
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DA 03-432

Released: February 13, 2003

**DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF
MPOWER COMMUNICATIONS CORP. BY FLORIDA DIGITAL NETWORK, INC., AND
SOUTHERN DIGITAL NETWORK, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-34

On January 24, 2003, Florida Digital Network, Inc. ("Florida Digital"), Southern Digital Network, Inc. ("Southern Digital") (collectively, the "FDN Companies") and Mpower Communications Corp. ("Mpower") (together "Applicants"), filed an application pursuant to section 63.04 of the Commission's rules,¹ for consent to transfer certain of Mpower's assets, which are located in Florida and Georgia, to FDN Companies.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction will result in the FDN Companies having a market share in the interstate, interexchange market of less than 10 percent; the FDN Companies would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither of the Applicants is dominant with respect to any service.

Florida Digital is a Delaware corporation with its principal place of business located at 390 North Orange Avenue, Orlando, Florida. Florida Digital provides local phone service, long distance phone service, and high-speed Internet access to more than 30,000 businesses in approximately 100 cities and towns throughout the state of Florida. Southern Digital is a Delaware corporation with its principal place of business also located at 390 North Orange Avenue, Orlando, Florida. Southern Digital is a wholly owned subsidiary of Florida Digital and was established to expand the FDN Companies' service area into Georgia.

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

² Applicants have also filed an application for transfer of control in connection with international section 214 authority. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

Mpower is a Nevada corporation with principal offices located at 175 Sully's Trail, Pittsford, New York. Mpower is a wholly owned subsidiary of Mpower Holdings Corp., a publicly traded Delaware corporation. Mpower is a facilities-based communications provider offering an integrated bundle of broadband data and voice communication services to small and medium-size business customers. Through Mpower's broadband DSL and T1 service delivery platforms, Mpower delivers a full range of telephony, high-speed data, Internet access and Web hosting solutions. Mpower's national network spans 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas and comprises nearly 600 central office collocations, 15 switches, and serves approximately 415,000 lines.

Through the proposed transaction, the FDN Companies propose to acquire and operate Mpower's existing Florida and Georgia telecommunications service operations. Specifically, Florida Digital and Mpower Holdings Corp ("Mpower Holdings"), the parent company of Mpower, have entered into an Asset Purchase Agreement whereby Mpower Holdings will assign to the FDN Companies, through an asset sale, Mpower's Florida and Georgia network assets, including switches, collocation equipment, and access lines, as well as approximately 11,000 customers located in Fort Lauderdale, Tampa, West Palm Beach, and Miami, Florida and 9,087 customers located in the Atlanta, Georgia area. The proposed transaction also contemplates the assignment to the FDN Companies certain customer accounts receivable and regulatory authorizations and licenses.

Applicants submit that the proposed transaction serves the public interest. Applicants state that through the transaction, the FDN Companies will obtain assets and customers which will expand their client base, provide the FDN Companies greater presence in the telecommunications market in Florida and Georgia, and thereby make the FDN Companies more viable competitors in those markets. Further, Applicants state that the proposed transaction will allow Mpower to enhance its competitive position by providing Mpower with greater flexibility in obtaining financing, which will yield benefits that allow Mpower to continue its operations in regions outside Florida and Georgia.

Applicants emphasize that the proposed transaction will be virtually transparent to existing customers with respect to the services that they receive. Following the transition of the Florida and Georgia business from Mpower to the FDN Companies, the FDN Companies will initially provide service to the customers under the same rates, terms and conditions as those customers currently receive service from Mpower. Applicants state that Mpower's customers are being notified of the transaction and the change in their telecommunications provider from Mpower to the FDN Companies, and that service to these customers will not be transferred until the requisite approval and notice periods have elapsed.

GENERAL INFORMATION

The transfer of assets application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to

return any transfer of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.³ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice.⁴ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

³ *See* 47 C.F.R. § 63.03(a).

⁴ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and
- (4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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