

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 15, 2001

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|----------------------------------|---|-------------------|
| IN RE: |) | |
| |) | |
| DOCKET TO ESTABLISH |) | DOCKET NO. |
| GENERIC PERFORMANCE |) | 01-00193 |
| MEASUREMENTS, BENCHMARKS |) | |
| AND ENFORCEMENT |) | |
| MECHANISMS FOR BELL SOUTH |) | |
| TELECOMMUNICATIONS, INC. |) | |

**ORDER GRANTING PETITION TO INTERVENE OF US LEC OF TENNESSEE
AND MOTION TO WITHDRAW PETITION TO INTERVENE OF MPOWER
COMMUNICATIONS CORPORATION**

At a regularly scheduled Authority Conference held on February 21, 2001, the Directors voted unanimously to appoint Director H. Lynn Greer, Jr. to act as Pre-Hearing Officer in these matters to prepare the docket for a hearing. This matter came before the Pre-Hearing Officer upon the Petition to Intervene filed by US LEC of Tennessee ("US LEC") and the Motion to Withdraw Petition to Intervene filed by Mpower Communications Corporation ("Mpower").

US LEC's Petition to Intervene

US LEC filed its Petition to Intervene on June 28, 2001, pursuant to Tenn. Code Ann. § 4-5-310, asserting that it has an interest in these proceedings because it purchases network elements from BellSouth Telecommunications, Inc. No objections to the Petition to Intervene have been filed.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions for intervention:

4-5-310. Intervention

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Having read and considered US LEC's Petition to Intervene, the Pre-Hearing Officer finds that said Petition complies with the requirements of Tenn. Code Ann. § 4-5-310. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. Pursuant to Tenn. Code Ann. § 4-5-310, the Petition to Intervene filed by US LEC is granted.

Mpower's Motion to Withdraw Petition to Intervene

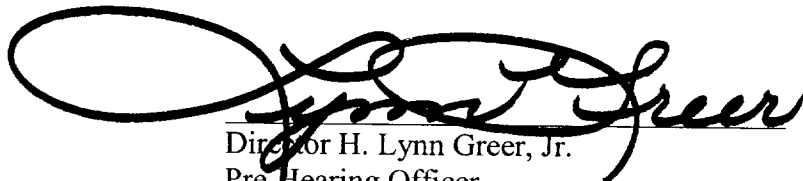
Mpower's Petition to Intervene was filed on April 6, 2001 and was granted on May 10, 2001. Mpower filed a Motion to Withdraw Petition to Intervene on May 29, 2001, asserting that it will no longer provide service in Tennessee. No objections to the Motion to Withdraw Petition to Intervene have been filed.

Having read and considered the Motion to Withdraw Petition to Intervene filed by Mpower, the Pre-Hearing Officer finds that Mpower has asserted that it will no longer provide service in Tennessee. Absent an involvement in providing telecommunications service in this state, Mpower has no legal interest in these proceedings. *See* Tenn. Code

Ann. § 4-5-310(a)(2). Accordingly, Mpower's Motion to Withdraw Petition to Intervene is granted.

IT IS THEREFORE ORDERED:

1. US LEC of Tennessee is hereby given leave to intervene and receive copies of any notices, orders or other documents herein;
2. The Motion to Withdraw Petition to Intervene filed by Mpower Communications Corporation is granted. Mpower Communications Corporation shall be no longer be included on the service list in this proceeding; and
3. Any party aggrieved by the decision of the Pre-Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority.



Director H. Lynn Greer, Jr.
Pre-Hearing Officer



K. David Waddell, Executive Secretary