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January 20, 2000
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Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.991838-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of BlueStar Network, Inc.'s Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery.

Please acknowledge receipt of the above on the extra copies enclosed herein and return them to me. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

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FPSC-RECORDS/REPORTING

In re:

Petition for Arbitration of BlueStar
Networks, Inc. with BellSouth
Telecommunications, Inc. Pursuant to the
Telecommunications Act of 1996

Docket No. 991838-TP

Filed: January 20, 2000

**BLUESTAR NETWORKS, INC.'S MOTION TO COMPEL
BELLSOUTH TELECOMMUNICATIONS, INC.
TO RESPOND TO DISCOVERY**

BlueStar Networks, Inc. (BlueStar), pursuant to rule 28-106.206, Florida Administrative Code, files this motion to compel BellSouth Telecommunications, Inc. (BellSouth) to respond to the discovery requests propounded by BlueStar. BlueStar further requests that the Prehearing Officer rule on this motion on an expedited basis. As grounds therefor, BlueStar states:

Introduction

1. On January 5, 2000, BlueStar served twenty-three (23) interrogatories and twenty-three (23) requests for production on BellSouth.¹
2. On January 18, 2000, BellSouth objected to the majority of BlueStar's requests.²
3. Direct testimony in this case is due on January 25, 2000. Rebuttal testimony is due on February 8, 2000. The hearing in this matter is set for March 2-3, 2000. Given the quickly

¹ BlueStar provided essentially the same requests in draft form to BellSouth on December 29, 1999. Further, at the issue identification meeting held in this case on January 11 and in the subsequent motion filed by BlueStar to expedite discovery, BlueStar offered to take a critical subset of the information sought on an expedited basis so that BlueStar could prepare its testimony. BellSouth has ignored that offer.

²Interrogatory Nos. 2, 3, and 20 are hereby withdrawn by BlueStar, as the issues to which the questions were related have been resolved.

approaching hearing date, time is of the essence. The information which BlueStar needs to prepare its case (including, but not limited to, cost study information) is solely in the possession of BellSouth. BellSouth's refusal to provide the clearly relevant information sought in discovery greatly prejudices BlueStar's ability to prepare its testimony and to prepare for hearing.

BellSouth's Specific Objections to Interrogatories³

4. BellSouth objects to BlueStar Interrogatory Nos. 1, 5, 9, 11⁴, 16, 18, 21, and 23 on the basis that they involve BellSouth's retail services and are therefore irrelevant.⁵ However, BlueStar is attempting to provide the same retail services which BellSouth currently offers. It is necessary for BlueStar to have access to the information sought to ensure that BellSouth provides BlueStar parity of services on a non-discriminatory basis and in the same time and manner they are provided to BellSouth's retail customers. As just one example, Interrogatory No. 16 asks BellSouth to describe how it determines if a customer qualifies for ADSL service. BlueStar must have this type of information to measure whether BellSouth provides the same service to BlueStar as it does to itself. One of the issues in this case is what kind of loop make up information BellSouth must provide to BlueStar. When BlueStar seeks to purchase a loop to provide a competitive alternative to BellSouth's ADSL, it is BlueStar's contention that it must go through a long and time consuming

³ BellSouth has also included numerous "boilerplate" objections which are not referenced to any specific discovery request. As such, these objections are inappropriate and must be rejected.

⁴Interrogatory No. 11 relates to the TELRIC calculator; it is difficult to understand BellSouth's objection to this request on the basis of "retail service information."

⁵BellSouth also objects because it claims the information is proprietary. As BellSouth is well aware, BlueStar has offered to execute a Protective Agreement in regard to proprietary information.

loop qualification process. BlueStar is entitled to compare that process with the process BellSouth uses for its retail customers. The other interrogatories objected to would provide similar information. Thus, not only is the information requested relevant, it is critical to an assessment of whether BellSouth is providing nondiscriminatory service.

5. BellSouth objects to Interrogatory Nos. 6, 14, and 16 on the basis that these interrogatories require the production of documents in addition to answers to the interrogatories. BellSouth attempts to elevate form over substance in an effort to avoid responding to legitimate discovery requests; BellSouth makes no substantive objection. All three of these interrogatories may require some information to be submitted in document form. These requests seek relevant information and were simply combined to ensure that BellSouth understood the requests.

6. BellSouth objects to Interrogatory No. 11 as being "overbroad and burdensome." This interrogatory asks BellSouth to explain how its TELRIC Calculator incorporates certain expenses, and how such factors are applied to determine the expenses. This request is not overbroad or overburdensome. In fact, it is quite specific. This information can only be provided by BellSouth and it is necessary to examine the TELRIC-based rates in dispute between the parties.

7. Interrogatory No. 15 requests that BellSouth provide a flow chart delineating the process of BellSouth's Operating Support Systems (OSS), as well as the title and name of an individual that can explain each step. BellSouth claims, without support, that this request is burdensome. Access to, and the operation of, OSS is at issue in this case. It is certainly not unreasonable to require BellSouth to provide a chart detailing how it thinks its own OSS operates. The information requested by BlueStar is not burdensome and is required in order to determine the progression of a request through the BellSouth OSS from start to finish.

8. Interrogatory No. 17 requests information on loop qualification, and what electronic data bases hold such information. Loop make up information is at issue in this case and BlueStar is entitled to discover how and where such information is stored within BellSouth. BellSouth objects claiming the request is burdensome, with no support for its claim whatsoever.⁶ Only BellSouth can provide this information to BlueStar and should be required to do so.

9. Interrogatory No. 22 requests information about BellSouth's contracts containing Alternative Dispute Resolution procedures. These are the same type of procedures BlueStar has requested be included in its interconnection agreement; BellSouth has refused such procedures. BellSouth claims this request is "grossly overbroad" and "no longer of any relevance." However, this is a disputed issue in the case and it would certainly be relevant to discover if BellSouth has such provisions in other contracts. Only BellSouth has knowledge regarding its contracts or interconnection agreements. Therefore, it should be required to respond to this request.

BellSouth's Specific Objections to Production Requests

10. BellSouth objects to Production Request No. 1, as it "calls literally for the production of every document that relates to any BellSouth response to any interrogatory." This request, however, simply requests that any information found in document form in response to an interrogatory be provided to BlueStar. This request is not overburdensome and only seeks to ensure that the information in response to the interrogatories is included regardless of its form.

11. BellSouth objects to Production Request Nos. 5, 6, 7, 8, 12, 17, and 20 on the grounds that they are irrelevant and proprietary, claiming they focus on BellSouth's retail offerings. BellSouth's objection is without merit. BellSouth's objections to Request Nos. 7 and 8, which seek

⁶Again BellSouth makes this conclusory claim with no support.

cost studies for the UNEs BlueStar wants to purchase, are particularly outrageous. BlueStar must have this information to evaluate the prices BellSouth seeks to charge. All the information sought in these requests is vital if BlueStar is to ensure that it receives services on a non-discriminatory basis and at TELRIC-based rates.

12. Production Request No. 15 seeks the *five most recent* contracts BellSouth has entered into which contain dispute resolution provisions. BellSouth objects to Production Request No. 15 as being overbroad and burdensome. BellSouth incredibly claims that this request is overbroad! Alternative dispute resolution is an issue in the case. Asking BellSouth to produce five contracts containing such provisions is clearly within BlueStar's discovery rights.

13. Production Request Nos. 20 and 21 ask for documents related to repair intervals--a contested issue in this case. BellSouth claims the requests are overbroad and irrelevant. Clearly, a comparison of the repair intervals BellSouth provides to its retail customers with what it proposes in the interconnection agreement is relevant to the issues in this case. Nor are the requests overbroad; they relate specifically to documents dealing with repair intervals.

14. BellSouth objects to Production Request No. 22 which seeks a copy of BellSouth's contracts with its 20 largest customers and suppliers, based on dollar value. BellSouth claims this request is "a demand for material that is proprietary, and a demand that appears to be propounded simply for harassment purposes." As to the proprietary objection, BlueStar is willing to execute a Protective Agreement. As to BellSouth's claim that this request is for purposes of "harassment," nothing could be more ludicrous. BlueStar needs this information to prepare for the arbitration by investigating the general provisions within BellSouth's contracts.

15. Finally, BellSouth objects to Product Request No. 23, saying that it is not a request

for production, but rather a request for the creation of a document. This information is important to BlueStar's discovery in order to determine the source and therefor the accuracy of any and all documents supplied by BellSouth in accordance with the Request for Production of Documents.

16. Pursuant to Rule 28-106.204, Florida Administrative Code, BlueStar has attempted to confer with counsel for BellSouth regarding this motion but was unable to reach him.

WHEREFORE, BlueStar requests that the Prehearing Officer enter an order requiring BellSouth to promptly respond to BlueStar's discovery requests and that the Prehearing Officer to do so on an expedited basis.



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Attorneys for BlueStar Networks, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of BlueStar Networks, Inc. 's foregoing Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery has been furnished by (*) hand delivery this 20th day of January, 2000, to the following:

(*) Donna Clemons
Florida Public Service Commission
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Tallahassee, Florida 32399-0850

(*) Phil Carver (also served by fax)
(*) Michael Goggin (also served by fax)
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, #400
Tallahassee, Florida 32301-1556


Vicki Gordon Kaufman