

J. PHILLIP CARVER
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BellSouth Telecommunications, Inc.
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February 17, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 991838-TP

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth's Response in Opposition to BlueStar's Motion to File Supplemental Rebuttal Testimony, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver

J. Phillip Carver

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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**CERTIFICATE OF SERVICE
DOCKET NO. 991838-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express (+) or Hand-Delivery (*) this 17th day of February, 2000 to the following:

Donna Clemons (*)
Staff Counsel
Division of Legal Services
Florida Public Service Comm.
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Norton Cutler (+)
V.P. Regulatory & General Counsel
BlueStar Networks, Inc.
L & C Tower, 24th Floor
401 Church Street
Nashville, Tennessee 37219
(615) 346-6660



J. Phillip Carver (M)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: February 17, 2000

**BELLSOUTH'S RESPONSE IN OPPOSITION TO BLUESTAR'S MOTION
TO FILE SUPPLEMENTAL REBUTTAL TESTIMONY**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Response in Opposition to BlueStar's Motion to File Supplemental Rebuttal Testimony.

1. BlueStar Networks, Inc. ("BlueStar") has, on more than one occasion, failed to diligently pursue some aspect of this case, then attempted to visit the results of its conduct upon BellSouth in a way that is prejudicial. To give one previous example, BlueStar filed its Petition on December 7, 1999, then did not file written discovery for 29 days. Nevertheless, when BlueStar did file written discovery, it also filed a Motion with this Commission requesting that BellSouth's response time be reduced to 15 days. This Commission, of course, refused to allow BlueStar this expedited discovery (Order No. PSC-00-0041-PCO-TP).

2. BlueStar is now making another request for some special dispensation in response to a situation that it has created. This request is somewhat unique in that BlueStar is requesting that it be allowed to file Supplemental Rebuttal Testimony in light of discovery that it claims that it did not receive. Typically, when a party asks that its

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opportunity to file Rebuttal Testimony be either expanded or postponed, it is based upon the contention that it has not had adequate time to review the testimony to which the rebuttal is directed. BlueStar, instead, alleges that it cannot respond to the Pre-Filed Testimony of BellSouth that has been in its possession for three weeks without first obtaining documents that it has requested in discovery. Given this, BlueStar's position is, at best, questionable.

3. BlueStar's position is weakened further by the fact that almost all of the documents in question are cost studies that relate only to the rates encompassed within Issue 10. BlueStar, however, has signed an Amendment in which it has agreed to rates. A copy of this Amendment is attached as Exhibit A. The discovery that BlueStar claims to need relates only to an issue that should be settled, but that BlueStar inexplicably continues to litigate.

4. Moreover, BlueStar's request should not be granted because, again, BlueStar is dealing entirely with a situation of its own creation. The pertinent background, all of which was left out of BlueStar's Motion, is as follows:

1. On February 25, 2000, BellSouth responded to BlueStar's discovery requests by making documents responsive to all non-objectionable requests available for inspection and copying at a mutually agreeable time.
2. On February 2, 2000, eight days after BellSouth's Response, Norton Cutler, General Counsel for BlueStar, appeared at BellSouth's premises to review documents. BellSouth made available for inspection 5,065 pages of documents at that time.

3. Mr. Cutler was requested to mark all documents of which he wanted copies. Mr. Cutler marked 217 pages, and he discussed specifically the documents he wished to have copied with the BellSouth employee in attendance, Norma Dodson-Bush. A substantial portion of the documents marked for copying came from two different cost studies that BellSouth produced, a UCL cost study and an ADSL cost study. Mr. Cutler also stated to Ms. Dodson-Bush, however, that he did not want BellSouth to begin making copies of these documents at that time because he planned to *contact the undersigned counsel for BellSouth to discuss obtaining cost studies in electronic format rather than in paper format.* Mr. Cutler did not subsequently contact the undersigned counsel for BellSouth for this purpose.
4. On Monday, February 7, 2000, Mr. Cutler contacted Ms. Dodson-Bush and stated that, rather than electronic copies, he would like to have paper copies after all. Three days later, on Thursday, February 10, 2000 (i.e., the same day BlueStar filed its Motion), BellSouth hand-delivered to BlueStar's attorney, Ms. Kaufman, in Tallahassee, copies of the documents requested.
5. Later that same day, yet another attorney for BlueStar, John Taylor, contacted BellSouth and stated for the first time that BlueStar wanted not only the 217 pages to be copied that Mr. Cutler had marked, but the entire

ADSL and UCL cost studies, as well as a Network Terminating Wire cost study. These three studies total 3,001 pages. Mr. Taylor also contended that Mr. Cutler had made this request at the time that he reviewed the documents originally. This contention contradicts the recollection of the BellSouth employee who spoke with Mr. Cutler. Further, the documents that Mr. Cutler did mark to be copied included many pages from two of the three cost studies. Thus, BlueStar's contention was that Mr. Cutler wanted copies of both the parts of the cost studies he marked and other parts that he did not mark. Nevertheless, BellSouth responded immediately to BlueStar's demand. Within 24 hours, BellSouth made available at its offices in Atlanta copies of the 3,001 pages of documents, as well as a series of compact discs containing both the ADSL and UCL cost studies. BlueStar took possession of the documents on that day.

5. Despite all of the above, BlueStar still filed the subject Motion. However, it is clear that any delay in BlueStar's obtaining documents is strictly its own fault. Given this, BlueStar is not entitled to have additional time to file Supplemental Rebuttal Testimony. Further, even if the Commission were to grant BlueStar's request, since it obtained copies of all documents, by February 11, 2000 (even those BlueStar requested to be copied for the first time less than 24 hours earlier), under BlueStar's requested five day extension, testimony would still be due no later than Wednesday, February 16, 2000.

6. If the Commission allows BlueStar to file Supplemental Testimony after it has received discovery, then, in all fairness, it should allow BellSouth to do the same. As

BellSouth stated in its Motion to Strike, BlueStar has attempted to improperly expand Issue 15 to include a variety of vague allegations by its witness, Ms. Hassett, which more properly belong in a complaint proceeding rather than an arbitration. Upon receiving this testimony, BellSouth promptly filed discovery to attempt to determine if there is any factual basis whatsoever for Ms. Hassett's testimony. BlueStar's responses to this discovery are not due, however, until today. Again, BellSouth has requested that BlueStar's improper approach to Issue 15 be disallowed. If, however, the Commission allows BlueStar to take this approach to Issue 15 then, at the very least, BellSouth should be allowed to supplement its testimony after it receives answers to its discovery concerning the alleged factual basis of Ms. Hassett's testimony.

7. BellSouth does not believe, in general, that it is appropriate to allow parties to supplement their Rebuttal Testimony in response to discovery, rather than in response to the testimony being rebutted. Even if this approach were appropriate in general, the fact that BlueStar is solely responsible for any delay provides another reason that BlueStar's Motion should be denied. BlueStar's alleged need to file supplemental testimony is the result of its own action. BellSouth, on the other hand, is struggling to obtain information to respond to BlueStar's inappropriate approach to Issue 15. If fairness dictates allowing either party to file Supplemental Rebuttal, it is BellSouth that should be given this option. Thus, if this Commission allows BlueStar to file *Supplemental Rebuttal Testimony*, then in fairness, and in light of the particular circumstances described herein as well as in BellSouth's Motion to Strike, BellSouth should be granted the same right.

Respectfully submitted this 17th day of February, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE
MICHAEL P. GOGGIN
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150 South Monroe Street, #400
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R. Douglas Lackey

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**Rebuttal Exhibit AJV-1
Docket No. 991838-TP**

**Amendment to Interconnection
Agreement Between
BlueStar Networks, Inc. and
BellSouth Telecommunications, Inc.**

4 Pages

Exhibit A

**AMENDMENT
TO THE
AGREEMENT BETWEEN
BLUESTAR NETWORKS, INC.
AND
BELL SOUTH TELECOMMUNICATIONS, INC.
DATED DECEMBER 28, 1999
(Florida, Georgia, Kentucky and Tennessee)**

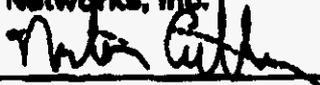
Pursuant to this Agreement, (the "Amendment"), Bluestar Networks, Inc. ("Bluestar"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to individually as a "Party" and collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated December 28, 1999 (the "Interconnection Agreement").

WHEREAS, BellSouth and Bluestar entered into an Interconnection Agreement on December 28, 1999 and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Interconnection Agreement entered into between Bluestar and BellSouth is hereby amended to delete Sections 2.1.2, 2.1.3 – 2.1.3.7 of Attachment 2 in its entirety and replace it with new Section 2.1.2 of Attachment 2 which is attached hereto as Exhibit A.
2. This Amendment shall have an effective date of January 27, 2000.
3. All of the other provisions of the Agreement, dated December 28, 1999, shall remain in full force and effect.
4. Either or both of the Parties may submit this Amendment to the appropriate Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Bluestar Networks, Inc.
By: 
Name: Norton Cutler
Title: General Counsel
Date: 1-27-2000

BellSouth Telecommunications, Inc.
By: 
Name: Jerry Hendrix
Title: Senior Director
Date: 1/27/00

EXHIBIT A

2.1.2 Technical Requirements

2.1.2.1 BellSouth will offer loops capable of supporting telecommunications services such as: POTS, Centrex, basic rate ISDN, analog PBX, voice grade private line, 2 and 4 wire xDSL, and digital data (up to 64 kb/s). Additional services may include digital PBXs, primary rate ISDN, Nx 64 kb/s, and DS1/DS3 and SONET private lines.

2.1.2.2 **Digital Subscriber Line ("xDSL") Capable Loops.** XDSL capable loops describe loops that may support various technologies and services. The "x" in xDSL is a placeholder for the various types of digital subscriber line services. An xDSL loop is a plain twisted pair copper loop. BellSouth will offer xDSL capable loops according to industry standards for CSA design loops (ADSL/HDSL) and resistance design loops (UCL). To the extent that these loops exist within the BellSouth network at a particular location, they will be provisioned without intervening devices, including but not limited to load coils, repeaters (unless so requested by Bluestar), or digital access main lines ("DAMLs"). These loops may contain bridged tap in accordance with the respective industry standards (CSA design loops may have up to 2,500 feet total (all bridged taps) and up to 2,000 feet for a single bridged tap; resistance design loops may have up to 6,000 ft). At Bluestar's request, BellSouth will provide Bluestar with xDSL loops other than those listed above, so long as Bluestar is willing to pay the loop conditioning costs needed to remove the above listed equipment and/or bridge taps from the loops. Any copper loop longer than 18kft requested by Bluestar through the loop conditioning process will be ordered, billed, and inventoried as UCLs. Loop conditioning costs will be charged in addition to the loop itself on any of the loops described in this section 2.1.2.2, Bluestar may provide any service that it chooses so long as such service is in compliance with FCC regulations and BellSouth's TR73600.

2.1.2.3 The loop will support the transmission, signaling, performance and interface requirements of the services described in 2.1.2.1 above. The foregoing sentence notwithstanding, in instances where BellSouth provides Bluestar with an xDSL loop that is over 12,000 feet in length, BellSouth will not be expected to maintain and repair the loop to the standards specified in the TR73600 and other standards referenced in this Agreement; provided, however, that for all loops (xDSL or otherwise) ordered by Bluestar, BellSouth agrees to maintain electrical continuity and to provide balance relative to tip and ring.

- 2.1.2.4 In instances where Bluestar requests BellSouth to provide Bluestar with an xDSL loop to a particular end-user premises and (i) there is no such facility (including without limitation spare copper) available, and (ii) there is a loop available that would meet the definition of an xDSL loop if it were conditioned consistent with the FCC's rules promulgated pursuant to the UNE Remand Order, FCC 99-238 (adopted Sept. 15, 1999) (*i.e.*, FCC Rule 51.319(a)(3)) (hereinafter "Conditioning Rules"), BellSouth shall offer such loop to Bluestar and shall offer to condition such loop consistent with the Conditioning Rules. In those cases where Bluestar requests that BellSouth remove equipment from a loop longer than 18kft, and this equipment is required to provide normal voice services, Bluestar agrees to pay a re-conditioning charge in order to bring the loop back up to its original specifications.
- 2.1.2.5 The Parties agree that such conditioning charges shall be interim and subject to true-up (up or down), pending the determination by the relevant Commission of conditioning charges. The Parties further agree that, if and when a Commission (in a final order not stayed) orders or otherwise adopts conditioning charges, they shall amend this Agreement to reflect said charges. If the Parties are unable to reach agreement on such an amendment, either Party may petition the appropriate Commission for relief pursuant to the dispute resolution procedures described in the General Terms and Conditions – Part A of this Agreement.
- 2.1.2.6 In those cases where Bluestar has requested that BellSouth remove equipment from the BellSouth loop, BellSouth will not be expected to maintain and repair the loop to the standards specified for that loop type in the TR73600 and other standards referenced in this Agreement.
- 2.1.2.7 In addition, Bluestar recognizes that there may be instances where a loop modified pursuant to this subsection 2.1.2.5 may be subjected to normal network configuration changes that may cause the circuit characteristics to be changed and may create an outage of the service that Bluestar has placed on the loop (e.g., a copper voice loop is modified by the removal of load coils so that Bluestar may attempt to provide xDSL service. BellSouth's records may still reflect that the loop is a voice circuit. BellSouth performs a network efficiency job and rolls the loop to a DLC. The original voice loop would not have been impacted by this move but the xDSL loop will likely not support xDSL service). If this occurs, BellSouth will work cooperatively with Bluestar to restore the circuit to its previous xDSL capable status as quickly as possible.

2.1.2.8 The following rates, as subject to true-up, will apply:

| 2-Wire Unbundled Copper Loop (18kft or less) | | | | | | | | | |
|---|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| | AL* | FL | GA* | KY* | LA | MS* | NC | SC* | TN** |
| Recurring | \$15.11 | \$18.00 | \$13.05 | \$11.89 | \$21.00 | \$14.83 | \$19.00 | \$20.81 | \$18.00 |
| Non-Recurring | | | | | | | | | |
| Non-Recurring 1st | \$514.21 | \$340.00 | \$359.00 | \$713.50 | \$340.00 | \$504.82 | \$450.00 | \$600.61 | \$450.00 |
| Non-Recurring Add'l | \$464.58 | \$300.00 | \$325.15 | \$609.44 | \$300.00 | \$456.24 | \$390.00 | \$507.33 | \$325.00 |
| Manual Svc Ord - 1st | \$47.00 | \$47.00 | \$18.94 | \$47.00 | \$18.14 | \$25.52 | \$47.00 | \$25.52 | |
| Manual Svc Ord - Adl | \$21.00 | \$21.00 | \$8.42 | \$21.00 | \$8.06 | \$11.34 | \$21.00 | \$47.00 | |
| Manual Svc Ord - Dis | \$17.77 | | | \$17.77 | \$11.41 | \$16.06 | | \$21.00 | |
| Order Coordination | \$16.00 | \$16.00 | \$34.22 | NA | \$32.77 | \$45.27 | \$16.00 | \$45.43 | \$45.00 |
| Disconnect 1st | | | | | \$72.54 | \$105.86 | | | |
| Disconnect Addl | | | | | \$39.42 | \$57.25 | | | |

*Same as ADSL loop rate

** ADSL rates not yet set

| Loop Conditioning | | | | | | | | | |
|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Remove Equip < 18ft | | | | | | | | | |
| First Install | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 |
| Addl Install | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 |
| Remove Equip > 18ft | | | | | | | | | |
| First Install | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 |
| Addl Install | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 |
| First Disconnect | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 | \$775 |
| Addl Disconnect | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 | \$25 |
| Remove Bridge Tap all | | | | | | | | | |
| First Install | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 | \$485 |
| Addl Install | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 | \$20 |

The UCL Rates listed above may be used for UCLs longer than 18kft until we are able to perform a cost study on long UCLs (18kft).

The Loop Conditioning charges would apply in addition to the UCL NRCs.

All the rates listed above would be subject to true-up once final cost numbers are determined.

The Parties agree that the prices reflected herein shall be "true-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the state in which the services are being performed or any other body having jurisdiction over this agreement, including the FCC. Under the "true-up" process, the price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, Bluestar shall pay the difference to BellSouth. If the Total Final Price is less than the Total Interim Price, BellSouth shall pay the difference to Bluestar. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up," the Parties agree that such differences shall be resolved through arbitration.