

MICHAEL P. GOGGIN
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January 14, 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 (BlueStar Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to BlueStar Networks, Inc.'s Motion for Expedited Discovery Response Times, which we ask that you file in the captioned docket.

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,

Michael P. Goggin
Michael P. Goggin

AFA _____
APP _____
CAF _____
CMU *Favor* _____
CTR _____
EAG _____
LEG 1 _____
MAS 5 _____
OPC _____
RRR _____
SEC 1 _____
WAW _____
QTH _____

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

DOCUMENT NO.
~~00711-00~~
1-18-00

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	
)	Docket No. 991838-TP
Petition for Arbitration of BlueStar Networks,)	
Inc. with BellSouth Telecommunications, Inc.)	
pursuant to the Telecommunications Act)	Filed: January 14, 2000
of 1996.)	
_____)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
 RESPONSE TO BLUESTAR NETWORKS, INC.'S MOTION FOR
EXPEDITED DISCOVERY RESPONSE TIMES**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to BlueStar Networks, Inc.'s ("BlueStar's") Motion for Expedited Discovery Response Times ("BlueStar").

1. On December 7, 1999, BlueStar filed this petition for arbitration of a new interconnection agreement with BellSouth Telecommunications, Inc. (the "Petition") with the Florida Public Service Commission ("Commission"). On January 5, 2000, prior to the issues identification workshop or the issuance of an Order Establishing Procedure in this matter, BlueStar served voluminous discovery requests on BellSouth. Including subparts, the discovery demands include over 90 requests for production and interrogatories. In addition to being numerous, the requests are overbroad (e.g. all documents relating to BellSouth's planning efforts with regard to its retail ADSL offering) and in many cases, irrelevant (e.g., contracts with BellSouth's 20 largest suppliers). In its discovery requests, BlueStar demanded that BellSouth respond within 20 days, 10 days earlier than the applicable rules permit.

2. Five days after it served its discovery, on January 10, 2000, during an issues identification workshop in this matter, BlueStar requested that BellSouth be compelled to respond to this massive discovery on January 18, 2000, a week less than the expedited 20 day period they demanded in their discovery requests. The reason given at that time for seeking this extraordinarily short response time was that BlueStar wished to have the discovery responses in time to use them to prepare its direct testimony by January 25, 2000¹. In other words, although BlueStar had waited 29 days after filing its complaint to propound discovery, now wished to give BellSouth less than two weeks in which to respond.² BlueStar was particularly insistent on receiving copies of BellSouth cost studies. During the issues identification, however, it became clear that BlueStar could not identify which rates in particular it wanted the Commission to arbitrate, making it difficult for BellSouth to determine which cost studies might be relevant or whether additional cost studies would need to be performed.

3. At the issues identification workshop, BellSouth indicated that it would endeavor to respond to BlueStar's discovery, subject to appropriate objections, within 20 days, but noted that given the number and extremely burdensome nature of the

¹ BlueStar also contends that a response date less than two weeks from the date of service is appropriate because it sent "draft" copies of the requests to BellSouth on December 29, 1999, a week before the actual discovery was served. Motion at p. 2. This is a bit misleading. The "data requests" BlueStar provided on December 29 were only for discussion purposes, according to BlueStar. BlueStar did not expect BellSouth to produce information in response to them. Indeed, BlueStar's counsel indicated at the time that they would discuss the draft requests before deciding when or whether to serve them. The "draft" requests were never filed or served. On January 5, 2000, BellSouth was served with discovery different from the "drafts" to which BlueStar refers. BellSouth's time for responding did not begin to run until BlueStar had served discovery it intended BellSouth to answer.

² Had BlueStar propounded discovery in early December, soon after filing its Petition, BellSouth could have been afforded the full 30 days permitted under the rules to respond, and BlueStar would still have had weeks to review the responses prior to preparing its direct testimony. If BlueStar's preparation will be hindered by receiving BellSouth's responses within the expedited 20 day period BlueStar requested, its problems are of its own making.

requests, it would be very difficult to do so.³ Contrary to the assertion in BlueStar's Motion (at p.3), BellSouth never "refused to provide the [cost] studies." BellSouth merely objected to BlueStar's suggestion that BellSouth be ordered to respond to BlueStar's mountain of discovery requests less than two weeks after they were served.

4. In attempt to help BlueStar resolve its dilemma, Commission Staff suggested that the parties could agree to move the hearing date back. This would permit BellSouth adequate time to respond to BlueStar's discovery and give BlueStar the time it claims it needs to review BellSouth's responses and to prepare its testimony. BlueStar refused to consider this option.

5. Two days after the issue identification workshop, BlueStar filed this Motion.⁴

6. The Commission should not disadvantage BellSouth by requiring it to attempt the impossible by responding to BlueStar's voluminous and burdensome discovery requests less than two weeks after they were served.⁵ BlueStar asserts in its motion that due to the "complexity of the issues" in this matter, and the fact that "these materials are critical to the preparation of BlueStar's case," it must have them in advance of the time that its direct testimony will be filed or it will be "extremely

³ BellSouth does not object to BlueStar's request to shorten the time for discovery for all requests to 20 days.

⁴ Although BlueStar states that it attempted to confer with counsel for BellSouth prior to filing this Motion, its attempts were half-hearted at best. Counsel for BlueStar called BellSouth's counsel, and, upon being informed that he was in Tallahassee on another matter, simply left a voice mail stating that the call represented an attempt to confer, and stating that the motion would be filed in the morning. In view of the fact that the parties had discussed BlueStar's desire for expedited responses a day earlier, however, the Motion did not come as a surprise to BellSouth.

⁵ BellSouth is aware that BlueStar now asks only that BellSouth be compelled to respond to *some* of its discovery in the impossible interval of 13 days. The rest, BlueStar is willing to take on a merely *expedited*

prejudiced.” Motion at 2. If BlueStar would be prejudiced in this instance, it has only itself to blame. BlueStar filed this Petition. It listed the issues in its Petition. It knew about the complexity of the issues, and, presumably, the sort of information that would be necessary to put on its case when it filed the Petition. It must have known that it might be “prejudiced” if it waited too long to conduct discovery. Yet, it waited almost a month after filing the Petition to propound discovery, and now wants BellSouth to answer in less than half the time the rules allow. The Commission should not prejudice BellSouth as BlueStar requests, just to relieve BlueStar of the ill effects of its own failure to plan ahead. The Commission should not countenance such blatant abuse of the discovery process.

7. More importantly, BlueStar would not be prejudiced, even if BellSouth were to take the entire 30 days permitted by the rules to respond to BlueStar’s discovery. The information they seek, to the extent it is relevant to any issues in this arbitration, relates primarily to the rates to be adopted for various loops and related services. BellSouth will file direct testimony supported by cost studies on January 25, 2000. BlueStar presumably will use the information it gets through discovery not for direct testimony, but to dispute the rates and supporting cost studies BellSouth submits in its direct testimony. This is most appropriately and effectively attempted in rebuttal testimony, which is not due in this matter until February 8, 2000. Accordingly, it is difficult to see how BlueStar, not withstanding its own delay in serving discovery, would

basis, 20 days. BlueStar’s willingness in its Motion to limit the number of its unreasonable demands, however, does not render them reasonable.

be prejudiced if BellSouth were to produce this information on an expedited 20-day schedule.

For the reasons stated above, BellSouth respectfully requests that BlueStar's motion be denied.

Respectfully submitted this 14th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE
MICHAEL P. GOGGIN

c/o Nancy Sims

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192861

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimile(*) and U.S. Mail this 14th day of January, 2000 to the following:

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JAN 14 2000

CMU