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RECORDS AND
REPORTING

January 27, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
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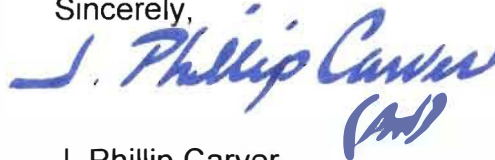
Re: Docket No. 991838-TP

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to BlueStar Networks, Inc.'s Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery, 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

- AFA _____
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cc: All Parties of Record
Marshall M. Criser III
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Nancy B. White

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FPSC-RECORDS & REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	
)	Docket No. 991838-TP
Petition for Arbitration of BlueStar Networks, Inc. with BellSouthTelecommunications, Inc. pursuant to the Telecommunications Act of 1996.)	
)	Filed: January 27, 2000
)	
)	

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

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to BlueStar Networks, Inc.'s ("BlueStar's") Motion to Compel BellSouth to Respond to Discovery ("Motion to Compel").

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, 2000. 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.¹ 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 requests, it would be very difficult to do so.

4. Two days after the issue identification workshop, BlueStar filed a motion requesting that BellSouth be ordered to respond to much of this voluminous discovery by January 18, 2000, less than two weeks after the discovery had been served. In the

¹ 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

interests of time, BellSouth, at the request of the Commission staff, volunteered to file an expedited response to this motion. In the Order Establishing Procedure in this docket, issued on January 21, 2000. The Commission denied Bluestar's demand.²

5. On January 18, 2000, BellSouth served preliminary objections to Bluestar's discovery, noting that the preliminary objections might be amended or modified as BellSouth continued to gather information to attempt to respond to the requests. On January 20, 2000, Bluestar filed this Motion to Compel.

6. Bluestar's actions in this matter are nothing more than rank abuse of the Commission's discovery process. First Bluestar serves massive discovery requests seeking responses on an expedited 20-day schedule. Then it files a motion demanding an even more compressed 13-day response time, and seeking an expedited ruling. Next, before the Commission has issued an order on its first motion, before the Commission has even determined whether a 20-day schedule would be appropriate, and well before any response would be due from BellSouth, Bluestar files this Motion to Compel. At best, Bluestar's conduct could be characterized as procedural gamesmanship. At worst, it might be seen as a calculated campaign of harassment.

7. Bluestar's purported justifications for filing its Motion to Compel are all undercut by the simple truth that, at the time it filed the Motion to Compel, BellSouth's response to Bluestar's discovery barrage would not be due for at least 5 days (depending on the terms of the Order Establishing Procedure, which had not yet been

hindered by receiving BellSouth's responses within the expedited 20 day period BlueStar requested, its problems are of its own making.

issued).³ In other words, BlueStar has no basis upon which to claim that BellSouth's responses to its requests are inadequate. It simply jumped the gun--again.⁴ This alone would be reason enough to deny the Motion to Compel.

8. Moreover, by prematurely filing its Motion, BlueStar has unnecessarily involved the Commission in discovery disputes that subsequently disappeared when BellSouth filed its response to the subject discovery. For example, in BellSouth's preliminary objections filed January 18, 2000, BellSouth objected to interrogatory No. 15 because the scope of the interrogatory was such that it appeared that providing responsive information would be burdensome. In its preliminary objection, BellSouth specifically stated that it would provide a more definitive response after it had conducted a search for the necessary information. After having done so, BellSouth withdrew the objection and answered the interrogatory. Of course, in the meantime, BlueStar has burdened the Commission with an unnecessary motion to compel.

9. At this juncture, the specific discovery requests to which BellSouth continues to maintain an objection are as follow:

- 1) Interrogatories: Nos. 2, 3, 5, 9, 11, 16, 21 and 23.
- 2) Production Requests: Nos. 1, 5, 6, 7, 12, 15, 20, 21, 22 and 23.

² The Commission granted BlueStar's request to require discovery responses within 20 days, a request to which BellSouth did not object, despite its misgivings about being able to respond to BlueStar's voluminous requests within that timeframe.

³ It should be noted here that the issuance of the Order Establishing Procedure was delayed in order to incorporate an expedited ruling on BlueStar's prior motion for expedited discovery responses.

⁴ As in its last motion concerning these discovery requests, BlueStar emphasizes the fact that Direct Testimony is due in this case on January 25, 2000, the same date by which BlueStar originally demanded that BellSouth respond to its requests. As BellSouth noted in its response to BlueStar's last motion, if BlueStar had not waited almost a month to serve discovery, it would not have to repeatedly complain that receiving BellSouth's responses within the expedited 20-day period it requested was not fast enough. BellSouth should not be prejudiced by having to produce mountains of information on a compressed time schedule to save BlueStar from a problem of its own making.

As to the interrogatory requests, each interrogatory that BellSouth has objected to seeks irrelevant, confidential, and competitively sensitive information relating to BellSouth's retail services. In its Motion to Compel, BlueStar attempts to justify this extremely broad and completely irrelevant request with the "broad brush" assertion that "it is necessary for BlueStar to have access to the information sought to insure that BellSouth provides BlueStar parity of services on a nondiscriminatory basis and in the same time and manner they are provided to BellSouth's retail customers." (Motion at p. 2). BlueStar, however, provides no specific support for the contention that the information that it seeks is relevant. Further, a specific review of BlueStar's request belies its contention.

10. For example, Interrogatory Nos. 2, 3 and 18 all inquire as to BellSouth's future plans for the deployment of particular retail services. Thus, BlueStar is apparently making the argument that it must know about BellSouth's future plans for services that have not yet been offered to determine whether BlueStar is receiving service at parity. Obviously, there can be no such thing as parity with a service that does not exist yet and may or may not be offered in the future. A more plausible explanation for BlueStar's request is that it is seeking confidential and competitively sensitive information having to do with BellSouth's future business plans for retail service offerings. As a competitor of BellSouth, this information would obviously be useful to BlueStar, and would just as obviously be damaging to BellSouth if released. It is equally obvious that this information has no relevance to the issues in this proceeding.

11. Likewise, BlueStar has submitted interrogatories seeking information from a variety of cost studies for retail services. These interrogatories are completely unjustified, either in the name of parity or otherwise. BlueStar should have no conceptual difficulty in understanding that there is a difference between purchasing unbundled network elements, such as a loop, and purchasing a retail service that utilizes a loop. Thus, the cost of providing the loop as a UNE is obviously different than the cost of providing the service to a retail customer. Given this, BlueStar has no justification for demanding the inherently different cost studies that relate to BellSouth's retail offerings.

12. BlueStar, of course, may argue that, to the extent that both cost studies include loops, this broadly-stated fact entitles BlueStar to this information. This argument, however, does nothing to militate the fact that BlueStar is requesting cost studies that are entirely different than the ones that are relevant to this proceeding. A few examples will suffice to demonstrate the differences.

13. In Interrogatory No. 9, BlueStar requests that BellSouth state "the cost of the loop that it attributes to its own retail ADSL service in any cost analysis." However, the cost studies supporting BellSouth's retail ADSL offering include the electronics necessary to make a loop ADSL compatible, but do not include the cost of loop provisioning itself. In contrast, the ADSL compatible UNE loop offering is for a copper loop that includes no electronics. Therefore, the cost of the loop BellSouth attributes to its own retail ADSL service is simply not comparable to the relevant loop cost for the UNE offering.

14. Likewise, BlueStar has demanded in Interrogatory No. 11 that BellSouth detail how any “cost study used to derive costs for either retail or unbundled local loops incorporates expenses associated with maintaining the outside plant facilities used to provision those loops.” BellSouth has responded to this interrogatory to the extent that it requires information regarding unbundled local loops. BellSouth continues to object, however, to the demand that it produce irrelevant cost studies relating to all BellSouth retail services that utilize the local loop. Beyond the fact that these studies are irrelevant, to conduct the search demanded by BlueStar would be incredibly burdensome. Specifically, it would require that BellSouth review and provide information for every cost study BellSouth has ever developed for almost every service, including but not limited to all of its special access services, all private line services, ESSX, PBX, Multi-Serve, 1FRs, 1FBs and a multitude of other services that utilize the retail loops. These cost studies have no relevance to this proceeding, and BellSouth should not be required to undergo the extreme burden of attempting to produce this irrelevant information.

15. To give a final example, BlueStar has requested in Interrogatory No. 23 that BellSouth state the “cost of removing load coils and bridge taps that BellSouth attributes to its own retail ADSL service in any cost analysis.” However, when BellSouth provides unbundled loops for DSL, if loop conditioning is required, it is done under an ICB and the cost is not based on a cost study. In contrast, BellSouth’s retail ADSL service includes an average, nonrecurring cost for load coil and bridge tap removal. Therefore, BellSouth’s retail loop conditioning cost is based on necessarily differing procedures. Again, the requested information is simply not relevant.

16. As to BlueStar's Production Request Nos. 5, 6, 7 and 12, these request cost studies and other documentation that relate to BellSouth's retail offerings, and they are irrelevant for precisely the same reasons set forth above.

17. Beyond this, BlueStar has also propounded a number of document requests that are objectionable for other reasons, including Nos. 1, 15 and 20 through 23.

18. Production Request No. 1 is, on its face, incredibly overbroad and burdensome. As BellSouth stated in its preliminary objection, this request calls literally for the production of every document that relates to BellSouth's response to any interrogatory. In its Motion to Compel, BlueStar stated that it is simply requesting that to the extent the answer to an interrogatory is in document form, the document be produced. If it is BlueStar's intention to now modify its production request and limit it in this manner, then BellSouth submits that it has already responded adequately to this request. In its interrogatories, BellSouth, in the main, answered the interrogatories with responses specifically drafted for that purpose. In several instances, BellSouth has availed itself of the option available under the Florida Rules of Civil Procedure to produce documents in answer to an interrogatory. Again, if this is all that BlueStar currently seeks, then BellSouth has fully complied.

19. However, what is stated on the face of BlueStar's request is completely different. For example, BlueStar's Interrogatory No. 22 requires BellSouth to identify every one of its interconnection agreements containing an alternate dispute resolution clause. In response to this, BellSouth provided BlueStar a list that includes approximately 35 agreements. In order to compile this list, it was necessary to review

the documents and determine which had alternate dispute resolution clauses. Thus, to literally comply with BlueStar's request that BellSouth produce all documents relied upon, BellSouth would have to produce every one of the 35 contracts, each of which is several hundred pages long. Thus, BellSouth under the original production request propounded by BlueStar, would have to produce tens of thousands of pages of paper to respond to only one of the 23 requests encompassed within Production Request No. 1. Thus, if BlueStar continues to seek the overbroad production that asked originally, then BellSouth continues to object.

20. As to Production Request No. 15, BellSouth has produced responsive interconnection agreements. It is unclear from BlueStar's request, however, whether BlueStar is requesting interconnection agreements or contracts of some other sort. Unfortunately, BlueStar's Motion to Compel does nothing to clarify this ambiguity. Thus, to the extent that BlueStar is requesting something other than the interconnection agreements that BellSouth has already produced, BellSouth continues to object to this production as irrelevant.

21. Request to Produce No. 20 asks that BellSouth "provide all documents reflecting repair interval measurements on repair services provided by BellSouth for its retail and wholesale customers." In other words, BlueStar has requested that BellSouth produce all repair records for all customers, either wholesale or retail, at any time. The request is staggeringly overbroad. Moreover, the information requested in both Production Request No. 20 and 21 are irrelevant to the true issue in this proceeding. As reflected in the testimony of BlueStar witness, Carty Hassett (p. 10), BlueStar is not requesting from BellSouth any sort of standard repair interval. Instead,

BlueStar's demand is that whenever it wishes, it should be able to contact BellSouth and demand that repairs to the service of any particular BlueStar customer be completed within one hour. If BlueStar had requested any contracts, tariffs or other documents that reflect an agreement by BellSouth to provide repair service to any customer upon demand within one hour (regardless of the circumstances) BellSouth's response would have been simple: no agreement exists, and it would be impossible to enter into such an agreement for the reasons set forth in the testimony of BellSouth witness, Keith Milner. Instead, BlueStar has requested exhaustive information regarding the standard repair intervals that it has declined to accept. Thus, this discovery does not relate in any way to the issue in this case as framed by BlueStar.

22. In Production Request No. 22, BlueStar requests BellSouth's contracts with its 20 largest customers. BlueStar maintains in its Motion that it "needs this information to prepare for the arbitration by investigating the general provisions within BellSouth's contracts." It is noteworthy that BlueStar has made no effort whatsoever to show how this request is relevant to any specific issue in this arbitration. The reason for this omission is simple—this information has no relevance to any issue in this proceeding. Instead, BlueStar is simply requesting competitively sensitive, confidential business information from BellSouth either for purposes of harassment or to improperly utilize the information in its own business. There is no justification for this request.

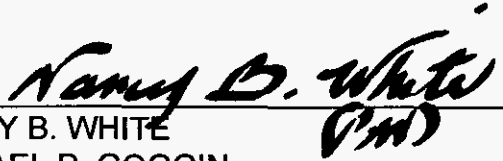
23. Finally, Production Request No. 23 does not ask for the production of any documents. Instead, BlueStar has demanded that BellSouth create a list with the name of every individual that provided any document produced to BlueStar. As BellSouth stated in its initial objection, this is not a proper production request, but instead a

demand that a document be created. Moreover, there is no justification for the creation of this document. BlueStar maintains in its motion that it needs to have this information in order to verify "the accuracy of any and all documents supplied by BellSouth." The reality is that BlueStar wishes to have the names of BellSouth employees in order to continue its campaign of conducting discovery for harassment purposes. One can only anticipate that BlueStar would use this information to set the depositions of the many BellSouth employees that participated in responding to BlueStar's voluminous request for information and documents. To the extent that BlueStar engages in this harassment, BellSouth would, of course, properly object and file a motion for a protective order. However, given the fact that there is no legitimate reason for BlueStar to have this information, it is appropriate for this Commission to sustain BellSouth's objection at this juncture and avoid BlueStar's attempt to conduct discovery that has no purpose other than harassment.

WHEREFORE, for the reasons set forth above, BellSouth respectfully requests that the Commission deny BlueStar's Motion in its entirety.

Respectfully submitted this 27th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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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

U.S. Mail this 27th day of January, 2000 to the following:

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