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February 4, 2000
VIA Hand Delivery

ORIGINAL

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 for Reconsideration.

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

AFA
APP
CAF
CMB favor
CTR
EAG
LEG 1
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OPC
RRR
SEC 1
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encl.

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 4, 2000

ORIGINAL

**BLUESTAR NETWORKS, INC.'S
MOTION FOR RECONSIDERATION**

BlueStar Networks, Inc. (BlueStar), pursuant to rule 25-22.0376, Florida Administrative Code, files this Motion for Reconsideration of Order No. PSC-00-0185-PCO-TP. As grounds therefor, BlueStar states:

1. On December 7, 1999, BlueStar filed its Petition asking the Commission to arbitrate disputes that had arisen during negotiations between BlueStar and BellSouth Telecommunications, Inc. (BellSouth) regarding the terms and conditions of an interconnection agreement. Among the items that the parties could not negotiate was BlueStar's request that the interconnection agreement provide for consequences in the event BellSouth failed to adhere to appropriate performance measures.

2. Issue No. 14 in BlueStar's Petition relates to BellSouth's refusal to include in the agreement consequences for its failure to perform under the agreement. Originally, BlueStar had asked BellSouth to include the liquidated damages provision recently approved and adopted by the Public Utility Commission of Texas. Subsequently, BlueStar learned that BellSouth has voluntarily offered such a provision to the Federal Communications Commission (FCC). It is that provision which BlueStar seeks to include in its agreement.¹

¹ BlueStar suggests this issue: Should the interconnection agreement include the liquidated damages provisions filed by BellSouth in Tennessee in Docket Nos. 99430 and 99377 as Exhibit

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3. On January 14, 2000, BellSouth filed its motion to exclude this issue. On January 19, 2000, BlueStar filed its response. On January 25, 2000, the Prehearing Officer issued Order No. PSC-00-0185-PCO-TP (Order), granting BellSouth's motion to remove the issue. BlueStar seeks reconsideration of this order. BlueStar alleges that the Order overlooks or fails to consider BlueStar's arguments regarding the inclusion of this important issue.

4. The inclusion of a damages issue in an arbitration is appropriate for several reasons. First, while BlueStar acknowledges that the Commission has determined that it cannot award damages, this is not what BlueStar seeks by the inclusion of this issue. To the extent this principle served as a basis to exclude issues relating to BellSouth's refusal to negotiate terms, inclusion of the damages issue is a different question. BlueStar is not asking the Commission to award damages; BlueStar is asking the Commission to require that the parties include terms and conditions in an interconnection agreement that will deter BellSouth from non-performance.

5. It is well within the Commission's authority to prevent anti-competitive behavior and this is the framework under which such an issue must be considered. In this arbitration, the Commission is implementing the Telecommunications Act of 1996, the objective of which is to facilitate competition in the local exchange market. New entrants who avail themselves of an ILEC's facilities as they attempt to build relationships with customers are dependent on the quality of the response they receive from the ILEC. The ILEC has every incentive to frustrate the intent of the Act by favoring its own operations over that of the new entrant. Unless the interconnection agreement has teeth, the new entrant will be exposed to the possibility of activities designed to place the ALEC at a competitive disadvantage. Standard consequences are needed to counter that incentive and to facilitate the competition that is the objective of the Act. Section 364.01(4)(g), Florida Statutes,

No. AJV-1 which relate to BellSouth's Service Quality Measurements (SQMs)?

empowers the Commission to ensure that all telecommunications companies are treated fairly, by preventing anti-competitive behavior. The Commission can exercise that power by requiring the parties to incorporate standards and effective remedies in their agreement.

6. Second, the damages provision which BlueStar seeks to include in its interconnection agreement has been proffered by BellSouth in at least two other forums of which BlueStar is aware--the state of Tennessee and the FCC. Thus, it would appear that BellSouth itself recognizes the necessity of including provisions which will help ensure performance in interconnection agreements.

7. Third, ordinary principles of contract law provide that a contract may include liquidated damages. Therefore, the federal Telecommunications Act permits liquidated damages.

8. BlueStar respectfully suggests that the Order did not address the arguments made by BlueStar but rather relied on prior orders of the Commission noting that the Commission cannot award damages, which is not what BlueStar seeks. BlueStar asserts that the issue on damages that it has framed is appropriate for inclusion in this arbitration and asks that the Commission reconsider this issue.

WHEREFORE, BlueStar requests that:

- 1) the Commission reconsider Order No. PSC-00-0185-PCO-TP;
- 2) if the Commission denies this motion, BlueStar requests that its denial to arbitrate this

issue be included in the Final Order in this matter for purposes of appeal.

Vicki Gordon Kaufman

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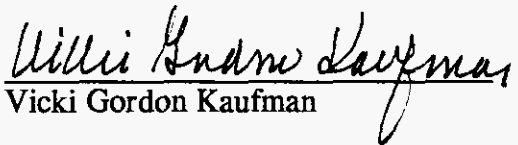
Attorneys for BlueStar Networks, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of BlueStar Networks, Inc.'s foregoing Motion for Reconsideration has been furnished by (*) hand delivery this 4th day of February, 2000, to the following:

(*) Donna Clemons
Florida Public Service Commission
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2540 Shumard Oak Boulevard
Gunter Building, room 370
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