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RECORDS AND
REPORTING

ORIGINAL

February 9, 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 one copy of BellSouth Telecommunications, Inc.'s Motion to Strike Testimony and Motion for Protective Order or, Alternatively Motion to Continue Hearing, 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
(BN)

J. Phillip Carver

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

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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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)
_____)

ORIGINAL
Docket No. 991838-TP

Filed: February 9, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO
STRIKE TESTIMONY AND MOTION FOR PROTECTIVE ORDER
OR, ALTERNATIVELY MOTION TO CONTINUE HEARING**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Motion to Strike Testimony and Motion for Protective Order or, Alternatively Motion to Continue Hearing, and states in support thereof, the following:

1. Issue 15 in this proceeding is defined in the Procedural Order (Order No. PSC-00-01410-PCO-TP), as follows:

Issue 15 – What, if any, provision should the agreement include for Alternative Dispute Resolution?

(Order, p. 15).

BlueStar responded to this issue in its Direct Testimony (albeit very briefly) with a proposal that the Commission handle complaints arising from interconnection agreements with an expedited process similar to the process that is currently in place for consumer complaints.

2. At the outset, BellSouth must note that BlueStar is taking a position that is not appropriate for arbitration. BlueStar has, in effect, requested that

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BellSouth enter into an agreement whereby the two parties would delegate to the Commission the task of resolving disputes between them. Even if the parties could have the Commission act as a sort of "on-call" arbitrator available to handle any dispute between them, any ALEC could opt into this agreement, and, conceivably, the Commission would have to make itself available to all parties to Interconnection Agreements for this purpose. In practical effect, BlueStar is really requesting that the Commission put in place a generic procedure for dealing with an entire class of complaints on an expedited basis. The appropriate way to do this would be to file a petition for a rulemaking proceeding to deal with this issue generically, rather than through arbitration.

3. This fact aside, BlueStar has stated almost nothing in its testimony to support the notion that having the Commission develop an expedited process for dealing with carrier complaints is either necessary, desirable, or even possible. BlueStar gives extremely cursory attention to the real issue here (i.e., the practicality and appropriateness of having a special expedited procedure just to deal with complaints arising from interconnection agreements). Instead, BlueStar has devoted roughly 75 percent of the testimony of its witness, Carty Hassett, to a series of extremely vague allegations, to the effect that there are either disputes between BlueStar and BellSouth, or that BellSouth has simply performed in a manner that BlueStar does not find acceptable. This is, of course, not the real issue. The parties could likely stipulate to the fact that disputes occur between incumbents and new entrants, both as to what interconnection agreements that are in place require and whether the

requirements of those agreements have been met. The issue (and it is an issue that BlueStar has largely ignored) is what should be done to deal with these disputes.

4. Despite this, BlueStar is apparently traveling under the mistaken notion that the appropriateness of an expedited dispute resolution process to be conducted by the Commission is somehow proven by its vague allegations to the effect that BellSouth has done something that gives rise to a legitimate grievance. In effect, BlueStar, rather than dealing with the real issue, has attempted to turn this proceeding into a sort of complaint proceeding. BlueStar has not done so properly since it has failed to make any of its allegations with the sort of specificity that would support a complaint. At the same time, BlueStar's grievances, either real or imagined, have given rise to only one actual complaint, and that was voluntarily withdrew by BlueStar last week. (See attached Notice of Withdrawal filed by BlueStar on February 4, 2000).

5. BlueStar, apparently using the same inappropriate approach, has set the depositions of two BellSouth employees, Pat Solon and Gill Aguayo, because they may have some information concerning the collocation dispute between BellSouth and BlueStar that was the subject of the complaint that has now been dismissed. The only contract that these employees have had with BlueStar was in the context of collocation issues. When the undersigned counsel for BellSouth inquired as to why these employees were being deposed, counsel for BlueStar replied that they "had something to do with the ADR issue."

6. BlueStar should not be allowed to use issue 15 as a pretext to turn the proceeding into some sort of quasi-complaint case. If BlueStar has an actual, legitimate grievance, then it is free to pursue it by filing a complaint with the Commission. BlueStar, however, has chosen not to do so. Yet at the same time, BlueStar claims that their many grievances necessarily require that the Commission institute an ADR process to, in effect, manage the ongoing business relationship between BellSouth and BlueStar. Again, BlueStar's allegations regarding BellSouth's conduct do not go to the real issue in this case. For this reason, BlueStar should not be allowed to try to turn this proceeding into what it is not, a complaint case. The only way to prevent BlueStar from doing so, however, is for the Commission to enter an Order that defines specifically the proper scope of this proceeding, and which prevents BlueStar from pursuing the improper course that it has taken.

7. For these reasons, the Commission should take three actions: 1) the Commission should strike Ms. Hasset's testimony from page 12, line 20 to page 15, line 2; 2) the Commission should enter a Protective Order to prevent BlueStar from taking the depositions of witnesses that have nothing to do with the appropriate issues in this docket (specifically, Ms. Solon and Mr. Aguayo); 3) the Commission should make clear in its Order that further attempts to misuse this arbitration to, in effect, complain about BellSouth without actually filing a complaint will not be allowed.

8. There is an alternative that the Commission may take, although it certainly would not be BellSouth's first choice. If the Commission believes that

the ADR issue does revolve around the existence of the above-described matters alleged in Ms. Hasset's testimony, then BellSouth should at least have an opportunity to defend itself against these allegations and to prove (as BellSouth believes) that the allegations are frivolous. If the testimony of Ms. Hasset on this point is allowed to stand, then BellSouth will have to rebut the testimony with its witnesses, and BellSouth will do so. At the same time, however, as noted above, Ms. Hasset's allegations are exceedingly vague. For this reason, BellSouth has filed written discovery to attempt to obtain more details about these allegations. This discovery was propounded three days after BlueStar's Direct Testimony was filed with the Commission, and two days after it was received by the undersigned counsel for BellSouth.

9. Despite BellSouth's prompt efforts to obtain further information, the responses to BellSouth's discovery are not due until February 17, 2000. The discovery deadline is one week later. The entire week is filled with either depositions already set by the parties, or by the Pre-hearing Conference on Monday, February 21, 2000. Moreover, if BellSouth were to set the depositions of persons that BlueStar identifies in its discovery responses as having direct knowledge about the allegations of Ms. Hasset, BlueStar will likely object to the notices as having been sent with less than adequate notice.

10. Although BellSouth does not believe that the "complaint-type" allegations of Ms. Hasset belong in this case, and has requested for this reason that the Commission strike them, if the Commission allows this approach to Issue 15, then BellSouth must be given a fair opportunity to conduct discovery of

BlueStar in order to rebut BlueStar's allegations. For this reason, BellSouth requests that if the Commission allows these allegations to remain in the case, that both the hearing in this matter and the discovery cut-off be postponed for a minimum of thirty days to allow BellSouth to conduct the appropriate discovery. If the Commission allows this evidence in the case, but does not allow BellSouth the opportunity to develop evidence to disprove the allegations of BlueStar, then BellSouth will obviously be prejudiced.

WHEREFORE, BellSouth respectfully requests the entry of an order striking the above-noted portion of Ms. Hasset's testimony and granting a protective order as to the depositions of BellSouth employees, Pat Solon and Gil Agueyo. In the alternative, BellSouth requests that the Commission continue this hearing and the discovery deadline for no less than 30 days in order to allow BellSouth an adequate amount of time to conduct discovery necessary to rebut BlueStar's allegations.

Respectfully submitted this 9th day of February, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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196305

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail, Federal Express (+) or Hand-Delivery (*) this 9th day of February, 2000 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

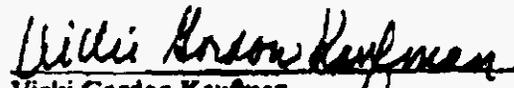
In re: Complaint of BlueStar
Networks against BellSouth
Telecommunications, Inc.

Docket No. 991405-TP

Filed: February 4, 2000

**NOTICE OF WITHDRAWAL OF COMPLAINT OF BLUESTAR
NETWORKS, INC. AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.**

BlueStar Networks, Inc., through its undersigned counsel, withdraws the Complaint in this docket filed on September 17, 1999.


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